

**Before the**  
**TRIPURA ELECTRICITY REGULATORY COMMISSION**  
Bidyut Bhavan Complex, Bhutoria, Banamalipur, Agartala, Tripura (W),  
Phone: 0381-2300-137,0381-2326372, Website: www.terc.tripura.gov.in

**CORAM**

1. D. Radhakrishna, Hon'ble Chairman, TERC
2. Jiban Krishna Sen, Hon'ble Member, TERC

**Dated: 27<sup>th</sup> Aug, 2021**

**Petition No : 3(FPPCA) of 2021**

**Order No : 11**

**In the matter of :**

**Review Petition Under Section 94(1)(f) of The Electricity Act, 2003 read with Regulation 34 of TERC Conduct of Business Regulation – 2015 for Review of Fuel And Power Purchase Cost Adjustment (FPPCA) Order dated 27<sup>th</sup> May, 2021.**

by

**Tripura State Electricity Corporation Limited (TSECL) ..... Petitioner**

Bidyut Bhawan, North Banamalipur

Agartala – 799001

Tripura

**ORDER**

1. Tripura State Electricity Corporation Limited (TSECL) filed a Review Petition vide No. **3(FPPCA) of 2021** seeking review and modification of the order dated 27 May,2021 passed by the Hon'ble Commission in the matter of approval of FPPCA as admissible under clause 4 of TERC Fuel and Power Purchase Cost Adjustment (FPPCA) Formula Regulation 2011 for 3<sup>rd</sup> Quarter and 4<sup>th</sup> Quarter of FY 2020-21.
2. The Petitioner has sought approval of FPPCA to be levied on consumers in its Petition in Petition no. 01(FCCA) of 2021. The Commission vide its referred order dated 27 May, 2021, has approved variation in inter-state transmission charges

(being an Associated transmission cost) along with any variation in the Power Purchase cost to be claimed under FPPCA as per the Regulations as specified by the Commission. However, while computing the FPPCA, the Commission has considered net power purchase cost against the sale of power done to the end consumers of TSECL and calculated net weighted average power purchase cost including inter-state transmission charges in comparison with the weighted average rate of power purchase as approved by the Commission in the Tariff Order. Hence, considering the negative FPPCA, the Commission has not allowed any refund to avoid tariff shock to consumers in future considering the existing approved Regulatory Asset of **Rs 308.15 Crores**.

3. Being aggrieved by the Order of not allowing the recovery of FPPCA, TSECL has filed the review petition and made the following prayers in a review Petition:
  - (i). *Admit the Review Petition*
  - (ii). *Review the order dated 27-05-2021 pass by Hon'ble Commission in light of the above mentioned submissions*
  - (iii). *Pass such further order or orders as may be considered appropriate to give relief to the consumers of the state.*
4. The Commission has taken on record the review Petition and issued notice to the Petitioner on 28-06-2021 for Admission Hearing to be held on 30<sup>th</sup> June, 2021 .
5. The Commission held the hearing on the matter on 08-07-2021. During the hearing, the Petitioner re-iterated the submissions made in the Review Petition and requested the Commission to allow the prayers made in the Petition.
6. The Commission notes that the Review Petition has been filed under Regulation 34 of TERC (Conduct of Business) Regulations, 2015, which specifies as follows:

#### **34. REVIEW OF THE DECISIONS, DIRECTIONS AND ORDERS.**

*1. The Commission may, on its motion or on the application of any of the*

*person or parties concerned, can review its decision, directions or orders and pass such appropriate orders as the Commission thinks fit.*

7. However, ambit of review is limited to the Order passed, and the present review Petition has to be evaluated accordingly.
8. The submissions made by the Petitioner are as given below:
  - 8.1. TSECL is suffering on account of its poor financial position and continuously increasing expenditure, it had filed the FPPCA petition on the subject cited matter to help recover the increase in actual power purchase cost and its variation from the approved power purchase cost on account of uncontrollable reasons like the revision of Point of Connection (PoC) charges through the CERC, as allowed under Electricity Act 2003 and TERC ,FPPCA Regulations 2011.
  - 8.2. The Commission has not approved any adjustment due to FPPCA to recover the uncontrollable increase in power purchase cost on account of PoC charges.
  - 8.3. TSECL has referred to approval of FPPCA given by various states such as West Bengal, Goa, Assam wherein FPPCA increase has been approved by the State Commission. Even in the context of Tripura, the Commission had approved FPPCA order in past due to change in gas price in year 2011 resulting in an increase in tariff to be paid by consumers.
  - 8.4. The basic regulatory principle regarding recovery of uncontrollable and prudent increase in expenditure is that such expenditure should be quickly recovered so that the utility does not face any gap in cost and revenue whereas the consumers are also not burdened with carrying cost of such expenditure.
  - 8.5. The impugned order, by not considering or ignoring the increase in power purchase cost due to the significant impact caused by the uncontrollable factor of increase in Point of Connection Charges due to the amendment of CERC regulations, is in non compliance or conformance to the basic over arching regulatory principles and statutory regulatory principles.

