

TECA: 2017/2018-SD-003

13 July 2017

**The Secretary,**  
**Tamil Nadu Electricity Regulatory Commission,**  
19-A, Rukumini Lakshmi pathy Salai,  
Egmore, Chennai – 600 008.

**SUB: OBJECTIONS OF THE TAMIL NADU ELECTRICITY CONSUMERS' ASSOCIATION TO AGGREGATE REVENUE REQUIREMENT (ARR) OF THE SLDC FOR THE FY 2017-18 AND 2018-19 HOSTED IN WEBSITE OF HON'BLE COMMISSION ON 29.06.2017**

## **1. Background:**

TAMIL NADU ELECTRICITY CONSUMERS' ASSOCIATION (TECA) represents consumers from all over Tamil Nadu, mainly; large, medium and small industries from the Textiles, Engineering, Chemicals and Fertilizers, Pharmaceuticals, Automobiles and Auto-Components, Building Materials sectors. The total membership as on 30.05.2017 was 560, accounting for a sanctioned load of 896 MW, about 10% of the HT Load in Tamil Nadu

HT/EHT consumers account for about 23% of the total energy sales to consumers by the TANGEDCO. They contribute about 33% to the total revenue from tariffs.

Most of the members of the TECA have invested in wind energy for their captive consumption and they are paying heavy amounts as Scheduling and System Operation Charges to the SLDC. In addition to the same, by way of transmission charges and T&D losses also, such WEG captive consumers are contributing to the kitties of the SLDC in a considerable way. Further to the same, most of the members are having arrangements to consume captive power through OA route and accordingly, they are also paying Scheduling and System Operation Charges and Transmission Charges to the SLDC heavily. Hence, the members of TECA have very strong stake in the financial aspect of the SLDC and they have every stake to get the charges fixed fairly.

## **2. Undue delay in Process**

At the very outset, it is humbly submitted that the licensee has completely failed in its duty of filing of a complete tariff petition within the timelines prescribed in Electricity Act 2003, and various sub-ordinate Regulations and orders.

2.1 After the order issued on 11.12.2014, both on the retail tariff and transmission related areas, no subsequent order was issued by the Hon'ble Commission, even though there is a mandate to it, to issue the orders at least once in a year.

2.2 As per the regulations of the Hon'ble Commission and judgment of the Hon'ble ATE in appeal No. 1 of 2011, in the absence of a timely petition from the utility, the Hon'ble Commission was to have commenced the suo moto exercise if there was a delay by the utility of a month in this regulatory requirement. But TANGEDCO and TANTRANSCO have jointly filed petitions for final True-Up from 2011-12 to 2015-16 (5 Years) and filed ARR for 2016-17 and 2017-18 (2 Years) on 31.01.2017. Accordingly, comments have been invited by the Hon'ble Commission by webhosting the petitions in the website of the Hon'ble Commission.

2.3 However the TANTRANSCO / SLDC has filed petition seeking for approval of the ARR for 2 years before the Hon'ble Commission without mentioning any date. The Hon'ble Commission has webhosted the petition in its website on 29.06.2017 and comments have been called for before 14.07.2017. Hence, being an Electricity consumers' Association, we feel that we have a strong role to file our comments and as such, we are filing the comments / suggestions as follows.

According to Clause 5 of the TNERC (Terms and Conditions for Determination of Tariff) Regulations -2005, it has been made as follows.

*"5. Filing of Aggregate Revenue Requirement*

*(1) The Distribution / Transmission licensee shall file the Aggregate Revenue Requirement (ARR) on or before 30th November of each year in the format prescribed, containing the details of the expected aggregate revenue that the licensee is permitted to recover at the prevailing tariff and the estimated expenditure.*

*(2) ARR shall be filed every year even when no application for determination of tariff is made."*

2.4 TANTRANSCO / SLDC has filed the petition before the Hon'ble Commission without mentioning any date and therefore, it can be considered as somewhere in June 2017 for all purposes, requesting to approve the ARR for the current year (2017-18) and for the next year (2018-19). As per the above quoted provisions of the Regulation, as well as Electricity Act 2003, ARR should have been filed mandatorily by TANTRANSCO / SLDC before the 30<sup>th</sup> of November 2016 for the

ARR requirement for 2017-18, failing which action needs to be taken by the Hon'ble Commission against the erring Transmission Utility. If the TANTRANSCO / SLDC have failed to file the ARR in time, Suo-Motu Tariff Order should have been issued by the Hon'ble Commission. There was no separate ARR filed by the TANTRANSCO / SLDC before the Hon'ble Commission earlier so far and the last ARR was filed jointly by TANGEDCO / TANTRANSCO, on 19.02.2013 for tariff revision for the year 2013-14. The last Suo-Motu revision of tariff was ordered by the Hon'ble Commission 11.12.2014 both for retail tariff and transmission tariff.

2.5 From the above, it could be seen that it is the mandatory obligation of the Transmission Licensee to file the ARR before 30<sup>th</sup> November of each year, even when there is no application for determination / revision of tariff. This Clause goes in line with Section 62 of the Electricity Act 2003. However, the Transmission Licensee has filed the Petition for the requirement of ARR for 2017-18 and 2018-19 was done only now. Hence, the ARR petition filed by TANTRANSCO / SLDC for 2017-18 is found with a delay of more than 7 months.

