JOINT ELECTRICITY REGULATORY COMMISSION FOR
THE STATE OF GOA AND UNION TERRITORIES
GURGAON

Coram*
Sh. S.K.Chaturvedi, Member
Petition No. 104/2013

In the matter of

Petition for review under section 94 of the Electricity Act, 2003 read with Regulation 74 of JERC (Conduct of Business) Regulations, 2009 of the tariff order dated 22.03.2013 passed by the Commission in petition no. 90/2012 for approval of ARR and determination of retail tariff of the ED-Daman & Diu for FY 2013-14.

And in the matter of:

M/S Daman Steel Association.

And

1. Electricity Department, Daman & Diu

ORDER

02.09.2013

This petition is filed by Daman Steel Association- petitioner for review of tariff order dated 22.03.2013 passed by this Commission in petition no. 90/2012 for approval of ARR and determination of retail tariff of the ED- Daman & Diu for FY 2013-14 under section 94 of the Electricity Act, 2003 read with Regulation 74 of JERC (Conduct of Business) Regulations, 2009. The relevant part of the petition runs as under:-

Quote

1. The Review Petitioner is the Daman Steel Association whose members operate 14 Induction Furnaces in the Union Territory of Daman & Diu. By way of the Order dated 22.3.2013, there has been a tariff shock to the Petitioner's category of consumers, namely HT industrial (Ferro Metallurgical/ Steel Melting/ Steel Re-rolling Power intensive). The petitioner's industries are completely dependent on power.
2. The Power/electricity constitutes about 50 % of the input cost in the industry of the Petitioner and therefore is the principal cost of manufacture for the Petitioner's Members. The uninterrupted supply of electricity at competitive rates is essential for the sustenance of a Steel Rolling Industry.

3. By way of the Tariff Order dated 22.3.2013, the tariff to the Petitioner's category has been hiked by 55 paise per unit which is substantial. The applicable tariff to the petitioner's category is as under:-

   B. HT industrial ((Ferro Metallurgical/ Steel Melting/ Steel Re-rolling Power intensive)

i. Fixed Charges (Demand Charges)

For billing demand	Charges (Rs./ KVA/ month) or part thereof
Upto to Contract Demand	Rs. 550.00/0 per KVA per month

ii. Energy Charges

Usage	Tariff (Ps./ Unit)
First 300 units/KVA	385
Next 200 units/ KVA	455
Above 500 units/ KVA	480

iii. Penalty Charges Twice the applicable Charges

a) Penalty charges will be levied on those units which are drawn beyond the contact demand. These units will be worked out on pro-rata basis co-relating the total consumption of the month with billing demand.

b) If industries are overdrawing power by more than 20% of the contract demand, their electricity connection will be disconnected immediately.

4. The main difficulty for the Petitioner's members is the high tariff in the UT of Daman which is making the operations completely unviable. This is especially in view of the fact that the Hon'ble Commission itself has by another Tariff Order dated 25.3.2013 issued for the Electricity Department, UT of Dadra Nagar Haveli fixed the tariff for the very same category of steel melting / steel re- rolling as under –

B. HT industrial ((Ferro Metallurgical/ Steel Melting/ Steel Re-rolling Power intensive)

i. Fixed Charge (Demand Charges)

For billing demand	Charges (Rs./ KVA/ month) or part thereof
Upto to Contract Demand	Rs. 550/-
In Excess of Contract Demand	Rs. 1000/-

5. It can be seen that the difference in the tariff for the same categories of consumers between the two Union Territories which are co-located is almost Rs. 1.25 per unit. The Steel Melting / Steel Re-Rolling are located in -both the Union Territories and within 30 Kms of each other. The Rolling Mills have tight budgets and are continuously competing with each other. Since the power tariff in the neighboring UT is much cheaper, it is getting impossible for the members of the Petitioner to sustain their businesses at such high tariffs.

6. It is respectfully submitted that the Steel Meltillg /Steel Re-Rolling located in the Union Territories of Daman & Diu and Dadra Nagar Haveli were set up on the very same platform but for the last 3 years, the tariffs in Daman is much more than in Silvassa and in the present year i.e. from April 2013 onwards, the difference in tariffs is massive and there is no way the industries in Daman can absorb such a high difference.

7. In fact, the present tariffs in Daman for the Petitioner which are Rs. 1.25 per unit more than the tariff in Silvassa has totally made the steel industry unviable and the Members would be left with no option than to close the units.

8. It is respectfully submitted that equals ought to be treated equally in terms of Article 14 of the Constitution of India.