- 8.6. The Commission has overlooked the regulations issued by TERC in 2011, which provide a very clear formula and mechanism for recovery of fuel and power purchase price variation during the year.
- 8.7. TSECL submitted that if the net power purchase cost as specified in the impugned order is considered, the power purchase cost variation would be calculated at the State interface point of TSECL and not at the ex-bus of generator (as mentioned clearly in the TERC FPPCA regulations) because the power sold by TSECL is happening at the State interface of TSECL and not at the generators end. Further, the TERC FPPCA regulation 2011, does not mention any reference to “net power purchase cost” as pointed out for the first time by the Commission, thereby blatantly non complying its own regulations which are in vogue. If the Commission intend to alter the FPPCA mechanism or formula, it should have issued a draft amendment in its own regulation first and conducted public consultation, instead of taking a new/incorrect approach in an order against a petition filed by TSECL. It is also useful to observe that the power sold outside the State by TSECL is not an uncontrollable cost as it is done by TSECL and not by an external agency. The Commission seems to have erred in considering this aspect (i.e. revenue from revenue of sale of power outside state) in the pass through of uncontrollable element of FPPCA formula.
- 8.8. The Regulation 5.3 of TERC (Fuel and Power Purchase Price Adjustment Formula) Regulations, 2011 (hereinafter ‘TERC FPPCA Regulations, 2011’) do not allow the Commission to disallow or prevent TSECL from charging the FPPCA charges during the same quarter. Even in the case of discrepancy, the Commission ought to have looked at the subsequent quarter, which is Quarter 1 of current fiscal year (FY 2020-21) and should have adjusted the variation due to the discrepancy (if any) after looking at the Quarter 1 FPPCA formula for FY 2020-21. In this case, the Commission by disposing the petition of TSECL has also not complied with the regulation, which does not allow the Commission to disapprove the formula within the same quarter and only provides for adjustments in the next quarter, if any.

8.9. The impugned order is also inconsistent with respect to the new approach taken for consideration of power purchase cost (on net basis). Even if we assume that the power purchase rate to be taken for calculation of FPPCA should be net power purchase cost (or net rate at the state interface of Tripura), the approach taken by Commission is prima-facie erroneous as the actual power purchase rate is taken as the net power purchase cost whereas the approved power purchase rate for comparison with the actual rate, is taken based on the gross power purchase rate (which is the rate of power purchase ex-bus of generating sources including transmission cost).

8.10. The energy handled is calculated based on the ex-bus of generating sources and the energy sold outside the state has not been subtracted to calculate the gross rate of INR 3.85 per unit in FY 2020-21. The same rate has been taken by the Commission in the impugned order as the approved rate and has been compared with the net rate calculated for actual power purchase rate. In that case the net power purchase cost will be INR 1.10 per unit instead of gross rate of INR 3.85 per unit.

8.11. The different base or approach used for power purchase rate for actual and approved comparison is clearly out of place and devoid of any logic. The correct deviation of power purchase rate between actual and approved can only be calculated if the method/base of both the actual and approved rate is same. It is erroneous to use the gross purchase rate for one and the net purchase rate for the other since the two would always be different and would not show the correct deviation of actual from approved costs. If both the actual and approved power purchase rate is taken as the gross rate, the correct FPPCA would have been INR 0.60 per unit (instead of calculated INR -1.27 per unit by the Commission) for Q3 and INR 1.10 per unit (instead of calculated INR -0.96 per unit by the Commission) for Q4.

8.12. TSECL has further submitted that if the Commission's method of net power purchase cost is considered correct also, then the same method if used for approved power purchase rate comes as INR 1.10 per unit. The approved rate

is much less than the actual rate of net power purchase for both Q3 and Q4 which are INR 3.02 and INR 3.33 respectively. Hence, the FPPCA calculation for both Q3 and Q4 would not come negative even if the net power purchase rate is used.

8.13. TSECL reiterated that the correct method for FPPCA calculation should have been the gross rate as submitted by TSECL in its original petition. The above calculations have been shown only to highlight the inadvertent or prima facie error in the impugned order with a request to the Commission to review accordingly based on the above-mentioned facts.

8.14. TSECL requested the Commission to review the impugned order and reconsider the submissions and FPPCA calculations made for Q3 and Q4 of FY 2020-21 and approve the charges as submitted by the Petitioner in Petition no. 01(FCCA) of 2021. This is critical for the financial sustainability of TSECL and maintaining the desired standards of power supply and performance from TSECL. It is equally important from the consumers point of view as it prevents accumulation of gap and carrying cost, burdening of past liabilities onto the present consumers and enabling quality service to the end consumers.

9. Having heard the Petitioner and considering the materials placed on record before the Commission, the Commission's analysis and decision are discussed subsequent paragraphs of this Order.

### **Commission's Analysis and Ruling**

10. The Petitioner has sought review of the Order dated 27 May, 2021 claiming that it suffers from errors apparent in that Order, as set out in the Petition along with the grounds for contending that these constitute errors falling within the ambit of review under Regulation 34.