2.6 However, even though the ARR Petition has been filed with a delay of more than 7 months, there was no explanation made available in the petition for seeking any condonation of delay by TANTRANSCO / SLDC on the reasons of having filed the ARR for 2017-18. This shows the lethargic attitude of the TANTRANSCO / SLDC in complying with the mandatory norms of filing the ARR in time and their attitude towards the Hon'ble Commission.

2.7 Hence, when the TANTRANSCO / SLDC has clearly violated the provisions of Clause 5 of the TNERC (Terms and Conditions for Determination of Tariff) Regulations -2005 blatantly and without any delay condonation petition, for the failure of the Utility in not having filed the ARR and having filed with such a large delay, the Hon'ble Commission should have dealt with the Utility firmly, as it is a clear violation under Section 64 (1) of the Electricity Act 2003 before calling for any comments. As this was not the first occasion to see such delays and the delay in filing the ARR is occurring every time in the past also, continuing such delays in filing the ARR always irregularly is a matter to be dealt with firmly and seriously.

2.8 As sufficient public interest is also largely involved in the matter of filing of ARRs with such delays by the Utility, the opportunity to scrutinize the accounts of the utility then and there becomes not possible for the stakeholders. Hence, it is not serving the very purpose and spirit of the control and monitoring of the utility by any agencies including the Hon'ble Commission and consumers. If this is allowed continuously, the virtual control and monitoring would go away and the utility would start acting on their own way without any regulatory controls. On the reason of the Utility having filed with such large delay of more than 7 months

and for the violation of the law and to maintain rigid control over the systems, the Hon'ble Commission should have viewed such delays both in the past as well as of now, more seriously to pull them to comply with the provisions of law in all possibilities. But in contra, the Hon'ble Commission has viewed the matter very lightly and is calling for the comments on the ARR filed even without a delay condonation petition. Hence, the Hon'ble Commission has to initiate suitable action against the TANTRANSCO / SLDC for not having filed the ARR in time and accordingly, the public interest should be restored fully at least in future.

2.9 Even in the last Tariff Order issued on 11.12.2014, the Hon'ble Commission has directed the TANGEDCO / TANTRANSCO to file the Tariff Petitions in time every year. However, for not having filed them in time, no action has been taken against the Utilities in any manner. Hence, with this lenient approach by the Hon'ble Commission, the Utilities are habitually following the practice of filing the ARR / Trueing Up Petitions only with large delays. The Operative Portion of the direction provided in SMT No. 8 of 2014 dated 11.12.2014 is extracted below for ready reference.

#### ***"Tariff Filing***

*1.14 As per provisions of Section 64 of the Electricity Act 2003, it is incumbent upon the Licensee to make an application to the State Regulatory Commission for determination of tariff in such manner as may be determined by Regulations framed by the Commission. Regulation 5 of the Tamil Nadu Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 lays down that licensee is required to file tariff application on or before 30th November each year, with the Commission, the relevant extract is reproduced below:*

*"(1) The Distribution / Transmission licensee shall file the Aggregate Revenue Requirement (ARR) on or before 30th November of each year in the format prescribed, containing the details of the expected aggregate revenue that the licensee is permitted to recover at the prevailing tariff and the estimated expenditure."*

*1.15 Accordingly TANTRANSCO was expected to file a petition for the final true up and approval of ARR for 2011-12, provisional true up for 2012-13, APR for 2013-14 and ARR and Tariff petition for 2014-15 by 30th November 2013. However the petition has not been filed by TANTRANSCO.*

*1.16 However TANTRANSCO has filed the petition formats for transmission business with the Commission in the month of October. The*

*Commission would like to place on record that it does not accept this data submission by the utility in lieu of the ARR and tariff petition to be filed by it. These numbers shall be filed by TANTRANSCO along with the petition for final true-up of ARR for FY 2011-12 to FY 2013-14, within the stipulated timelines as per regulations."*

### **3. Failure of the Hon'ble Commission in having not issued Suo Moto Tariff Orders in the absence of Petition filed by TANTRANSCO / SLDC.**

3.1 Even in the case of delays in filing ARRs, the Hon'ble Commission has the authority to fix the Tariff Suo Moto without a Petition for this purpose from the Utility. It can order to continue the existing tariff or it can revise it upwards or even it can order to reduce the tariff depending up on the actual position. However, the Hon'ble Commission has not issued any Suo-Motu Tariff Order for the past 2 ½ years after 11.12.2014.

3.2 Even the National Tariff Policy in Clause 8.1.(7) goes as follows.

*"7) Appropriate Commissions should initiate tariff determination and regulatory scrutiny on a suo moto basis in case the licensee does not initiate filings in time. It is desirable that requisite tariff changes come into effect from the date of commencement of each financial year and any gap on account of delay in filing should be on account of licensee."*

3.3 Further, the Hon'ble APTEL, New Delhi has clearly directed the Hon'ble Commission to issue Tariff Orders on Suo Moto basis, even when the Utilities failed to file Trueing Up Petitions / ARRs in time in its order in O.P. No. 1 of 2011 dated 11<sup>th</sup> November 2011. Accordingly, the tariff orders should have been issued once in a year without waiting for the ARR to be filed by the Utilities. The Operative Portion of the directions of the APTEL, New Delhi is extracted below.

