

Section 1 Introduction

1.1 Constitution of the Commission

The Jharkhand State Electricity Regulatory Commission (hereinafter referred to as the JSERC or the Commission) has been constituted by the Government of Jharkhand under Section 17 of the Electricity Regulatory Commission Act 1998 (hereinafter referred to as the ERC Act), vide the Department of Energy's notification No. 1763 dated August 22, 2002. The Commission became operational on April 24, 2003 with the Chairman being administered the oath of office. The Government notified the functions and the duties of the Commission as per Section 22 (1) and (2) of the ERC Act.

1.2 Functions of the JSERC

The Commission has been mandated to discharge the following functions listed under section 22(I) of the ERC Act. This section is reproduced below:

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- (a) To determine the tariff for electricity, wholesale, bulk, grid or retail, as the case may be in the manner provided in Section 29.
- (b) To determine the tariff payable for the use of the transmission facilities in the manner provided in Section 29.
- (c) To regulate power purchase and procurement process of the transmission utilities including the prices at which power shall be procured from the generating companies, generating stations, or from other sources for transmission, sale, distribution and supply in the state.
- (d) To promote competition efficiency and economy in the activities of electricity industries to achieve the objects and purposes of the Act."

1.3 Tariff determination by the State Electricity Regulatory Commission (SERC)

The Commission is guided by Section 29 of the ERC Act, which enunciates the principles to be followed for the determination of tariff. It reads as follows:

"(1) Notwithstanding anything contained in any other law, the tariff for intra State transmission of electricity and the tariff for supply of electricity, grid, wholesale, bulk or retail, as the case may be, in a State (hereinafter referred to as the "tariff"), shall be subject to the provisions of this Act and the tariff shall be determined by the State Commission of that State in accordance with the provisions of this Act.

(2) The State Commission shall determine by regulations the terms and conditions for the fixation of tariff, and in doing so, shall be guided by the following, namely:

- a. the principles and their applications provided in Sections 46, 57 and 57A of the Electricity (Supply) Act, 1948 (54 of 1948) and the Sixth Schedule thereto.
- b. in the case of the Board or its successor entities, the principles under Section 59 of the Electricity (Supply) Act, 1948 (54 of 1948).
- c. that the tariff progressively reflects the cost of supply of electricity at an adequate and improving level of efficiency.
- d. 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.
- e. the interest of the consumers are safeguarded and at the same time the consumers pay for the use of electricity in a reasonable manner based on the average cost of supply of energy;

- f. the electricity generation, transmission, distribution and supply are conducted on commercial principles;
- g. national power plans formulated by the Central Government.

(3) The State Commission, while determining the tariff under this Act, shall not show undue preference to any consumer of electricity, but may differentiate according to consumer's load factor, power factor, total consumption of energy during any 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.

(4) The holder of each license and other persons including the Board or its successor body authorized to transmit, sell, distribute or supply electricity wholesale, bulk or retail, in the State shall observe the methodologies and procedures specified by the State Commission from time to time in calculating the expected revenue from charges which he is permitted to recover and in determining tariffs to collect those revenues.

(5) If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under this section, the State Government shall pay the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the license or any other person concerned to implement the subsidy provided for by the State Government.

(6) Notwithstanding anything contained in Sections 57 A and 57 B of the Electricity (Supply) Act, no rating committee shall be constituted after the date of commencement of this Act and the Commission shall secure that the licensees comply with the provisions of their license regarding the charges for the sale of electricity both wholesale and retail and for connections and use of their assets or systems in accordance with the provisions of this Act."

1.4 Advent of the Electricity Act, 2003

The recently enacted Electricity Act, 2003 (hereinafter referred to as the Act) that has come into force with effect from June 10, 2003 is the governing legislation for electricity sector repealing the Indian Electricity Act, 1910; the Electricity (Supply) Act, 1948 and the ERC Act. Among the tariff related provisions, the SERC has to be guided by the National Electricity Policy and tariff policy. The generation, transmission and distribution tariff have to be determined separately, and the SERC has to take into account the principles and methodologies that would be specified by the Central Commission for generation and transmission tariff. However, the relevant provisions as per the Electricity (Supply) Act, 1948 and the ERC Act continue to be applicable for a period of one year after the enactment of the Act or until the terms and conditions related to tariff as specified under the Act are finalized, whichever is earlier.

The Act recognizes the SERCs constituted under the ERC Act and permits the Chairperson, Members, Secretary and officers to continue to hold office, on the same terms and conditions on which they were appointed under the ERC Act.

The Act provides the functions of an SERC in its Section 86, which are enumerated as below:

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(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;
- b. regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through

- agreements for purchase of power for distribution and supply within the State;
- c. facilitate intra-state transmission and wheeling of electricity;
- d. issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;
- e. promote congeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;
- f. adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;
- g. levy fee for the purposes of this Act;
- h. specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;
- i. specify or enforce standards with respect to quality, continuity and reliability of service by licensees;
- j. fix the trading margin in the intra-State trading of electricity, if considered, necessary; and
- k. discharge such other functions as may be assigned to it under this Act.