11. The scope of the Review Petition is very limited and has to be considered only if there is mistake or error apparent which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation

either of the facts or the legal position. Under the guise of review, it is not permissible under Regulation 34 for a decision which is erroneous to be virtually reheard and reconsidered. There is a clear distinction between an erroneous decision and an error apparent on the face of record. A Review Petition has a limited purpose and cannot be tantamount to an appeal against a purportedly erroneous decision.

- 12.** The Commission has passed the reasoned Order dated 27 May, 2021 in Petition no. 01(FCCA) of 2021 based on the power given by the Electricity Act, 2003, Rules and Regulations made there under considering the regulatory principles and the provisions of TERC FPPCA Regulations, 2011. The Commission is of the view that the submission made by the Petitioner that the Commission by disposing the petition of TSECL has not complied with the statutory regulatory provisions and basic regulatory principles regulation are without any basis. The Commission has passed the reasoned order as per the FPPCA Regulations 2011.
- 13.** Also, the claim of the Petitioner that FPPCA Regulations, 2011 does not allow the Commission to disapprove the formula within the same quarter and only provides for adjustments in the next quarter needs to be read in conjunction with the legitimate claim to be allowed to be recovered from the consumers. Such submission of Petitioner is erroneous as it would necessary mean that the Commission having received the Petition will allow the Petitioner to collect the FPPCA charges even when such charges are computed contrary to the Regulations. Such a contention of the Petitioner cannot be accepted as it is contrary to the statutory scheme of things and the same will also result in the unnecessary additional burden on the consumers.
- 14.** The submission of the Petitioner that TERC FPPCA regulation 2011, does not mention any reference to “net power purchase cost” as pointed out for the first time by the Commission, thereby blatantly non complying its own regulations which are in vogue is completely misplaced. As per TERC FPPCA Regulations 2011, the formula for computing the FPPCA Recovery rate clearly specifies that Actual Quantity of power purchased during the period in kWh for sale to the

***Distribution Licensee's scheduled consumers*** is required to be considered. The relevant extract of the Formula defining the terms is given below:

*“QPP = Actual Quantity of power purchased during the period in kWh for sale to the Distribution Licensee's scheduled consumers.*

*RPP2 = Actual weighted Average rate of power purchase during the period in Rs. /kWh.*

*RPP1 =Average weighted rate of power purchase as approved by the Commission in Rs./kWh.”*

As per the 'QPP' specified in the formula of the referred Regulations, power purchased only for consumers of Distribution Licensee is to be considered and not the entire power purchase (part of which is subsequently sold outside) as has been sought by the Petitioner in the review Petition. Accordingly, the Commission has rightly considered the net power purchase i.e. power purchased for its own consumers and that there is no error apparent and hence the review is not warranted on this issue.

15. The Petitioner has submitted that different base or approach used for power purchase rate for actual and approved is considered by the Commission. As per the Petitioner, it is erroneous to use the gross purchase rate for approved power purchase cost and the net purchase rate for the actual power procurement, since the two would always be different and would not show the correct deviation of actual from approved costs. The Commission is of the view that the approved average weighted rate of power purchase, i.e. RPP1 (as per formula mentioned above) has to be considered which is Rs. 3.85/kWh as per the Tariff Order and the Actual weighted Average rate of power purchase during the period i.e. RPPs (as per formula mentioned above) is to be considered for the power purchased for sale to Distribution Licensee's scheduled consumers only. Accordingly, the Commission has rightly considered the approved rate of Rs 3.85/kWh which only includes the weighted power purchase rate for the power purchased for its consumers and not the net



rate after consideration of outside sale. Hence, there is no error apparent and the review is also not admissible on this issue.

16. The Commission in its Tariff Order and Order dated 27 May, 2021 has already held that due to current pandemic situation due to Covid-19, it is essential to protect the interest of the consumer and at the same time ensuring recovery of cost by the utilities. Accordingly, the Commission had held that it will consider any revenue gap/surplus arising out of variation of Fuel and Power Purchase adjustment at the time of Tariff Determination Petition to avoid any tariff jerk, let alone tariff shock to the consumers. The Commission had already directed the Petitioner to file the Tariff Determination Petition by 30 June, 2021. The Petitioner is yet to file the Petition in violation of the directions of the Commission.
17. In view of the above, the petition is disposed off with an instruction to file the Tariff Petition for the year 2021-2022 immediately, so that the true-up of the increase of rates etc may also be considered appropriately. Also in the future for removing ambiguity, the petitioner may file for FPPCA on quarterly basis, so that the Fuel and Power purchases price variation can be accommodated on a regular manner.
18. The Secretary, TERC is directed to inform to all concerned.

Sd/  
( Jiban Krishna Sen )  
Member  
TERC ,Agartala

Sd/  
( D . Radhakrishna )  
Chairman  
TERC , Agartala

**Certified True Copy**

Sd/  
31.08.2021  
( Ms Sujata Das Chakrabarti )  
Secretary TERC ,  
Agartala