



TELANGANA IRON & STEEL MANUFACTURERS ASSOCIATION

Regd. No. 58 of 2022

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Vinod Kumar Agarwal

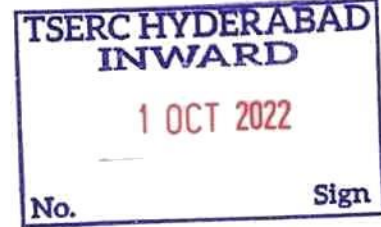
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September 29, 2022

The Secretary,
TSERC
5th Floor, Singareni Bhavan,
Red Hills,
Hyderabad.



Dear Sir,

Sub: Filing of the True-up petition for the Distribution Business for the FY 2006-07 to FY 2020-21, under Multi-Year Tariff principles in accordance with the "Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Wheeling and Retail Sale of Electricity) Regulation, 2005" by TSSPDCL and TSNPDCL – objections / comments of TISMA

Ref: Public Notice issued by TSDISCOMs on 18/08/2022 & 08/09/2022

Referring to the subject, TISMA is hereby submitting its comments/objections in the matter of True-up of Distribution Business for the period from FY 2006-07 to 2020-21 filed before Telangana State Electricity Regulatory Commission by TSSPDCL and TSNPDCL.

Since the petitions are voluminous, we are submitting only preliminary objections and request you to accept our additional objections at the time of public hearing and also give us the opportunity to present our objections in person at Public Hearing.

Thanking You

Yours Sincerely,

For M/S Telangana Iron & Steel Manufacturers Association

Vinod Kumar Agarwal

General Secretary

Mob: 9849079571

BEFORE THE TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
AT HYDERABAD

O.P. Nos. 39 to 41 and 43 to 45 of 2021

In the Matter of :

True-Up of Distribution Business for 1st to 3rd control periods being FY 2006-09, 2009-14 and 2014 to 19 under APERC Regulation No 4 of 2005.

MEMORANDUM OF OBJECTIONS

filed on behalf of

TELANAGANA IRON AND STEEL MANUFACTURERS ASSOCIATION

May it please the Hon'ble Commission :-

1. The notice issued by way of publication in the newspaper mentions filing of O.P. Nos 39 to 42 of 2021 by TSSPDCL and O.P. Nos 43 to 46 of 2021 by TSNPDCL. From the Commission's website it was difficult to find the filings because of the manner in which they were put up. The copies available on the Commission's website do not give the O.P. Nos of each of the petitions and it has not been possible for us to ascertain which O.P. No. pertains to which petition. There are also IA Nos 12 to 15 of 2021 filed by TSSPDCL and IA Nos 16 to 19 of 2021 filed by TSNPDCL. There is no such numbers in the documents put up on the web site and it can only be presumed that these are applications to condone delay in filing.

In addition, the newspaper notice mentions O.P. 20 of 2022 filed by TSNPDCL and O.P. No. 22 of 2022 filed by TSSPDCL. There is no information available

as to what these OPs are and we have not been able to locate these OPs on the Commission's website.

In the circumstances, we proceed on the basis that the O.P. Nos 39 to 41 of 2021 and O.P. Nos. 43 to 45 of 2021 are the true up applications filed by the licensees for the 1st to 3rd control periods respectively. These objections are with these matters relating to the True Up for the 1st to 3rd control period.

2. The objections and submissions made herein are with respect to the particular applications filed by TSSPDCL and the same objections may be treated as being applicable also to the applications filed by TSNPDCL *mutadis mutandis*.

Insufficiency of time and particulars

3. The time allowed for making the submissions is far too short considering that the applications relate to 3 control periods relating to 3 tariff orders. The issues have to be examined in relation to the respective tariff orders. The information given in the applications is scant without compliance with the methodology in the tariff orders and the Regulation. Going into these aspects in detail requires relevant information to be made available by the licensees and also substantial time. The information and time provided is not reasonable or fair. In the circumstances, the submissions made herein may be considered to be preliminary submissions reserving our right to make further submissions in any extended time that may be allowed or at the time of public hearing.

Gross deficiency of information and necessary particulars

4. The licensees have filed Petitions without the necessary statements and details as required and contemplated by the Regulation. They have not given relevant information with regard to the expenditure vis-à-vis the norms fixed by the tariff order. In the absence of the same, it is not possible for the Objector

to evaluate the claim of the licensee. The Petitions require to be dismissed as being vague, bereft of necessary details and for non-compliance with the requirements of the Regulations.