9. The Review Petitioner understands that the licensees in Daman and Silvasa are different and have separate power purchase and other related costs. However, the consumer load and mix in both areas is very similar and the nature of the consumption is identical.

10. One of the suggestions of the Petitioner in the present petition to review and rationalize the tariff to the Appellant is to bring down the demand charges. This will ensure that the energy charges which would constitute the payment of the variable charges by the Respondent to the generating companies will not be affected.

11. The demand charges to the Petitioner's consumer category can also be reviewed and fixed at Rs. 100 per KVA to bring it at par with the demand charges fixed by the Hon'ble Commission for the general category. This would ensure that the Respondent recovers the variable costs to the full extent.

12. The Daman Industries Association had specifically pointed out the above aspect to the Hon’ble Commission during the hearing in the tariff proceedings which has been recorded by the Hon'ble Commission in the Tariff Order as under-

> *iv) Further, the Daman Industries Association has submitted that in Silvassa the tariff is much lower even though both Daman & Silvassa are adjoining areas. The Competitiveness of the industries in Daman is impacted due to lower tariff in Silvassa. The DIA requests the Commission to consider these facts and accordingly set the tariff.*

13. In the above circumstances, it is respectfully submitted that there are sufficient reasons for the Hon'ble Commission to review the Tariff Order dated 22.3.2013. The Petitioner shall suffer irreparable loss and prejudice, if the review is not granted on the above terms.

14. The Petitioner submits that the present petition for review is filed without prejudice to the rights and contentions of the Petitioner in other proceedings.

15. The Petitioner respectfully submits that the Tariff Order dated 22.3.2013 was not communicated to the Petitioner Association specifically. The Tariff Order was probably communicated to the Daman Industries Association; which is an umbrella Association.

16. The Members of the Petitioner Association came to know about the Tariff Order dated 22.3.2013 upon receipt of the bills in the second week on May 2013. Immediately and on 15.5.2013, the Petitioner downloaded the Tariff Order dated 22.3.2013. The Review Petition has been filed within 45 days of the knowledge /communication of the Order dated 22.3.2013 and therefore is within limitation.

17. The Petitioner reserves the right to amend the Review Petition.

18. In the circumstances, it is respectfully prayed that the Hon'ble Commission may be pleased to:

a. Admit the present review petition;
b. Review and modify the Order dated 22.03.2013 passed by the Hon'ble Commission to the extent mentioned above;
c. Condon any inadvertent error(s) in the filing of the petition;
d. Pass such other order(s) as the Hon'ble Commission may deem just in the facts of the present case.

Unquote

The petitioner on 18.07.2013 submitted additional affidavit also. The additional petition/ affidavit is as under:-

Quote

1. I state that for the last 8 years, the petitioner or any of its members have not objected to the tariff hikes even once since they have a responsibility to the Distribution Company and are concerned in operating their steel units in an economical way which neither disturbs the revenue requirements of the licensee nor impairs the business being run by the petitioner. However, the steep increase in tariff in the present year makes the electricity costs unbearable and the business unviable.
2. As per the order dated 22.03.2013, the tariff applicable to the petitioner's member is as under:-

HT industrial ((Ferro Metallurgical/ Steel Melting/ Steel Re-rolling Power intensive)

i. Fixed Charges (Demand Charges)

For billing demand	Charges (Rs./ KVA/ month) or part thereof
Upto to Contract Demand	Rs. 550.00/0 per KVA per month

ii. Energy Charges

Usage	Tariff (Ps./ Unit)
First 300 units/KVA	385
Next 200 units/ KVA	455
Above 500 units/ KVA	480

iii. Penalty Charges Twice the applicable Charges

a) Penalty charges will be levied on those units which are drawn beyond the contact demand. These units will be worked out on pro-rata basis co-relating the total consumption of the month with billing demand.

b) If industries are overdrawing power by more than 20% of the contract demand, their electricity connection will be disconnected immediately.

3. The main difficulty is being faced from the increase of the demand charges to Rs. 550 per KVA. This should mean that a Units having a sanctioned load of 2000 KVA would need to pay a fixed minimum monthly bill of Rs. 11,00,000/- (2000 KVA x Rs. 550 per KVA) even if the unit would remain shut and not consumer a single unit of power. In fact, due to such a steep increase in demand charges, several members of the petitioner have shut down and given notice of permanent disconnection of the respondent/ licensee.
4. I say that the above is neither in the interest of the petitioner nor the respondent. While the business of the petitioner's Members is coming to a halt, the respondent is also losing revenue from the cross-subsidizing consumer in the Union Territory.

