

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Order in Suo-Motu Petition No. 1995 of 2021

In the matter of:

Filing of application for Determination of Aggregate Revenue Requirement (ARR) and Tariff for FY 2022-23

CORAM

**Mehul M Gandhi, I/C Chairman & Member
S.R. Pandey, Member**

Date: 24/09/2021

ORDER

1. The Commission initiated Suo-Motu proceedings under Regulations 23 and 24 of the GERC (Conduct of Business) Regulations 2004 for filing the applications by the Licensees for determination of Aggregate Revenue Requirement (ARR) and Tariff for FY 2022-23 by issuing Public Notice dated 18.8.2021 inviting comments and suggestions from the stakeholders for preparing and filing application for determination of Aggregate Revenue Requirement (ARR) and Tariff for FY 2022-23 based on the GERC MYT Regulations, 2016.
2. In the aforesaid public notice, it is also stated that the Commission defers the implementation of MYT Framework for one year and directed the licensees, utilities and generating companies to file their ARR/Tariff Petition for FY 2022-23 on or before 30.11.2021. It is specified in the Public Notice that the stakeholders/ interested persons may file their comments/suggestions on the aforesaid Suo-Motu Petition to the Secretary, GERC. It is also stated that the

public hearing in the aforesaid matter is scheduled on 17.09.2021 at 11.30 Hours.

3. Section 86 of the Act, 2003 lays down the functions of the Commission. The determination of tariff for supply of electricity is one of the important functions of the State Electricity Regulatory Commission. The relevant extract is reproduced as under:

“Section 86. (Functions of state Commission): -- (1) The State Commission shall discharge the following functions, namely: -

- (a) Determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:*

Provided that where open access has been permitted to a category of consumers under section. 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers; ...”

4. Further, while determining the tariff, the Commission follows the provisions of the Tariff Regulations notified under Section 61 of the Electricity Act, 2003 which consists of the terms and conditions for determination of tariff. The relevant extract of the said Section reads as under:

“Section 61. (Tariff Regulations):

The appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the”

5. The Commission has been notifying the terms and conditions for determination of tariff by framing the Tariff Regulations. The last

MYT Regulations were notified by the Commission on 29.03.2016. These Regulations remained in force till 31.03.2021. The Commission has initiated the process of framing the new MYT Regulations for the new Control Period of FY 2021-22 to FY 2025-26 by issuing Public Notice dated 10.08.2020 and invited comments/suggestions on the MYT Regulations. However, the same was deferred for one year as decided by the Commission in its Order dated 22.12.2020 in the Suo-Motu Order No. 07 of 2020 stating that to file tariff application on principles and methodologies as provided in the MYT Regulations, 2016.

6. Determination of Annual Revenue Requirement/Tariff needs to be decided based on the various norms for different parameters specified in the MYT Regulations/Tariff Regulations. It is necessary to consider the past years performance data of generating companies, licensees and SLDC. Moreover, such collective information on various performance parameters for the past years requires to be discussed, deliberated, analyzed and examined thoroughly for deciding the Regulations. Regulations making is an intensive and time-consuming process. Framing of Regulations consists of complexity of different parameters and its applicability. Hence, it requires to be properly examined before notifying the MYT Regulations.
7. It is also necessary that the tariff applications/ARR petitions are filed by the licensees/generating companies/utilities by 30th November of the Financial Year so that the Commission can issue tariff orders in timely manner before commencement of the next Financial Year.

