

**Before the
GUJARAT ELECTRICITY REGULATORY COMMISSION**

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Gandhinagar – 382355,
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Suo Moto 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

Suo Motu Petition Under Section 23 and 24 of the GERC (Conduct of Business)
Regulations, 2004

MOST RESPECTFULLY SHOWETH:

1. Section 86 of the Electricity Act, 2003 specifies the ‘Determination of Electricity Tariff’ as one of the important functions of the State Electricity Regulatory Commission. The relevant section of the Act, 2003 is reproduced as below: -

“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;”

2. Further, the Act, 2003 empowers the appropriate commission to specify the terms and conditions for the determination of tariff. The relevant extract of the Section of the Act is given below:

“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”

3. Accordingly, the Gujarat Electricity Regulatory Commission (hereinafter, ‘the Commission’) has been notifying the Tariff Regulations from time to time specifying the terms and conditions for the determination of tariff, with the most recent of them after following due process as specified under the Act, is last the GERC (Multi-Year Tariff) Regulations, 2016 notified on 29.03.2016. These Regulations were applicable from 1st April, 2016 and remained in force till 31st March 2021.
4. While the Commission had initiated the process of framing the MYT Regulations for new Control Period of FY 2021-22 to FY 2025-26 by issuing public notice dated 10th August, 2020, the process was delayed due to circumstances and reasons beyond the control of the Commission such as pandemic situation and long period consumed in appointment of Member (Legal). Consequently, the Commission vide its Suo Motu Order No. 07 of 2020 dated 22nd December, 2020 deferred the 5-year control period for new MYT Regulations for one year. Accordingly, all the concerned utilities and licensees were directed to file an application for determination of annual ARR for FY 2021-22 and Determination of Tariff for FY 2021-22 based on the principles and methodology as provided in the GERC (MYT) Regulations, 2016.

5. Further, considering the ruling of the Hon'ble High Court of Gujarat in R / Special Civil Application No. 11022 of 2020 dated 05.11.2020, the procedural process of new MYT Regulations are to be started afresh only upon the Judicial Member starts functioning in the Commission. The procedure and process of framing the new MYT Regulations is required to consider the past years' performance data of generating companies and licensees and frame the norms for performance parameters linked with Tariff Determination and ARR of the concerned generating companies and licensees. Moreover, these collected information on various performance parameters for the past periods are required to be discussed, deliberated, analysed and examined thoroughly for deciding the regulations. Therefore, the 'regulations making' is an intensive and time-consuming but important process. The varied complexity in framing the regulations requires a deep and pensive thought, with all considerations and contemplations which are to be properly examined before notifying the MYT Regulations. Further, concerned generating companies and licensees have been filing their tariff applications by 30th November of the financial year so that the Commission can issue the Tariff Orders in timely manner, before commencement of next financial year. Therefore, there is a paucity of time for the notification of new MYT Regulations and inviting tariff applications for the next control period before 30th November. Moreover, the process of public consultation and public hearing shall also demand considerable time. Additionally, due to current pandemic conditions, collection of past years' data of varied nature and analysing them for framing of fresh MYT Regulations also requires time and therefore, the Commission is of the considered opinion that such thorough examination cannot be completed due to paucity of time and enable generating companies and licensees to file their tariff applications for the next control period in a timely manner, i.e., before 30th November.

6. Further, the Commission is also of the opinion that the concerned generating companies, SLDC and licensees may not be able to fairly estimate their realistic projections for the ARR and business plan for the forthcoming control period of 5 years considering the current circumstances and very short time frame available for finalizing the MYT Petition.
7. Regulations 1.2 and 7 of the GERC (Multi-Year Tariff) Regulations, 2016 are important to consider and 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.

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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.”

8. In view of the above, it is proposed to direct all the concerned generating companies, SLDC and licensees to file annual ARR for FY 2022-23 and application for determination of tariff for FY 2022-23 based on the principles and methodology as provided in the GERC (Multi-Year Tariff) Regulations, 2016 and defer the implementation of the MYT framework for further one year.
9. Regulations 23 and 24 of the GERC (Conduct of Business) Regulations, 2004 that the Commission may initiate any proceedings Suo-motu or on a Petition filed by any affected person, and pass an appropriate order on it.
10. In view of the background and reasons mentioned above and looking to the requirement and importance of timely determination of tariff preferably within 120 days from the receipt of the application as specified under sub section (1) of section 64 of the Electricity Act, 2003 for the concerned generating companies, SLDC and licensees, the Commission proposes to initiate Suo Motu proceedings to defer implementation of MYT framework by one year and adopt the determination of annual ARR and determination of tariff for FY 2022-23. Further, it is also proposed to direct all the regulated Generating Stations, Transmission Licensee, SLDC and Distribution Licensees (including deemed Licensees) to file application/petition for the Truing up for FY 2020-21 and for determination of Annual ARR and Tariff for FY 2022-23 on or before 30th November 2021.

11. The Commission invites comments / views from the stakeholders in this regard and the interested persons are informed to file their comments / views through email at efiling@gercin.org or submit the same to the Secretary, Gujarat Electricity Regulatory Commission, 6th Floor, GIFT ONE, Road 5-C, Zone 5, GIFT City, Gandhinagar – 382 255 on or before 13th September, 2021.

-Sd-
(Roopwant Singh, IAS)
Secretary
Gujarat Electricity Regulatory Commission
Gandhinagar

Place: Gandhinagar
Date: 17/08/2021