



# Assam Electricity Regulatory Commission

File Number: AERC. 516/2015

Petition Number: 18/2015 & 26/2015

## Order Sheet

28.12.2015

Before the Assam Electricity Regulatory Commission  
ASEB Campus, Dwarandhar,  
G. S. Road, Sixth Mile, Guwahati – 781 022  
Petition No. 18/2015 & 26/2015

Assam Power Distribution Company Limited

----- Petitioner

In the matter of Review petition filed by Assam Power Distribution Company Limited under Regulation 34, Chapter-VII of AERC (Conduct of Business) Regulations 2004 seeking review and / or modification of Tariff Order dated July 24, 2015 of the Hon'ble AERC for tariff of the FY 2015-16 and True-up of FY 2013-14

### CORAM

**Shri D.Chakravarty,**  
**Chairperson (i/c) & Member**

### ORDER

1. The Assam Power Distribution Company Limited (hereinafter referred to as the 'Petitioner' or 'APDCL') had filed the petition (Petition No.3/2015) for True-up for FY 2013-14, Annual Performance Review (APR) for FY 2014-15 and approval of the Annual Revenue Requirement (ARR) for FY 2015-16 and corresponding tariff adjustments, under Section 62 of the Electricity Act, 2003 on January 31, 2015.
2. The Commission after taking the due process issued Tariff Order dated July 24, 2015, for true-up for FY 2013-14, Annual Performance Review for FY 2014-15, and revised ARR and Retail Tariff for FY 2015-16, making the new tariff effective from August 1, 2015.
3. APDCL has prayed for review of the Order of FY 2015-16 on the following issues, vide Petition No 18/2015:
  - A. Allow recovery of Rs. 128.40 Crore of service charge for implementing RGGVY deducted from True Up ARR for FY 2013-14 due to improper classification;
  - B. Allow recovery of additional retrospective power purchase liability towards HHPCPL on account of revised tariff along with admissible interest;
  - C. Allow legitimate amount against interest on Long Term Loan (LTL);
  - D. Allow legitimate amount against depreciation amounting to Rs. 59.29 Crore;
  - E. Allow the claim of APDCL regarding realistic Distribution Loss considering the ground reality;
  - F. Allow the claims of APDCL on the issue of O & M expenses;
  - G. Allow all legitimate power purchase costs as APDCL has neither violated the merit order principle nor power has been purchased at unreasonable rates in line with Clause 8.2.1(1) of Tariff Policy;
  - H. Pass any other order as it may deem fit and proper in the facts and circumstances of the present case." Prayer for Review under Truing-up for FY 2013-14
4. The AERC (Conduct of Business) Regulations, 2004 specifies as under with respect to Review of the decisions, directions and orders of the commission:

*"34. Review of the decisions, directions and orders*

  - i. Any person aggrieved by a decision or order of the Commission, from*

*which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decision/ order was passed by the Commission or on account of some mistake or error apparent from the face of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision/ order of the Commission.”*

- ii. *An application for review shall be filed in the same manner as a petition under Chapter II of these regulations.*
  - iii. *When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.*
  - iv. *The application for review shall be accompanied by such fee as may be specified by Commission.”(emphasis added)*
5. The Commission noted that the Review Petition was filed on October 26, 2015, which is after 93 days from the date of issue of the Order dated July 24, 2015 and as such, the petition is barred by the law of limitation.
  6. Assam Electricity Regulatory Commission (Payment of Fees etc.) Regulations, 2015 provides for the option of filing a petition for condonation of delay along with prescribed fee. However, APDCL had not filed any separate petition for condonation of delay along with the review petition.
  7. APDCL further submitted a separate petition for condonation of delay on November 16, 2015 (Petition No. 26/2015), 144 days after the issue of order and 51 days after filing of review petition (Petition No 18/2015). However, APDCL did not present any justifiable grounds for such delay in the submission of the review petition showing that APDCL did not have “**sufficient cause**” for not submitting the review petition on time which is one of the major condition for consideration of the condonation of delay.
  8. The Commission, vide its notice dated December 10, 2015, scheduled a Hearing prior to the admission of the petition at 12:30 P.M. on December 18, 2015.
  9. The Commission conducted the hearing on the scheduled date at the Office of the Commission. Shri A. Baishya, CGM (Commercial), APDCL, Shri M.K. Adhikary, GM (TRC), APDCL, Shri. K. Goswami, DGM (TRC), APDCL, Shri A.N. Debchoudhary, AGM (TRC), APDCL and Shri Nilmadhab Deb, AM (A), (TRC), APDCL appeared on behalf of the petitioner.
  10. The Chairperson initiated the Hearing and at the outset informed the APDCL that in the pleadings submitted to the Commission for condonation of delay no sufficient grounds have been set forth. Moreover no cognizable reasons for delay have been filed and under the said facts and circumstances the Hon’ble Commission expressed that the Commission is not in a position to condone the delay in filing the Review Petition. In point of fact, the Review Petitioner submitted the Petition for condonation of delay after filing of the Review petition and that too after a delay of 144 days (from the date of Tariff Order i.e. July 24, 2015), for which no proper explanation is forthcoming.

#### ***Commission’s Analysis and Decision***

1. The Commission heard the petitioner and recorded the submissions made. However, APDCL could not submit any suitable justification for-
  - i. Not submitting the review petition in time
  - ii. Not submitting the condonation of delay petition in time
  - iii. Not submitting sufficient grounds for delay in filing of petition
2. On the above grounds, the Review Petition (Petition No. 18/2015) and Petition for condonation of delay (Petition No. 26/2015) are not admitted.

**With the above observations and decisions, the petitions (Petition No. 18/2015 and Petition No. 26/2015) filed by APDCL stands disposed of at the stage of admission.**

Sd/-  
(Shri D.Chakravarty)  
Chairperson (i/c) & Member, AERC