

SECTION 1: INTRODUCTION

Constitution of the Commission

- 1.1 The Assam Electricity Regulatory Commission (hereinafter referred to as the AERC or the Commission) was established under the Electricity Regulatory Commissions Act (hereinafter referred to as the ERC Act), 1998 on February 28, 2001. The AERC came into existence in August 2001 as a one-man Commission and it has been mandated to exercise the powers and functions conferred under section 22(I) of the ERC Act.
- 1.2 The Commission is now mandated to exercise the powers and functions conferred under Section 181 of the Electricity Act 2003 (36 of 2003) (hereinafter referred to as the Act) and to exercise the functions conferred to it under Section 86 of the Act. The Act was applicable from 10th June 2003. However Section 61 of the Act provides for the determination of tariffs as per Electricity Supply Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) for a period of one year beyond the appointed date. Determination of tariff for FY 2004-05 contained in the Tariff Order 2004-05 was done in accordance with the provisions of these Acts and the Tariff Order was issued by the Commission on 21 July, 2004.
- 1.3 On 6 April, 2005 the Commission issued the AERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 in exercise of its powers under Section 61 read with Section 181 (zd) of the Act. The object of these regulations is to specify the terms and conditions for the determination of tariffs by the Commission for the supply of electricity by a generating company to a distribution licensee, transmission of electricity, wheeling of electricity and retail sale of electricity. These regulations replace the determination of tariffs as per Electricity Supply Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998). These new tariff regulations came into force on 29 April, 2005 which is the date of publication of the regulations in the official gazette of the Government of Assam (refer to section 61 proviso 1 of the Act).

Tariff Related Functions of the Commission

- 1.4 Under Section 86 of the Act, the Commission has the following tariff related functions:
 - (a) To determine the tariff for electricity, wholesale, bulk, grid or retail, as the case may be;
 - (b) To regulate power purchase and procurement process of the transmission utilities and distribution utilities including the price at which the power shall be procured from the generating companies, generating stations or from other sources for transmission, sale, distribution and supply in the State;

- (c) To promote competition, efficiency and economy in the activities of the electricity industry to achieve the objects and purposes of this Act.
- 1.5 Under Section 61 of the Act in the determination of tariffs, the Commission is to be guided by the following:
- (a) The principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;
 - (b) That the electricity generation, transmission, distribution and supply are conducted on commercial principles;
 - (c) The factors which would encourage efficiency, economical use of the resources, good performance, optimum investments, and other matters which the State commission considers appropriate for the purpose of this Act;
 - (d) The interests of the consumers are safeguarded and at the same time, the consumers pay for the use of electricity in a reasonable manner based on their customer category cost of supply;
 - (e) That the tariff progressively reflects the cost of supply of electricity at an adequate and improving level of efficiency and also reduces and eliminates cross subsidies;
 - (f) The National Power Plans formulated by the Central Government including the National Electricity Policy and Tariff Policy; and
- 1.6 In accordance with the Act, the Commission will not show undue preference to any consumer of electricity in determining the tariff, but may differentiate according to the consumers' load factor, power factor, voltage, total consumption of energy during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. (Section 62 of the Act)
- 1.7 If the State government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the Commission, the State government shall pay the amount to compensate the person affected by the grant of subsidy in the manner the Commission may direct as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government. (Section 65 of the Act)

Background of the present petitions

Submission of petitions

- 1.8 The Commission issued Tariff Order for retail sale of electricity to different categories of consumers of ASEB for FY 2004-05 on 21 July, 2004. The Commission ordered that the tariff approved in the order of the Commission dated 21 July, 2004

shall remain valid up to 31 March, 2005 or next revision of the tariff whichever is earlier.