(2) The State Commission shall advise the State Government on all or any of the following matters, namely :-

- i. promotion of competition, efficiency and economy in activities of the electricity industry;
- ii. promotion of investment in electricity industry;
- iii. reorganization and restructuring of electricity industry in the State;
- iv. matters concerning generation, transmission , distribution and trading of electricity or any other matter referred to the State Commission by that Government."

1.5 Regulations and Guidelines issued by the Commission

The Commission has issued the following regulations since its inception:

*** JSERC (Conduct of Business) Regulation, 2003**

These regulations, which were notified on July 10, 2003 describe the legal and institutional set up under which the Commission would function.

*** JSERC (Tariff) Regulation, 2003**

This regulation that was issued on July 10, 2003 mandates the utility to file a petition for the revision of tariff and submit details regarding its Annual Revenue Requirement and the Expected Revenue from the existing and the proposed tariff. First amendment to this regulation was made on August 29, 2003.

*** Guidelines for submission of Tariff petition**

These guidelines prescribe the formats of information requirements to be taken into account by the utility while submitting its tariff petition.

*** JSERC (Miscellaneous Provisions) Order, 2003**

These regulations have been published in the Official Gazette and were notified on August 18, 2003. Among other provisions, these describe the miscellaneous provisions related to a petition including the fee that would be charged. First amendment to this regulation was made on September 26, 2003.

*** JSERC (State Advisory Committee) Regulations, 2003**

These regulations, which were published in the Official Gazette and notified on October 29, 2003 describe the formation, objects and members of the Advisory Committee. The provisions on conduct of business by this

committee have also been notified through these regulations.

1.6 First meeting of State Advisory Committee

The State Advisory Committee was constituted on November 24, 2003 with its members representing interests of different stakeholders such as commerce, industry, academic and research bodies, consumer associations, licensees etc. The first meeting of the State Advisory Committee was held on November 27, 2003 wherein the current situation of electricity sector in Jharkhand was discussed. The Annual Revenue Requirement and Tariff Petition filed by the Jharkhand State Electricity Board (hereinafter referred to as the JSEB or the Board) for the financial year 2003-04 was also discussed. The SAC was of the view that in order to encourage metered supply, the tariff for un-metered supply of energy may be kept higher than for the metered one.

1.7 Tariff filing by the Board

The Board is a vertically integrated utility operating in generation, transmission and distribution of electricity. In accordance with the JSERC (Tariff) regulation, 2003, the Board had filed a petition for determining the Annual Revenue Requirement (ARR) and revision of tariff for the year 2003-04 on August 26, 2003. The Commission undertook an examination of the filing and had found that the guidelines issued for filing the tariff have not been complied by the Board, and there were major information gaps in the petition. The Commission conveyed its observations on the petition and had asked the Board to re-submit its petition incorporating the additional information required vide the Commission's letter No. JSERC/Tariff/127 dated September 9, 2003 and JSERC/Petition/146 dated September 29, 2003. Thereupon, the Board revised the petition and submitted the same on November 4, 2003. The Commission scrutinized the revised petition in the light of its comments on the first one and the guidelines that had been issued by it. It was observed that there was a marginal difference in terms of adequacy and consistency of information submitted in the revised petition. The figures had been changed arbitrarily without any sufficient reasoning. The most conspicuous drawback of the petition had been the inconsistency of data. Different figures have been reported against the same parameter for the same year/month. In fact, within the Board also, the data reported by different departments was not consistent. The Board didn't submit its accounts along with the petition. It was found that even the 2001-2002 accounts have not been audited. A part of the reason with respect to the poor maintenance of accounts is that the post bifurcation accounts between Bihar State Electricity Board and the JSEB, especially on division of assets and liabilities have not been settled yet. Nevertheless, it is observed that the time taken by the Board to revise the filing had been of no avail. The Commission places on record its dissatisfaction with the level and kind of reporting that had been undertaken by the Board, which, in turn, has also constrained the Commission in its analysis of ARR and tariff.

1.8 Submission of Objections and conduct of public hearing

The Commission issued a public notice on November 19, 2003 and November 20, 2003 inviting objections on the tariff petition filed by the JSEB, and permitted a period of ten days for submitting the objections. This notice was issued in the following newspapers:

Name of the daily	Date of publication
(i) Prabhat Khabar (Hindi)	November 19, 2003
(ii) Hindustan (Hindi)	November 19, 2003
(iii) Aaj (Hindi)	November 19, 2003
(iv) Dainik Jagran (Hindi)	November 19, 2003

- (v) Ranchi Express (Hindi) November 20, 2003
- (vi) Hindustan Times (English) November 19, 2003
- (vii) Uditvani (Hindi) November 20, 2003

The Commission received a total of 104 objections. These objections have been considered by the Commission and are discussed in a later part of this order. The Commission conducted a public hearing on December 7, 2003 and December 9, 2003 at Ranchi and Deoghar respectively.

1.9 Communication with the Board's staff

The Commission communicated regularly with staff of the Board in order to validate the information submitted by them and to consider their views on different aspects of the tariff petition. The Commission had also visited the Patratu Thermal Power Station (PTPS), the generation plant being run by the Board to take stock of the situation against the backdrop of abysmally low Plant Load Factor (PLF) coupled with a very high degree of auxiliary consumption.