Scope of the present petitions and consequently the objections

5. The prayer in the petitions is only for approval of the true ups as per the petition. There is no proposal for pass through in any manner to the consumers. In the circumstances, the objections now made are only with regard to the true up of the ARR. The question of whether and how the admitted true-up amount is to be passed through is considered beyond the scope of the present petitions.
6. In the event that there is any proposal for pass through to the consumers, the consumers are entitled to specific notice thereof so that appropriate objections may be made.

Wilful delay in filing the true up petition

7. In terms of the Regulation, true up for gains and losses arising out of uncontrollable items are to be filed along with the ARR of year succeeding the relevant year. In the case of the controllable items, the true up is to be with respect to the control period as a whole, and the relevant application for true up ought to be brought before the Commission immediately after the end of the control period.
8. It is stated in the petitions that the true up for the 1st and 2nd control periods was filed for the first time along with the ARRs & FPT for 2016-17. Nothing is stated as to what happened to those true up applications. The Commission appears to have directed filing the true ups for first two control periods and FYs 2014-15 and 2015-16 "so as to issue directions to improve performance of

DISCOMs". That appears to be ignored. Eventually the Commission directed filing true ups for the 1st, 2nd, and 3rd control periods on or before 31.12.2020 in the tariff order dated 29.04.2020. That also was not complied with, and the reasons given are nothing but lame excuses.

9. The licensees say that they could not file the true-ups with ARR filings for 2017-18 as they could not ascertain the impact of Uday on the true ups for 2006-07. That was also a mere lame excuse because there is nothing in the present petition also which indicates the impact of Uday.
10. The conduct of the licensees therefore has been to wilfully evade and avoid the exercise of true ups for reasons best known to themselves and wilfully suppressed. In fact the conduct of the licensees has been to even avoid and evade filing ARRs for reasons best known to themselves and wilfully suppressed so that even annual tariffs are not determined.
11. In the circumstances the delays in filing the petition cannot be excused. Even if the true ups are now carried out for academic and record purposes there cannot be any pass through whatsoever to the consumers with respect to the first three control periods. The IAs for condonation of delay deserve to be dismissed, and consequently the OPs themselves are to be dismissed.

Impact of Uday Scheme

12. The true up petitions do not show the impact of the Uday scheme. The licensees may be directed to specifically provide details in respect of each of the control periods.

Scope of the Distribution Business ARR & Scope of True-up

13. In terms of Clause 3.3 of the Regulation, the ARR determined for the Distribution Business is the basis for the fixation of the wheeling tariff/charges. So much of the Distribution Business ARR as is relevant to the Retail Supply Business of the licensee is to be considered in the ARR for the Retail Supply Business pursuant to Clause 6.4(b) of the Regulation.
14. In a True-up exercise, such as the one purportedly being undertaken presently, the methodology must necessarily be the same as in the Distribution Tariff Order. There cannot be any variation. It is only the actuals, subject to prudence check, that had to be substituted for the estimates considered in the original Distribution Tariff Order. This is settled law.
15. Clearly the licensees have not projected their true-ups by adopting the settled principle that the true-up is to be carried out on the same methodology as in the tariff order. For each of the control periods the licensees may be directed to furnish the tru-ups on the basis of the same methodology as in the tariff order together with the relevant factual data of the actuals.

Uncontrollable Items

16. The only uncontrollable item in the Distribution Business is "Taxes on Income". Nothing more needs to be said on this item as the deviations stated are marginal and nominal.

Controllable Items

17. With respect to the Distribution Business, the controllable items as per the Regulation are
 - (a) O & M expenses,

(b) RoCE,

(c) Depreciation and

(d) Non-Tariff Income.

18. In each of the above cases the licensee has to present the actuals for true-up on the same methodology and basis as in the relevant tariff order. Where norms were the basis of the determination in the relevant item, the same norms are to be applied on the actuals of the relevant variables. For example, if the approved expenditure is on the basis of estimated ckt kms etc, the true up expenditure must be computed on the basis of the actual ckt kms applying the same norm.
19. It is submitted that the classification of expenses as uncontrollable and controllable must be given a purposive meaning and effect in the consumer interest.