- 1.9 On 10th December 2004 the Government of Assam issued a notification (vide memo no. PEL.151/2003/Pt./165) to restructure the Assam State Electricity Board by transferring and vesting of functions, properties, interests, rights, obligations and liabilities of Assam State Electricity Board on the State Government and re-vesting thereof by the State Government in the five corporate entities as follows:
- (a) Assam Electricity Grid Corporation Limited (AEGCL) to carry out the functions of electricity transmission as the State Transmission Utility (STU).
 - (b) Assam Power Generation Corporation Limited (APGCL) to carry out the functions of generation of electricity in the state of Assam.
 - (c) Lower Assam Electricity Distribution Company Limited (LAEDCL) to carry out the functions of electricity distribution and retail supply in the areas of Guwahati, Mangaldoi, Rangia, Bongaigaon, and Kokrajhar circles of the erstwhile ASEB.
 - (d) Central Assam Electricity Distribution Company Limited (CAEDCL) to carry out the functions of electricity distribution and retail supply in the areas of Tezpur, Nagaon, KANCH and Cachar circles of the erstwhile ASEB.
 - (e) Upper Assam Electricity Distribution Company Limited (UAEDCL) to carry out the functions of electricity distribution and retail supply in the areas of Dibrugarh, Jorhat, Lakhimpur and Sibsagar circles of the erstwhile ASEB.
- 1.10 In exercise of powers under Section 172 of the Electricity Act, 2003 the State Government authorized Assam State Electricity Board to continue as a trading licensee for a period up to 10th June, 2005 (notification no PEL 33/2004/266 dated 23rd August 2004). The Assam State Electricity Board (ASEB) is to carry out the functions of bulk purchase and bulk supply, namely the purchase of electricity from the generating companies including the Assam Power Generation Corporation Limited (APGCL) and the bulk supply of electricity to three distribution companies.
- 1.11 Under the Conduct of Business Regulation of AERC, the petitions for approval of ARR for the next year should be submitted before the Commission on or before 15th December. On 10th December 2004, the ASEB filed petition before the Commission that in view of the re-organisation of ASEB as per Government Notification PEL.151/2003/pt/165 dated 10.12.04 by which five different companies were formed from the erstwhile ASEB, it will be meaningful if the different newly formed entities submit their own tariff petitions before the Commission. The petitioner prayed for 60 days time from 10th December to submit the petitions. The Commission while recognising the situation granted 40 days time to submit petitions vide its order dated 14th December 2004.
- 1.12 ASEB and each of the successor entities of ASEB, AEGCL, LAEDCL, CAEDCL, and UAEDCL initially filed petitions for the Annual Revenue Requirement for the

year 2005-06 and revised tariff proposal for 2005-06 on 19th January, 2005, with a request for additional 20 days time for submission of Power Purchase Agreements (PPA) of Assam Power Generation Corporation Limited (APGCL) with Distribution Companies, Transmission Service Agreements (TSAs) between APGCL, AEGCL and Discoms and Bulk Supply Agreements between ASEB and Discoms.

- 1.13 After scrutiny of the petitions in accordance with the provisions of the Act, the AERC (Conduct of Business Regulations), 2005 and guidelines issued by the Commission for filing ARR/tariff proposals, the Commission found that the petitions were not found acceptable due to a number of reasons enumerated in **Annexure 1**.
- 1.14 The Commission directed that these petitions be submitted afresh after complying with the points as in Annexure 1 as well as all past directions of the Commission in the matter of submission of Tariff Petitions within fifteen days, i.e. 7 February 2005.
- 1.15 Further on 27th January 2005, and 1st February, 2005 the Commission directed the petitioners to submit additional information/data along with the petitions. On 29 January, 2005 the Petitioners submitted the draft Power Purchase Agreement, Transmission Service Agreement and Bulk Supply Agreements.
- 1.16 On 7th February, 2005 the petitioners submitted before the Commission the additional information as sought by the Commission. However they failed to submit information as prescribed in the format circulated by the Commission and a separate petition for APGCL. The petitioners requested the Commission to consider the PPA of APGCL and ASEB to determine the ARR of APGCL. It was also mentioned in the petition that a comprehensive exercise had been done to build up asset registers on physical assets records. The petitioners stated that the final asset registers will be made available by 31st March 2005.
- 1.17 The Commission did not accept the contention of the petitioners in the matter of non submission of documents in standard formats issued by the Commission and to consider the PPA as petition of APGCL and further directed on 8th February, 2005 to submit information in formats and separate petition for APGCL for approval of Generation tariff for all generating stations and informed that PPA cannot be considered as tariff petition and granted 7 more days' time to comply with the directions, to be submitted along with some additional information on the petitions.
- 1.18 On 15th February, 2005 the petitioner submitted the additional information requested by the Commission.