*"(iii) In the event of delay in filing of the ARR, truing-up and Annual Performance Review, one month beyond the scheduled date of submission of the petition, the State Commission must initiate suo-moto proceedings for tariff determination in accordance with Section 64 of the Act read with clause 8.1 (7) of the Tariff Policy."*

3.4 Hence, not issuing any Tariff Order for the last 2 ½ years after 11.12.2014 by the Hon'ble Commission, the consumers are unable to ascertain whether there is any justification to pay the present tariff continuously for more than 2 ½ years. Therefore, such a failure to fix the tariff every year by the Hon'ble Commission, the spirit of the National Tariff Policy read with Section 64 of the Electricity Act

2003 has become mockery of Justice and it also goes against the express directions provided by the Hon'ble APTEL in this regard.

#### **4. The Statutory requirement to constitute SLDC as a separate Government Entity.**

4.1 According to Section 31(1) of the Electricity Act 2003, it was mandated that *"the State Government shall establish a centre to be known as the State Load Despatch Centre for the purposes of exercising the powers and discharging the functions under this part."*

4.2 Likewise, in Section 31(2) of the Electricity Act 2003, it was mandated that *"the State Load Despatch Centre shall be operated by a Government Company or any Authority or Corporation established or constituted by or under any State Act, as may be notified by the State Government."*

4.3 Hence, it was made clear that the SLDC shall be operated only by a separate Government Company or by any Entity established or constituted by or under any of the State Act as notified by the State Government.

4.4 Even though, the transitory provisions permit the functioning of SLDC to operate it along with State Transmission Utility (STU) temporarily, even after 14 years of coming in to force of the Electricity Act 2003, continuing to allow the SLDC to operate along with STU, is not a correct and fair procedure. Hence, the Hon'ble Commission should come forward to direct the Government under its powers vested under Sections 86 (k) and 86 (2) (iii) to constitute the SLDC in to a separate Department under the control of the Government of Tamilnadu, so as to allow it to function independently without the mix up of either STU or Distribution Licensee. As this is the objective of the Electricity Act 2003, taking immediate steps to ensure the functioning of SLDC independently would be a right course at this point of time.

#### **5. Non-revision of tariff and other charges then and there would go against the interest of consumers.**

5.1 The TANTRANSCO has not proposed any increase in tariff for the year 2017-18 and 2018-19. Hence, consumers at the face of the record may feel happy that there is no increase in the tariff. But there is a hidden trick and manipulation. When there is an increase in the input costs and purchases, the tariff is to be hiked and raised. Thus, it equally stands to the reason that, when there is a decrease in the input cost and purchases, the tariff should be reduced.



In fact, the Hon'ble Commission has allowed the TANTRANSCO to abuse the spirit of law, by allowing transmission utility to file ARR after a seven months delay.

## **6. The Hon'ble Commission should order to enforce its Regulation by TANTRANSCO / SLDC.**

6.1 The Hon'ble Commission has directed the TANTRANSCO / SLDC to file separate ARR petition for SLDC during the year 2013 itself. The same direction was repeated while the Tariff Order was issued on 11.12.2014 also. The amended Tariff Regulation as on 09.04.2014 also mandates filing of separate ARR for SLDC. However, TANTRANSCO, has filed combined ARR in violation of the Tariff Regulations of the Hon'ble Commission and also violated the direction provided by this Hon'ble Commission. While all other SERCs and even the CERC are determining the SLDC and RLDC charges based on the separately filed ARRs and based on the capacity, in this State alone, fixing up of the SLDC charges arbitrarily without any logic and in violation of its own Regulations is going on continuously.

6.2 Hence, the following data may ordered to be furnished by TANTRANSCO for public comments.

- i. Category wise SLDC charges collected by SLDC.

6.3 On making available the above data and after receiving public comments the matter may be taken into account by the Commission before approving the ARR.

## **7. TANTRANSCO is continuously inefficient in bringing down T&D loss.**

7.1 Tamilnadu is the State where the highest T&D loss is recorded when compared to any other State. As the loss on transmission is attributable to the TANTRANSCO, even leaving the Distribution Losses to TANGEDCO for its inefficiency, the TANTRANSCO has to take responsibility for the high level of transmission losses. Since, the ARRs were filed in a combined manner earlier both for TANGEDCO and TANTRANSCO, the T&D losses were able to be analysed only in the following manner.

7.2 In the earlier ARR filed by the TANGEDCO and TANTRANSCO it is reported and indicated a constant T&D loss of around 21%. (T&D losses of 21.62%, 20.95%, 21.52%, 22.02% and 20.13% for FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15 and FY 2015-16 respectively). As the actual line losses have not been measured by meters, one wonders how TANGEDCO and TANTRANSCO have arrived at these figures. The Hon'ble Commission must demand proper methods for arriving at actual T&D losses. T&D loss of around 21% shows utter

inefficiency of the Utility. Under R-APDRP of GoI, T&D loss shall be reduced @ 1.5% per annum. In the UDAY Scheme, the TNEB has agreed to reduce the AT&C losses to 13.5% in 2018-19. T&D loss Trajectory fixed by the Hon'ble Commission is tabulated below.