"Controllable" means that it is within the control of the licensee and therefore any losses arising on such items cannot be allowed. Only such parts of excess expenditure on such items as are shown by specific and explicit pleadings and evidence to have been due to uncontrollable force majeure factors can be considered. Otherwise, all losses on controllable items are to the account of the licensee alone and cannot be allowed. On the other hand, if there are gains on any controllable items, the same are subject to sharing or pass through. Share for the licensee in gains ought to be allowed only if the gain has been due to any identifiable efficiency improvement in the working of the utility, and not otherwise. For example, if a gain is the result of not carrying out works which ought to have been carried out, no share ought to be allowed to the licensee on the gains.

20. The Regulation requires the licensee to present a statement of gain/loss against each controllable item after adjusting for any variations on account of

uncontrollable factors. The licensees have not complied with the requirements of this Clause.

The licensees have not pleaded or demonstrated by details or evidence any force majeure circumstances with respect to any of the losses in any controllable item.

21. The submissions hereafter are without prejudice to the aforesaid submissions.

Employees Cost & A&G Expenses

22. For the 1st control period the tariff order discusses the issue but allows only a specified increase year by year. The licensee cannot contend that the Commission disregarded the methodology proposed by it at the time of the tariff order and go on to claim true up on an entirely different basis. The licensee is bound by the tariff order operating as an inviolable budget, and even employee costs are to be controlled by the licensee within the amount approved. The same applies to the 2nd control period.

For the 3rd control period the tariff order sets out norms irrespective of the actual cost. These norms cannot be varied in a true-up exercise. The employees cost includes all components such as salaries, benefits, pension, leave encashment etc. The norms have to be applied to the actual number of substations, Line ckt.km., DTR, and number of consumers. No details are available in the Petition as to these actuals. The licensees may be directed to furnish the necessary information so as to enable the Objector to evaluate the amount allowable in true-up. Further, the increase in the sub-stations, lines, DTRs etc is also to be limited to the approved increase. Clause 9 of the Regulation provides for, inter alia, a capital investment plan to be approved by the Commission and these are to be adopted for the determination of tariff. Para 36 read with Table 5.16 of the said tariff Order deals with the Investment plan approved. The Hon'ble Commission has already considered the

increases in the MYT period and determined the EC&AG expenses according to the norms. Therefore, no increase whatsoever over the approved amounts for each year of the control period can be allowed to the licensees.

On the other hand, if there are gains to the licensees by applying the same methodology, the same are to be passed on to the consumers in the next ARR. No share of gains on this account may be allowed to the licensees as the norms are asset based.

It is re-iterated that allowing additional expenditure over and above that computed as per the norms and the approved capital plan is not permissible in a true-up exercise. It is tantamount to modifying the norm itself which is impermissible in a true-up exercise.

R & M Expenses

23. R&M expenses are also to be allowed only on normative basis.

It is submitted that the GFA itself is not unregulated (please see hereunder under the heading GFA). The GFA to be considered for the purposes of R & M expenses is the approved Opening GFA as per the approved investment plan or the actual opening GFA whichever is less.

Gross Fixed Assets (GFA)

24. Chapter III of the tariff order for the 3rd control period deals with the approval of the Investment Plan. In para 38, under Table 3.11, the said order clearly directs that "*The Discoms shall strictly adhere to the head-wise investment schedule mentioned in Annexure E while incurring capital investment.*" Annexure E to the Order specifies the approved investment for each Discom.

The Hon'ble Commission was mindful of the fact that the investments made by the licensees will have financial consequences on the consumers, and that the investments need to be regulated. Accordingly, the investments were regulated. The Order of the Commission with regard to the investment approved will have to be given effect to; and the licensees will have to themselves bear the brunt of consequences arising out of not complying with the order and direction of the Commission. There is no explanation or details in the Petition with regard to the deviation from the amounts of investments approved by the Commission.

Consequently, the GFA to be considered for all purposes in true up (viz R&M, RRB, depreciation etc) will have to be limited to the approved GFA or the actual GFA whichever is lower.

25. It is necessary also to ascertain the gross value of the assets no longer in use in each financial year and to remove such value from the GFA.

O & M Expenses

26. The O & M expenses, being the aggregate of the Employess Costs, AG Expenses and the R&M expenses will have to be determined in true-up on the basis of the submissions supra.

Regulated Rate Base

27. Regulated Rate Base is defined in Clause 2(o) of the Regulation as the value of GFA net of consumer contribution and accumulated depreciation. However, the RRB for the purposes of computing RoCE in terms of Clause 15.1 of the Regulation is different. Keeping that anomaly aside, the working capital is taken as part of the RRB_i.