Discussions with the Petitioners

- 1.19 After an initial review of the petitions, the Commission observed that a number of issues needed to be discussed with the petitioners for clarification and explanation along with supporting documents. A list of issues were finalised and a series of meetings was initially called on 25th, 28th February 2005 and 1st March, 2005. The issues short listed for the meetings are in **Annexure 2**.

- 1.20 On 25th February, 2005 the Chairperson met with the officers of ASEB and successor Companies on Tariff Petition. The points raised during the meeting pertaining to the filing of Tariff Petitions are in **Annexure 3**.

The Commission's staff explained the reasons behind the points raised vide Letter No. AERC 118/2004/58 Dt. 21 February, 2005 and requested the petitioners to furnish the documents asked for in full and in a systematized way, indicating the sources and duly authenticated so as to avoid loss of time and to allow the Commission adequate time to properly consider the petitions in the interest of the consumers as well as the petitioners.

- 1.21 The Commission on admission of the petitions directed the petitioners on 2nd March, 2005 to issue a public notice that the Commission had duly accepted the Tariff Petitions filed by the petitioner ASEB and successor entities on 15 February, 2005 and that responses were invited to the three tariff petitions filed by the distribution companies - LAEDCL, CAEDCL, and UAEDCL. The petitions are registered as Petition No 1/2005, 2/2005, 3/ 2005, 4/2005, 5/2005 and 6/2005 for ASEB, AEGCL, APGCL, LAEDCL, CAEDCL and UAEDCL respectively.
- 1.22 A consolidated form of Annual Revenue Requirements (ARR) of Distribution Companies with estimated energy sale proposed for the companies along with a statement of Tariffs proposed for each category of consumers in the petitions with existing Tariffs. This should be published at least in four regional news papers out of which two must be in local languages in the areas of respective distribution companies.
- 1.23 The copies of the Tariff Petitions with supporting documents mentioned in Annexure 4 are to be made available to consumers and other interested parties on demand for which the petitioners may charge a price which is not to be more than normal printing cost of the documents. The documents should be made available at least for a period of one month from the date of notification in offices of all Superintending Engineers/CEOs of all Discoms and in the office of the Additional Chief Engineer (Com-T), ASEB. This information should be a part of the Newspaper Notice. The documents are to contain information on the points as per **Annexure 4**.
- 1.24 In addition the petitioners were directed to prepare a handout, incorporating a brief background of the tariff petitions including information mentioned in paragraphs 1.22 and 1.23 above which should be made available free of cost on demand to the consumers and other interested parties who may not be willing to purchase the documents.
- 1.25 On 11 March, 2005 the petitioners filed a petition before the Commission seeking amendment of the original petitions filed regarding misquotations of certain clauses of the 'Conduct Of Business' Regulations, 2005 of the Commission along with information that the State Government vide notification no. PEL.133/2003/266 dated 23rd June 2004, has authorised ASEB to continue as trading licensee up to 10th June 2005.