8. The new MYT Regulations are required to be framed with consideration of past years performance data, thorough examination of it, deliberation, analysis and after hearing the stakeholders. However, due to the pandemic situation in the State and its effect on various performance parameters, the licensees/ generating companies are required time to collect the data as per the provisions of the Regulations and file their applications/tariff petitions. Therefore, the Commission is of the view to defer the MYT Regulations for one year and proposed to direct the generating companies, SLDC and licensees to file their Applications/Petitions for determination of Annual ARR and tariff for FY 2022-23 based on the proposed methodology as provided in the GERC MYT Regulations, 2016.
9. The GERC MYT Regulations, 2016 provide that in case if new Regulations do not come into effect on the last date of the MYT Regulations, 2016 i.e., 31.3.2021, the provisions of GERC MYT Regulations, 2016 shall remain in force. The relevant provisions of the said Regulations are reproduced below:

“1.2 These Regulations shall come into effect from the date of their publication in the Official Gazette and shall remain in force till 31st March, 2021, unless otherwise reviewed/extended.

....

7. Saving of Inherent Power of the Commission

7.1 Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.

7.2 Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act, a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons

to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

7.3 Nothing in these Regulations shall, expressly or by implication, bar the Commission to deal with any matter or exercise any power under the Acts for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

..

12. Power of Relaxation

The Commission, for reasons to be recorded in writing, may relax any of the provisions of these Regulations on its own motion or on an application made before it by an interested person.”

10. Further, it is also necessary to refer to Regulations 23 and 24 of the GERC (Conduct of Business) Regulations, 2004 which provide power to the Commission to initiate the proceedings and issue appropriate orders. The said Regulations are reproduced below”

“23. The Commission may initiate any proceedings suo moto or on a Petition filed by any affected person.

24. The notice of the initiation of the proceedings may be issued by the Commission, and the Commission may give such orders and directions as may be deemed necessary, for services of notices to the affected parties, the filing of Reply in opposition or in support of the Petition in such form as it may direct.

The Commission may, if it considers appropriate, issue orders for publication of the Petition and/or Reply inviting comments on the issues involved in the proceedings in such form as the Commission may direct.”

From the aforesaid, it is clear that the Commission has power to initiate Suo-Motu Proceedings in any matter. Further Regulation 1.2 of the GERC MYT Regulations, 2016 provides that the

Regulations shall remain in force till 31st March, 2021, unless otherwise reviewed/extended.

11. The Commission has invited comments / views from the stakeholders by issuing Public Notices in the following newspapers:

Sr. No.	Name of the Newspaper	Language	Date of Publication
1	The Business Standard	English	23.08.2021
2	The Gujarat Samachar	Gujarati	22.08.2021
3	The Sandesh	Gujarati	20.08.2021

The said public notices and the Petition were also placed on the Commission's website (www.gercin.org) for inviting comments / views on the Petition. The interested persons / stakeholders were asked to file their comments / views through email at efiling@gercin.org or submit the same to the Commission's office on or before 13th September, 2021.

12. In response to the aforesaid Public Notice, the Commission has received comments/suggestions from GUVNL and TPL. GUVNL has requested that the Commission may grant one month extension up to 31.12.2021 to file ARR and tariff proposal for FY 2022-23, instead of 30.11.2021, as the state owned DISCOMs shall be required to approach Government of Gujarat for concurrence and confirmation about subsidy support to Agricultural Sector and tariff revision based on estimated gap/surplus position of FY 2022-23. TPL has submitted that they support Commission's proposal to defer the implementation of new MYT framework for one year and file

application / petition for determination of Annual ARR and Tariff for FY 2022-23 based on the principles and methodologies as provided in the GERC (MYT) Regulations, 2016. They have also submitted that the Commission may give sufficient time to prepare the tariff petitions and file the same before the Commission.

13. The matter was kept for hearing on 17.09.2021. On that day following stakeholders and their representatives remained present during the hearing:

Sr No.	Name of Stakeholders
1	Gujarat Urja Vikas Nigam Ltd. (GUVNL)
2	Torrent Power Ltd. (TPL)
3	Gujarat Energy Transmission Co. Ltd. (GETCO)
4	Madhya Gujarat Vij Co. Ltd. (MGVCL)
5	Uttar Gujarat Vij Co. Ltd. (UGVCL)
6	GIFT Power Co. Ltd. (GIFT PCL)

14. During the hearing, Shri Hetal Patel, Jr. Engineer, on behalf of GUVNL reiterated the facts stated in para 11 above. He further submitted that the Commission may grant one month time, i.e., up to 31.12.2021 instead of 30.11.2021, for filing tariff application for approval of true-up of FY 2020-21 and for determination of Annual ARR and Tariff for FY 2022-23. Shri Jignesh Langalia, on behalf of TPL submitted that they have no objection against this Petition and supports this Petition. So far as extension of time for filing the Petition, it is for the Commission to decide.