2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
17.20	16.80	16.40	16.00	15.60	15.20

7.3 Such trajectory of the Hon'ble Commission has also been approved by the APTEL in its order in Appeal No. 196 of 2013 & Appeal No. 199 of 2013. By adopting this loss trajectory, the ARR will be reduced by Rs.1120 crores in 2011-12 to Rs.2273 crores in 2015-16. The Hon'ble Commission has to follow either the norms or follow their already approved loss trajectory. The TANTRANSCO shall be directed to determine the loss details using scientifically acceptable method.

7.4 Due to the abnormal rate of T&D loss, the consumers are unnecessarily facing the unfair tariff rise and therefore, there should be a clear order made available to TANGEDCO and TANTRANSCO to reduce the T&D losses as per the trajectory provided or to bear the quantum of loss by its own funds without over loading the consumers.

## **8. Objections on Transfer Scheme and other related issues whether they are violations under Electricity Act 2003**

8.1 The first SEB unbundling in the country was done in Orissa in the 1990s, and was supported by the GoI and multi-lateral lending agencies. However, the refusal of the Government of Orissa to takeover unfunded terminal liabilities, loading of the liabilities onto the utilities and consequently, consumers through tariff, with no perceptible improvement in operational performance or customer service, led to failure of the reforms process. The Kanungo Committee report, explicitly identified this as one of the crucial aspects contributing to the failure of reforms.

8.2 This experience and the subsequent lessons learnt have guided the provisions of the Electricity Act 2003, which has explicitly mandated in Section 131(5)(a) that the transfer scheme shall be determined in a way that promotes the profitability and viability of the resulting entity, ensures economic efficiency, encourages competition and protects consumer interests. Clearly, the transfer scheme notified for TNEB violates the mandatory provisions of the Electricity Act 2003 governing reorganization of SEBs.



8.3 In their previous petitions, the successor entities had claimed and the Hon'ble TNERC has accepted that as per Section 131(3) (b) of Electricity Act, 2003 the transfer scheme is binding even on the Hon'ble State Commission adjudicating on the tariff for successor entities. It is humbly submitted that this on the binding nature of the transfer scheme on the Hon'ble Commission, viz-a-viz the vast powers vested in the Hon'ble Commission by the entirety of the Electricity Act 2003, is misconceived and incorrect. A bare reading of Section 131(3) (b) of Electricity Act 2003 will reveal that Section 131(3) (b) is not a restrictive clause as far as other sections of the Act are concerned.

*“(3) Notwithstanding anything contained in this section, where, -  
(a) the transfer scheme involves the transfer of any property or rights to any person or undertaking not wholly owned by the State Government, the scheme shall give effect to the transfer only for fair value to be paid by the transferee to the State Government;*

*(b) a transaction of any description is effected in pursuance of a transfer scheme, it shall be binding on all persons including third parties and even if such persons or third parties have not consented to it.”*

8.4 It may be noted that Section 131(3) starts with - “Notwithstanding anything contained in this section”. Therefore the provision in Section 131(3) (b) is given precedence only over anything contained in Section 131, and not over the entire Act. Therefore Section 131(3) (b) cannot be viewed as having precedence over other Sections of the Act and it cannot undermine powers of the Hon'ble Commission with regard to prudence check, approval of only efficient cost for recovery in tariff, tariff determination, and the basic principles of the Electricity Act 2003 – consumer choice, competition and efficient cost recovery.

8.5 As per preamble and Section 61 (d) of the Act, the Regulatory Commission has to safeguard the consumer's interest and ensure that the tariffs are reasonable. This has been upheld by ATE in its judgment on Appeal No. 58 of 2012 dated 24th September 2013.

*“As per preamble and Section 61 (d) of the Act, the Commission has to safeguard the consumer's interest so that the tariff, transmission tariff as well as the retail tariff for distribution of electricity has to be determined in such a way that the electricity is supplied to the consumers on the reasonable rates.”*

8.6 However such safeguarding of consumers' interest will not be possible if the Hon'ble Commission is forced to accept the transfer scheme without any scrutiny in the matter of approving ARR and setting tariff, and is clearly not the intent of the governing law as enacted by Parliament. We don't dispute that TANTRANSCO would like it to be, but that wish would fall into the same basket as consumers wishing to not pay for the profligacy and inefficiency of TANTRANSCO management. However, what we find baffling is that the Hon'ble Commission is adopting the same stance.

8.7 Further, if the stance of TANTRANSCO is accepted, a situation arises wherein the Hon'ble Commission will be restricted from prudently exercising its power of tariff determination granted to it under sections 61, 62 and 86 of Electricity Act 2003. The dramatic swing in transmission tariff, due to allowing the hefty interest costs on debt taken to fund revenue losses for recovery through tariff, clearly shows the effects of this stance.

8.8 The Hon'ble ATE in its order on Appeal No. 4-13-14-23-25-26-35-54-55 of 2005 dated 26th May 2006 has clearly stated that directions or orders of the Regulatory Commission made for the purpose of determination of tariff will be binding on all the concerned parties including the State and the Board.