- 1.26 Between 15th March, 2005 and 2nd May, 2005 Commission staff discussed various issues related to finance and accounts of the Tariff Petitions with the ASEB staff. ASEB clarified various points as summarized in **Annexure 5(A)**.
- 1.27 In a petition dated 15th March, 2005 the ASEB stated that the relevant documents and clarifications sought vide letter No.AERC.118/2004/63 dated 15th March,2005 on issues related to finance and accounts of the Tariff Petitions were being compiled and prayed for extension of date for submission of the same up to 4th April, 2005
- 1.28 The nodal officer for APGCL submitted on 23rd March, 2005 the modified annual gas transmission charges data for supply of gas to LTPS by GAIL and AGCL.
- 1.29 In compliance with the decisions of various meetings held and letters asking for information, ASEB furnished information and documents as in **Annexure 5(B)**.
- 1.30 A meeting was held on 30th March, 2005 between Commission staff and ASEB officers and the issues discussed are placed in **Annexure 6**.
- 1.31 The Commission vide letter no.AERC.118/2004/131 dated the 18th April,2005 sought from ASEB clarifications along with supporting documents on the issues as in **Annexure 7**.
- 1.32 The Deputy Secretary, Power, Government of Assam informed the Commission vide letter no PEL.12/2005/85 dated 20th April, 2005 that the Government desires that the lower income group consumers may be untouched by any enhancement of tariff in the immediate future. The Government also wanted an opportunity of making a submission to the Commission. This opportunity was given.
- 1.33 On 27th April, 2005, the Principal Secretary, Power, Government of Assam made a submission to the Commission on observations of Government of Assam on the tariff petitions filed by ASEB/New Companies. The GoA observed that:
- (a) The total forecast generation from NTPS could be increased 657 MUs leading to availability of 1042 MUs from APGCL.
 - (b) Depreciation could be restricted to Principal Repayment of loans.
 - (c) A 3% return on net fixed assets could be used instead of a return on equity to calculate profit for the petitioners.
 - (d) With additional generation from NTPS, the Commission could adjust the sales and power purchases forecasts.
 - (e) The Government of Assam's support of Rs 49 Crores as per FRP should be taken into account by the Commission.
 - (f) If the above observations are taken into account, the ARR for all the Discoms could be Rs 1002.3 Crores against Rs 1190 Crores as filed in the tariff

petitions. This would result in an average retail tariff increase of 6.22% instead of the 26.1% petitioned by the Discoms.

The Commission sent a copy of the observations of Department of Power, Government of Assam, on the tariff petitions to the ASEB for its views

1.34 The ASEB in its petition dated 29th April, 2005 furnished responses on the observations of Government of Assam, as follows :

- (a) The additional generation of NTPS as observed by Government of Assam does not appear to be feasible.
- (b) No depreciation was allowed in the last tariff order and if depreciation is not allowed as per tariff proposals for this year also, the high depreciation charges shall have to be loaded in the ARRs in future years leading to tariff shocks. So, they plead for allowing depreciation as asked for in the petition.
- (c) The return on equity of Rs. 66.99 Crores as filed in the petitions has been computed on an equity base of Rs. 803.70 Crores for the new companies. The equity base of ASEB as on March 31, 2004 stands at Rs. 1350 Crores. Government of Assam has further agreed to convert Rs. 1147 Crores from grant to equity making a total allowable equity capital equal to Rs. 2497 Crores. Applying a return on equity of 16% on this amount would work out to be Rs. 471.52 Crores. The new companies have considered the lower of the two values of ROE given this is the first year that the ROE method is to be applied.
- (d) Income from trading: The gross income from trading @ Rs. 1.90 per kWh for sale of projected 420 MU of surplus power as per ARR of ASEB is Rs. 79.80 Crores. After adjusting the cost of power purchases of Rs. 39.21 Crores, the net income arrived at was Rs. 40.59 Crores, which has been deducted to arrive at the ARR value. However, with competitive bidding the highest offer was received from PTC for sale of surplus off-peak power with effect from May, 2005 to October, 2005, the net income after deducting the cost of power purchase of Rs. 39.21 Crores as projected in the ARR of ASEB is Rs. 46.32 Crores which is to be incorporated as net income from trading.
- (e) In respect of purchase of power, the observations made by Government of Assam are not commercially acceptable in view of comments on generation from NTPS.