- 15.1 Representatives of GETCO, MGVCL and UGVCL have submitted that they are adopting the submission made by GUVNL. The Commission has expressed its concern about timely filing of the

Petition, Shri K.J.Bhuva on behalf of GETCO fairly admitted that the GETCO shall file its petition up to 30th November of the current financial year.

15.2 Shri Rakesh Inala, on behalf of Gift Power Co. Ltd. submitted that they have no objection to the proposal made by the Commission and agree to file the tariff petition within the specified period of 30.11.2021 and for determination of Annual ARR and Tariff for FY 2022-23.

16 We heard the parties. We have considered the submission made by them. We note that one of the important concerns is to determine the tariff and carry out true-up in proper time frame enabling the Licensees to recover the tariff from the consumers/beneficiaries for the ensuing year at proper time to meet out its Annual ARR. It is, therefore, necessary to initiate the tariff proceedings at proper time giving an opportunity to the licensees/utilities for preparation of petition/application and file before the Commission. Such petitions are also required to be published for the knowledge of the stakeholders inviting comments and suggestions and consider the same by the Commission. The Commission also requires to analyze the proposals of the licensees, generating companies and SLDC, comments of the consumers/stakeholders and pass appropriate order on such petitions in a prescribed time manner so that the licensees, generating companies and SLDC will be able to recover its tariff and meet out Annual ARR in sufficient time frame of the Financial Year. As the Financial Year is starting from 1st April, it is necessary for the Commission to pass appropriate order within 120 days specified in Section 64 of the Electricity Act, 2003 which works out to 30th November of the previous Financial Year by the

licensee/generating company. Further, the MYT Regulations, 2016 also provide that the licensee/generating company shall file their petition on or before 30th November of the Financial Year.

16.1 We note that in the Suo-Motu proceedings, all the interested parties agreed with the background and views expressed in the Suo Moto Petition. Accordingly, the Commission decides to adopt the determination of annual ARR and Tariff for FY 2022-23 based on the GERC (MYT) Regulations, 2016 and defer the implementation of MYT Framework for further one year. So far as MUL, DPT, Aspen Park Infra and GSECL are concerned, there is no submission nor any representative remained present during the hearing and requested for extension of time limit for filing the tariff application. Only GUVNL has requested to grant one month time, i.e., up to 31st December, 2021 on the ground of taking approval from the Government about the subsidy and tariff revision based on the estimated gap/ surplus position of FY 2022-23 for the State-owned Distribution Companies.

16.2 We note that the proceedings and the issuance of Orders with respect to tariff applications for FY 2022-23 must be completed in a timely manner. As regards the request for time limit extension for filing the tariff application for FY 2022-23 being put forwarded by GUVNL, we have sufficient reason to believe that the utilities have sufficient time for filing their tariff applications for FY 2022-23 at this juncture. We, therefore, decide not to grant the extension of time limit for filing the tariff applications. However, the State Owned Discoms can approach the Commission in case they face any difficulties.

ORDER

17. We decide and direct generating companies, licensees and utilities to file their tariff applications for approval of true-up for FY 2020-21 and for determination of Annual ARR and Tariff for FY 2022-23 on or before 30.11.2021 based on the principles and methodologies as provided in the GERC (MYT) Regulations, 2016.
18. We Order accordingly.

Sd/-
(S. R. Pandey)
Member

Sd/-
(Mehul M. Gandhi)
I/c. Chairman & Member

Place: Gandhinagar

Date: 24.09.2021