*"58. Having held so, we would examine the question whether the State Government independently, directly and by itself, without being reached through the Board, will be bound by the directions of the Commission. The answer lies in Section 61 of the Act of 2003 and Section 28 of the Act of 1998 and other allied provisions. The Appropriate Commission while determining tariff under Section 61 of the Act is required to be guided by the factors and parameters enshrined therein. One of the factors on the basis of which tariff is to be determined is the consumer interest. Sub-clause (d) of Section 61 requires the Commission to safeguard the interest of the consumers and ensure that the recovery of the cost of electricity is effected in a reasonable manner. This was also one of the requirements under Section 28(2)(e) of the Act of 1998. The Commission, therefore, is/was bound to determine fair, prudent and reasonable cost of the RSD project which is to be allocated to the Board, in consonance with the interest of the consumers. At the same time recovery of the cost of electricity is/was to be made in a reasonable manner. The aforesaid provisions of the Act of 2003 and the Act of 1998 are not hedged in with the limitation that in case the State Government or any other authority has allocated an unwarranted cost to the generator or a licensee, it can not be interfered with, even when such a cost may be*

*imprudent and unjust and not in the interest of the consumers. Otherwise the cost loaded by the State Government on the Board will have to be allowed by the Commission for the purposes of tariff and the ARR of the Board. In case such a limitation is read, into the aforesaid provisions, the purpose of the Act including Section 61 will be frustrated. Since the Commission has the power to determine the tariff and the ARR of a utility, it has all the incidental and ancillary powers to effectuate the purpose for which power is vested in it. Consequently, directions or orders of the Regulatory Commission made for the purpose of determination of tariff and ARR in consonance with the provisions of the Act are binding on all the concerned parties including the State and the Board.*

...

*64. For a proper determination of tariff and ARR of the utilities suitable and binding directions can be given by the Regulatory Commissions to the Government to achieve the purpose of Sections 61 and 62 of the Act of 2003, particularly clause (d) of Section 61 thereof.*

*65. In a nutshell, the Commission is empowered to issue orders or directions to the State Government in regard to the matters having a bearing on and nexus with tariff determination. The directions of the Commission are binding on it not only because it is the owner of the PSEB de jure and de facto but even otherwise as well. Section 146 of the Act of 2003 provides that whoever, fails to comply with any order or direction given under the Act, within such time as may be specified or contravenes or attempts or abets the contravention of any of the provisions of the Act or any rules or Regulations made thereunder, is liable for punishment with rigorous imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees or both. The word 'whoever' is of a very wide connotation. It covers all persons and authorities....*

*66. There is nothing in Sections 61 & 62 of the Act of 2003 to show that orders relating to tariff will not bind the State Government. The State is not above law and it is bound to respect the mandate of the legislature. Otherwise tariff determination will not be in consonance with the various factors and parameters specified in Section 61. The Commission is an independent statutory body and its directions being in terms of the Act are definitely binding on the Board whose de jure owner is the State. The ultimate end effect shall be on de jure owner viz. the State of Punjab."*

8.9 Further, notwithstanding the above, even if for the sake of argument, if it is assumed for an instant that the Hon'ble Commission may accept the balance sheet prepared as per transfer scheme, it is still not necessary that all the costs as per balance sheet need to be passed on to the consumers. It is totally upon the Hon'ble Commission to decide how much of those costs are required to be passed on to the consumers through tariff. This has been clearly upheld by the ATE in its order on Appeal No. 4-13-14-23-25-26-35-54-55 of 2005 dated 26th May 2006.

*"76. In view of the aforesaid analysis, we hold and direct that:-*

*(i) Commission is not powerless to issue orders and directions relating to matters having a bearing on and nexus with the determination and fixation of tariff and its directions shall be binding on all persons and authorities including the State Government in this case.*

*(ii) The accounts of the Board which reflect the cost of the RSD project allocated to the Board are not binding on the Commission even though the allocation may have been done by the State of Punjab as the allocation is a tariff issue."*

8.10 The aforementioned ATE judgment also quotes the case of West Bengal Electricity Regulatory Commission vs. CESC Ltd. wherein it was held by the Supreme Court of India that the Regulatory Commission is bound to examine the accounts of the utility even though they may be genuine and are not challenged. According to the Supreme Court, the accounts of the utility are not ipso-facto binding on the Commission as the Commission is required to consider the factors and parameters for determination of tariff. In this regard, the Supreme Court held as follows:

*"...The High Court further came to the conclusion that in view of the fact that there is no challenge to the accounts of the Company by the consumers, the said accounts of the Company should be accepted by the Court. Here again we are not in complete agreement with the High Court. **There may be any number of instances where an account may be genuine and may not be questioned, yet the same may not reflect good performance of the company or may not be in the interest of the consumers.** Therefore, there is an obligation on the Commission to examine the accounts of the Company, which may be genuine and unchallenged on that count still in the light of the above requirement of Sections 29(2)(g) to (h). In the said view of the matter admitting that there is no challenge to the genuineness of the accounts, we think on this score also the accounts of the Company are not ipso facto binding on the Commission..."*

8.11 Further, as per Section 86 (1)(f), the Hon'ble Commission is empowered to adjudicate disputes between licensees, and generation companies and to refer disputes to arbitration.