1.35 The reply of ASEB on the observations of Department of Power, Government of Assam, was sent to the Principal Secretary, Government of Assam, Department of Power, on 2nd May, 2005. The Deputy Secretary to the Government of Assam, Power Department, in his letter of response on 6th May, 2005 made the following observations on the reply of ASEB.

- (a) The Government would not like to make any further observations in respect of depreciation and return on equity as this is a matter to be determined by the Commission.

- (b) The total average generation from the six units of NTPS would be 628 MU as against Government of Assam's original projection of 657 MU. The difference of 29 MU for the entire year is because of shut down of unit 3 for 2 months for overhauling, hence gross generation for 2005-06 would be 1013 MU and not 885 MUs as project by ASEB.
- (c) In view of this overall ARR would be Rs. 1008 Crores as against the ARR indicated by Government in their original observations at Rs. 1002.3 Crores.
- 1.36 APGCL vide its letter no. CEO/APGCL/Tariff/115/39 dated 13th May, 2005 revised the gross generation target of NTPS for FY 2005-06 as 555 MU.
- 1.37 The Commission vide its letter No AERC. 118/2004/134 dated 14th May, 2005 sent a copy of the letter no PEL.12/2005/85 dated the 20th April, 2005 from the Department of Power, Government of Assam to ASEB stating the Government's desire that the lower income group consumers may be untouched by any enhancement of tariff in the immediate future.

Meeting of the State Advisory Committee

- 1.38 The Commission has reconstituted the Advisory Committee on 8th November, 2004 with 18 members. The first meeting of the reconstituted Advisory Committee was held on 5th April, 2005. The tariff petitions submitted by ASEB and successor entities for the FY 2005-06 were placed in the meeting. The members offered their valuable advice and suggestions on the tariff petitions. These were duly taken into consideration while fixing the tariffs for ASEB and successor entities for FY 2005-06. The minutes of the first meeting of the Advisory Committee are in **Annexure 8(A)**.

Public Notice Inviting Responses

- 1.39 The Commission on admission of the petitions directed the petitioners to issue a public notice inviting responses to the petitions for ARR and Tariff revision filed by LAEDCL, CAEDCL and UAEDCL. The public notice was issued on 9th March, 2005. The last date for the submission of responses was given as 9th April, 2005. The notice was issued in the following newspapers:
- (a) The Sentinel (English Daily)
- (b) Amar Asom (Assamese Daily)
- (c) Dainik Janambhumi (Assamese Daily)
- (d) Samayik Prasanga (Bengali Daily)
- 1.40 As it was brought to the notice of the Commission by Government of Assam that there was a lot of interest in filing responses to the Tariff Petitions filed before the Commission by ASEB and the successor entities the date was extended till 21 April 2005.

- 1.41 The Commission held two hearings at Guwahati and Dibrugarh in order to provide opportunity to the respondents to make their submissions directly to the Commission in the presence of the petitioner companies and other interested parties. Hearings were held on the following dates and locations:
- (a) Guwahati – 25 April, 2005;
 - (b) Dibrugarh – 4 May, 2005.
- 1.42 The responses received by the Commission are addressed in section 3 of this Order.

Interim Tariff Order for FY 2005-06

- 1.43 On 16th March 2005, the petitioner filed a petition before the Commission to allow the tariff approved by the Commission for FY 04-05 to be continued beyond 31st March 2005 as the Tariff Order of the Commission in force with effect from 1st August, 2004 was to remain valid only up to 31st March, 2005 or next revision whichever is earlier.
- 1.44 Accordingly, as there would not have been any effective tariff order for retail consumers of distribution companies beyond 31 March, 2005 the Commission issued an interim Tariff Order applicable to the retail consumers of the distribution companies on 31 March, 2005. The interim Tariff Order for FY 2005-06 issued by the Commission will remain in force until tariff petitions filed by ASEB and its successor companies as mentioned above are disposed of by the Commission by issuing final orders. The background in which the Commission issued the interim order is dealt with in detail in the order dated 31 March, 2005 and is placed at **Annexure 8(B)**.