It is clear from the definition of RRB_{i-1} in Clause 15.1 that the RRB for the i^{th} year is to be determined on the basis of the approved capital investment plan referred to in Clause 16.1. Therefore, the RRB calculation for RoCE has to be on the basis of the GFA as approved in the investment plan or the actual GFA whichever is lower.

The working capital component WC_i for computation of RoCE is to be computed in true up on the basis of the allowable O&M expenses as submitted supra.

Return on Capital Employed (RoCE)

28. RoCE is to be computed having regard to the submissions supra on the GFA, RRB and working capital.
29. However, it is submitted that any loss of RoCE ought not to be allowed as a pass through to the consumer. It should be borne by the licensee alone. On the other hand, if there is a gain in RoCE, the licensee ought to be declined any share of the gain.

Depreciation

30. It is not clear from the Petitions as to how the depreciation has been computed.
31. Clause 17 requires the methodology as decided by CERC from time to time. It is not clear whether this has been done, or according to which CERC order or what exactly is the method employed. Prima facie, it does not appear that the depreciation has been computed as per the applicable CERC Regulations. MoP guidelines are inapplicable in the teeth of specific provisions in the Regulation. It is also settled law that if the tariff order departs from the

Regulation the departure will have to be corrected at the time of true up in conformity with the Regulation.

32. Clause 17.4 provides that Depreciation shall be allowable only from financial year following the financial year in which the asset was first put to use. It is not clear whether this has been done. It is not clear as to what part of the additions to fixed assets in a financial year was put to use in the same financial year. In the absence of such necessary information, the amount of depreciation cannot be verified or computed.
33. It is reiterated that the depreciation is to be allowed only on the opening GFA (to the extent the assets have been put to use) or the actual opening GFA (also to the extent the assets have been put to use) whichever is lower. Any gains on this account are only to the share of the consumers.
34. By way of caution, it is submitted that the GFA or depreciation claimed in the audited accounts, which may be in terms of the requirements of the Companies Act, is not relevant in the regulatory context. Also, the treatment of consumer contribution in the audited accounts is not relevant if different from that in the regulatory framework. It is the depreciation as per the Regulation 4 of 2005 that is relevant and applicable.

Special Appropriations – Safety Measures

35. Purchase of safety material such as earth discharge rods etc are normally routine and regular purchase items within the O&M expenses.
36. The object and purpose of the Commission allowing a special appropriation as a one-time measure is to give a quantum leap in safety measures so as to achieve a drastic reduction in electrical accidents and compensations paid for electrical accidents. That objective has not been served as there is continuous increase in electrical accidents and fatalities. The special

appropriations was not utilised. Now again the special appropriation allowed is barely utilised and the object is not served.

37. What the licensees appear to do is to divert routine regular expenditure on safety material from O&M expenses to Special appropriations. That should not be permitted. The amounts stated to have been spent ought to be properly considered as part and parcel of O&M expenses. The entire amount of approved special appropriations ought to be treated as a gain and allowed to be a pass through entirely to the consumers.

Other Expenditure

38. There appears to be diversion from other heads to this head, the details of which is not clear. If expenses that are properly part of O&M or A&G expenses have been diverted to this account, it ought to be excluded altogether. A careful examination of this head of account is necessary. In any case, unless expressly shown by pleadings and evidence that they are due to uncontrollable factors, no part of such losses can be allowed.
39. Moreover, Other Expenditure is neither classified as an uncontrollable item or a controllable item in Clause 10.4, and therefore it is not an item subject to truing up either in terms of Clause 10.5 to 10.7 or 10.8 of the Regulation. The losses are entirely to be disallowed.

Non-Tariff Income

40. Non Tariff Income is defined in Clause 2(l) of the Regulation. It relates to both distribution and retail supply.
41. The Petitions do not state as to what part of the non-tariff business relates to distribution business and what part relates to retail supply business. It should

not be that the licensee can, or does, claim losses in non-tariff income in the true up of both.

Other Submissions

42. The entire approach and content of the Petitions are misconceived, casual and without necessary details or explanations. The Petitions are also not in conformity with the Regulation. Properly, the Petitions ought to be dismissed or returned to the licensees.
43. All Objections taken are without prejudice to one another.
44. We desire to be heard through counsel at the hearing.

2022 September 30

On behalf of the Objector

A handwritten signature in black ink, appearing to read "for Spog".