*(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;*

8.12 As per Section 94, the Hon'ble Commission has the same powers as a Civil Court

*94. (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters,*

8.13 As per Section 95, all proceedings before the Hon'ble Commission are considered to be judicial proceedings

*95. All proceedings before the Appropriate Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appropriate Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.*

8.14 Taken together, and as clearly established, the Hon'ble Commission is a quasi-judicial body, which cannot under any circumstances be called a third party. Even in cases at any judicial body, involving the Government of India or any State Government, such judicial body is never considered as a third party. Therefore, the stance of the utility and the Hon'ble Commission that the Hon'ble Commission is merely a third party is beyond comprehension.

8.15 As the above arguments clearly prove, the transfer scheme, including the balance sheet prepared under the transfer scheme, need not be viewed as sacrosanct for the purposes of cost approval and tariff determination, which are statutory functions of the Hon'ble Commission.

8.16 We therefore urge the Hon'ble Commission again to re-examine its stance and correct this mistake at this juncture at least, since significant, unwarranted, inefficient cost is being loaded on to the Utility and passed on to the consumers due to this error.

## **9. Regulatory Compliance and make available the Audited Accounts**

9.1 We had already discussed in detail the licensees' non-compliance of the express directives on the Hon'ble Commission. Considering that there does not seem to be any effort on the part of the licensees to improve the situation, we suggest that the Hon'ble Commission may strictly monitor the compliance of various directives issued by it and the undertakings given by the licensees with independent agencies and auditors.

9.2 It is also suggested that in matters of regulatory compliance, including compliance of directives, the Hon'ble Commission shall not be dependent only on the reports of the licensees. The Hon'ble Commission is requested to exercise its powers and insist on the submission of the audited accounts before taking up the annual tariff revision exercise for the licensees. It is unfair to the consumers to do the truing up on the basis of provisional figures when enough time has passed for the submission of final audited figures. In spite of the repeated directives of TNERC and the undertaking that licensees had given to various authorities including Government of India, the licensees have not been finalizing its audit accounts before the statutory dead lines. This shows their incompetence or a desire to hide their accounts from public scrutiny. There is no reason why TANGEDCO and TANTRANSCO should be unable to finalise their accounts even seven months beyond the end of financial year whereas companies with much larger operations like National Thermal Power Corporation (in generation) and Power Grid Corporation (in transmission) and comparable operations in distribution like Tata Power and CESC are able to do so on time. Such companies also put out periodical statements on their operations for their shareholders and consumers. In comparison, even though public sector utilities, TANGEDCO and TANTRANSCO strives to keeps their accounting and financial data secret even when they try to project thousands of crores as revenue gap in order to justify their demands for increase in consumer tariff.

9.3 TNERC is also requested to issue suitable regulations and guidelines which mandate the statutory independent auditor to comment on the compliances with various statutory and regulatory compliances applicable to companies licenced by it. The auditors make such comments in respect of compliances of companies being audited by them in respect of Employees Provident Fund, Gratuity payable to employees, loans taken, tax deducted at source and so on. For this purpose, TNERC may write to Ministry of Corporate Affairs, Government of India, Comptroller and Auditor General of India and the Institute of Chartered Accountants. TNERC is also requested to insist on annual cost audit of TANGEDCO, by qualified professionals.

9.4 In view of the substantial public interest being involved, TNERC must request Comptroller and Auditor General of India (CAG) to make the audit of the operations of TANGEDCO an annual exercise and make available the audit report



before the tariff exercise is initiated. It is brought to the attention of the Hon'ble Commission that such an audit was ordered on the power utilities in Delhi even though they were not government companies and courts have upheld the legality of such special audits. The Hon'ble Commission may contact the Ministry of Power, Government of India and other statutory authorities for ordering a similar audit investigation on TANGEDCO and TANTRANSKO.

9.5 It may also be noted that the licensees were earlier directed to maintain Regulatory Accounts which seems not to have been complied with. TNERC must direct TANGEDCO to maintain and submit separate regulatory accounts independent of the accounts maintained by it for compliances with Companies Act, 2003, Income tax Act, 1961 and other legislations. These accounts should be in compliance with the Electricity Act, 2003 and the various directions given under the Act and the subordinate legislations. These accounts should be audited by a chartered accountant appointed by TNERC and the annual reports should be posted on the websites of TNERC and TANGEDCO. The annual report prepared from such account should be submitted to TNERC and should form the basis on which tariff revision exercise is initiated. From the accounts TNERC should be able to easily fetch the required data without arriving at them from the accounts maintained for other statutes. As and when required, the Hon'ble Commission may also mandate a reconciliation of the regulatory accounts and the other statutory accounts.

**10. The procedure and the formula adopted by the Hon'ble Commission needs sea changes:**

10.1 We feel that the most important and the fundamental error committed by the Hon'ble Commission in fixing the SLDC charges in the earlier orders, is the procedure or formula adopted by the Hon'ble Commission to calculate the SLDC charges. **The Hon'ble CERC and other Hon'ble SERC's have determined the SLDC charges based on the ARR and the allotted capacity.** The procedure or formula adopted by the CERC and other SERCs are reproduced below from their respective Regulations/Orders.

**(i) CERC's Fees and Charges Regulations 2015**

- (3) The rates of system operation charges for distribution licensee and buyers shall be computed on annual basis and recovered monthly after taking into account aggregate contracted capacity in accordance with following formulae:

$$\text{SOC (Distribution or buyer)} = (45\%) (70\% \times \text{AFC}/(\text{CC}))/12$$

Where,

AFC = Annual Charges computed in accordance with Regulation 14;

CC = Aggregate long term or medium term contracted capacity by distribution licensees and buyers whose scheduling and accounting is covered under concern RLDC as on last day of the month prior to the month of billing;

Provided that the system operation charges from distribution licensees and buyers shall be collected in proportion to the sum of their allocations and contracted capacities, as the case may be, as on the last day of the month prior to billing of the month.

**(ii) MERC order on SLDC Charges dated 22-07-2016**

**Table 91: MSLDC Charges for FY 2016-17 to FY 2019-20 approved by Commission (Rs./MW/Month)**

Monthly MSLDC Charges	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Total MSLDC Annual Fixed Charges (Rs. lakh)	1484.17	1879.60	1925.19	1944.36
Base Transmission Capacity Rights (MW)	19007	20168	21404	22719
<b>MSLDC Charges (Rs./MW/Month)</b>	<b>650.71</b>	<b>776.64</b>	<b>749.54</b>	<b>713.19</b>

**(iii) GERC order on Case No. 1546 of 2015 Dated 31st March, 2016**

SLDC Charges for Power System Operation payable for a month by a Long-Term Open Access customer of the Gujarat Grid

$(SCB/12) * (ATCi/SATCi)$

where,

SCB = SLDC Aggregate Revenue Requirement for the year

ATCi = Actual Total Capacity of the customer (Generator or Distributor) for the Month i,

SATCi = Sum of Actual Total Capacity (Generation + Allocation) for the Month.

**(iv) RERC order dated 27-10-2016**

**E Approved SLDC expenses for FY 2016-17 (Rs. Crore)**

Sr. No.	Particulars	Approved by Commission
1	Net Revenue Requirement for SLDC Operations to be recovered from Discoms and Long Term Open Access Customers (Rs. Crore)	9.40
2	Contracted capacity for Discoms and Long Term Open Access Customers (MW)	13,128
3	SLDC Charges for Discoms and Long Term OA Transactions (Paise/kW/Month)	59.66
4	SLDC Charges for Medium Term OA Transactions (Paise/kW/Month)	59.66
5	SLDC Charges for Short Term OA Transactions (Paise/kW/Day)	1.96

**(v) APERC SLDC charges order dated 9-5-2014 for 3rd Control Period FY2014-15 to FY2018-19**

**Table No.5.6 - APERC: Annual Fee and Operating Charges**

Sl.	Parameter	2014-15	2015-16	2016-17	2017-18	2018-19
1)	Generation Capacity (MW)	21760.61	24132.41	25552.53	26674.74	27781.74
2)	Capital Cost (Rs. Cr.)	5.52	7.46	9.03	10.66	11.71
3)	Operating Expenses (Rs. Cr.)	62.10	63.98	68.92	73.63	78.10
	<b>Annual Fee (Rs./MW/Annum)</b>	<b>2535.65</b>	<b>3092.78</b>	<b>3533.18</b>	<b>3995.39</b>	<b>4214.27</b>
	<b>Operating Charges (Rs/MW/Month)</b>	<b>2378.11</b>	<b>2209.34</b>	<b>2247.62</b>	<b>2300.31</b>	<b>2342.73</b>

Notes on fee and charge

- i) The SLDC charges (Annual Fee & Operating Charges) shall be paid by Generating Companies (including Captive Generating Plants), Distribution Licensees and Trading Licensees using the intra-State Transmission Network.

10.2 In all the CERC and SERC Regulations/Orders, the ARR is divided by the total allotted capacity to arrive at the SLDC charges whereas the Hon'ble Commission followed an arbitrary formula of Rs. 2,000 per day in its earlier orders. This resulted in a highly discriminatory collection of SLDC charges from various entities as mentioned in the 2014 Tariff order of the Hon'ble Commission which is reproduced below.

*Table 11: Scheduling and system operation charges collected from TANGEDCO and other consumers (INR Crores)*

<b>Name of OA customer</b>	<b>FY 14 Q1</b>	<b>FY 14 Q2</b>	<b>FY 14 Q3</b>
<b>From TANGEDCO</b>	<b>0.02</b>	<b>0.02</b>	<b>0.02</b>
<b>From LTOA consumers</b>	10.55	11.27	12.10
<b>From STOA consumers</b>	13.96	8.33	7.42
<b>Total</b>	24.53	19.62	19.54

10.3 In other States, the Distribution Licensee who has been allotted with maximum capacity would bear the maximum SLDC charges. As per the last tariff order of the Hon'ble Commission, in Tamil Nadu, the TANGEDCO who is handling around 7500 MW of its own conventional power, pays the least of only Rs.2,000 per day. A 500 MW conventional power station also pays only Rs.2000 per day. Whereas a one MW of WEG shall pay Rs.800 per day and 3 MW of WEG shall pay

Rs.2400 per day when each 1 MW of wind turbines are located in different places. Hence, the formula adopted in the earlier orders, is highly discriminatory. For the whole capacity of 7,500 MW of TANGEDCO, SLDC gives a single Scheduling and System Operation Charge of Rs.2,000 only. SLDC is not scheduling every WEG but gives single scheduling for the 7,600 MW of Wind power installed in the State as a whole. Therefore, on similar lines, SLDC should charge only Rs.2000 per day for the entire WEGs. Hence, we request the Hon'ble Commission to follow the formula followed by the CERC and other SERCs in determining the SLDC charges without following a discriminatory formula.

## **11. Comments on the statistical data provided in the ARR:**

11.1 In the ARR Petition submitted by the TANTRANSCO / SLDC to the Hon'ble Commission, the SLDC has taken the estimates for FY 2016-17 being the provisional figures even though the year has closed by 31.03.2017 itself. Hence, the veracity of such figures, need to be verified for their accuracy by the Hon'ble Commission. However, even assuming that the base figures are correct, we make the point-wise observations/comments as detailed below:

### **(1) Employee Expenses:**

The annual increase in the Salary and DA each considered at 5.72%, in addition to making significant provisions for the implementation of 7<sup>th</sup> Pay Commission. This seems to be an overestimated figure, which needs to be verified before providing approval by the Hon'ble Commission on the ARR.

### **(2) Capex & Capitalisation:**

Capitalisation in 2017-18 at Rs.1907 lakh is higher than the Capex amount of Rs.1400 lakh in 2017-18. There is a huge gap of Rs.507 lakh towards ULDC/SCADA up gradation which requires verification by the Hon'ble Commission as the figures are highly imaginary and inflated.

### **(3) Interest on Loan:**

In the ARR, the interest expenditure is estimated on a presumptive basis, considering loan at 70% of the GFA. This would not be an appropriate method as the ARR is intended to recover the actual cost incurred through determination of tariff. Hence, SLDC may be directed to furnish the details of actual loans availed for their equipment. It is

also submitted that the interest rate of 12% considered, may get reduced in view of the fact that TANGEDCO/TANTRANSCO joined the UDAY scheme, consequent to which there are widespread reports in the Press that there would be significant reduction in the interest rate for the Utilities.

(4) Interest on Working Capital:

There is no need for any working capital for SLDC, as the functioning of SLDC requires Equipment, Hardware, software and communication facilities. Hence, interest on working capital need not be considered for ARR.

(5) Return on Equity:

The return on equity proposed seems to be very unrealistic and the same needs to be reworked considering the equity actually infused for the projects expected to be commissioned during the FY 2017-18 and FY 2018-19 and the equity infused for projects under construction should not be considered for the purposes for ARR.

(6) Other Comments:

- a. The Scheduling and System Operation Charges collected from the WEGs @ 40% of the conventional generators, alone accounts for more than the ARR amount filed in the SLDC petition. Therefore, the Scheduling and System Operation Charges for the WEGs are required to be brought downwards heavily to fit with the exact requirement and therefore, it needs to be revised downwards heavily.
- b. The ARR filed by SLDC is Rs.43 Crores, whereas the TANTRANSCO ARR petition filed in January 2017 shows a huge recovery of Rs.132 Crores. This amount of Rs.132 Crores itself is a gross under estimation as wind mill owners alone would contribute to more than Rs.175 Crores at rates determined by the Hon'ble Commission. With the recovery from Scheduling and System Operation Charges from other OA consumers and TANGEDCO, the overall recovery would be more than 5 times of the estimated amount. Hence, Scheduling and System Operation Charges should be drastically reduced considering the realistic revenue recovered on this account from the wind sector.



- c. In view of the fact that TANTRANSCO's tariff petition filed in January 2017 had included the SLDC charges also, it is requested that the same may be adjusted while determining the ARR for TANTRANSCO.

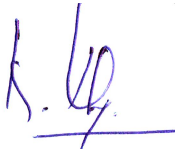
## **12. Public Hearing.**

12.1 Even though at the face of the record there is no information available about the increase in tariff as per the ARR filed, considering the various submissions as explained in the earlier paragraphs, the Hon'ble Commission may provide us an opportunity of bringing more facts by conducting Public Hearings by following the Principles of Natural Justice before providing any approval on the petitions filed by TANTRANSCO / SLDC and to explain as why the Scheduling and System Operation Charges need to be rationalized as followed in other State Commissions and by CERC itself besides to the factual matrix.

12.2 Though all these policy guidelines are to be followed in letter and spirit, the Hon'ble Commission's tariff proposal indicates that the policy directives are not taken seriously in seeking the tariff revision. It is humbly submitted that until and unless the Hon'ble Commission addresses these basic issues, the tariff fixation will not be meaningful and may not yield the intended benefits to the consumers or to TANTRANSCO. We request the Hon'ble Commission to consider our above points and kindly give us an opportunity to present our case before the commission in person. We also crave leave of the Hon'ble Commission to allow us to make any additional submissions on this issue as and when the same are available.

Thanking You,

Yours Sincerely,



K Ilango  
Secretary