5. In fact, several of the petitioner's members were planning their operations for night period of 8 hours to cut costs in the overall economic and market sentiment due to low demand of steel products. However, since the demand charges are so high, this is also becoming unviable. For example if a unit runs for 8 hours (10 PM – 6 PM) and consumers 4,50,000 units, the fixed costs of Rs. 11,00,000/- + variable costs of Rs. 3.85 per unit becomes payable. The total bill would come to Rs. 17,32,000/- with the average tariff rate of Rs. 6.30 per unit (approximately Rs. 5.95 per unit taking into account the rebate of 10%). As can be seen, in the bill the major component is the fixed costs which is more than 70% of the total bill. Due to this the petitioner's industry is not able to take the advantage of the lower energy costs even during the night time.
6. I say that the above scenario will also have a ripple effect. The Respondent / Licensee purchases power at much lower rates during the night hours and one effective way for the Respondent / Licensee to earn revenue is by selling this cheaper power to the industry during non-peak hours. however, since the demand charges are so high, the industry is unable to consume the power even during the night hours.
7. I say that in order to give the flexibility of operation to the steel industry and also to benefit the licensee to sell power during night hours, in most states, the demand charges are lower and the recovery of the ARR is more by way of variable charges. In Maharashtra and Gujarat, the demand charges have been fixed at Rs. 150/- per KVA.
8. I say that the very concept of fixed/demand charges is to compensate the distribution licensees to make necessary arrangements and keep electricity ready to be supplied to the consumers on demand. In other words, non-drawal of electricity by the consumer ought not to cause a loss the distribution licensee who have an obligation to supply electricity on demand to the consumers. The Respondent/Licensee ought not to be allowed to use the fixed charges as a tool to exploit the consumers.
9. It is respectfully submitted that it is the prerogative of the Hon'ble Commission to design the tariff in a manner as thought appropriate, However, as a matter of principle, all state Regulatory Commissions design the tariff in such a manner that the share of the fixed costs in the ARR is much lesser than the share of the variable costs.
10. I say that the Members of the Petitioner / steel industry are under extreme pressure due to the high tariff and the design of the tariff, namely very high demand charges, they are unable to operate even at the night tariff. As stated hereinabove, many units have already applied for permanent disconnection to the Respondent / Licensee and if the current situation prevails, it will lead to a mass closure of the units.
11. It is also submitted that the Steel Rolling Mills located in the Union Territories of Daman & Diu and Dadra & Nagar Haveli were set up on the very same platform but for the last 3 years, the tariffs in Daman is much more than in Silvassa and in the present year i.e. from April 2013 onwards, the difference in tariffs if massive and there is no way the industries in Daman can absorb such a high difference. Further, due to the high demand charges, even open access in not a viable option for the Petitioner's Members.
12. In view o the above, it is humbly prayed that the Hon'ble Commission may rationalize the tariff by bringing down the demand charges from Rs. 500 per KVA to Rs. 100 per KVA and change the tariff design the compensate the Respondent / Licensee in an appropriate manner.

Unquote

The Commission sent notice of the review petition to the respondent ED- Daman & Diu. The respondent ED- Daman & Diu in response to the notice of the petition and additional affidavit of the petitioner filed reply dated 24.07.2013 which runs as under:-

Quote

1. The present petition has been filed by the petitioner seeking review of the tariff order dated 22.03.2013 passed by the Hon'ble Commission approving the annual revenue requirements of the respondent for the year 2013-14 and determining the retail supply tariff applicable to the consumers in the union territory of Daman & Diu.
2. The petitioner has not in the review petition filed, challenged any part of the revenue requirements of the respondent as allowed by the Hon'ble Commission but has only raised grievances on the tariff design as determined by the Hon'ble Commission and made applicable to the consumers in the Union Territory of Daman & Diu.
3. It is stated that the issue of tariff design is the discretion of the Hon'ble Commission and so long the revenue requirements of the respondent are protected and the respondent is not made to suffer on this count, the issue raised by the petitioner is to be considered at the discretion of the Hon'ble Commission. It is however stated that the present petition ought not to in any manner affect the recovery of the total revenue requirement of the respondent.
4. It is further stated that the ground of challenged placed by the petitioner that the tariff in the Union Territory of Daman & Diu is higher than the tariff in the Union Territory of Dadra and Nagar Haveli may not be relevant to consider for the determination of tariff by the Hon'ble Commission. The total revenue requirements of each distribution licensee varies in accordance with the cost and expenditure incurred by each distribution licensee. Merely because another distribution licensee has a lower tariff on account of the revenue requirement being low cannot by itself be a ground to challenge the revenue requirement and the tariff as determined by the Hon'ble Commission for the respondent. The petitioner has not pointed out any imprudence or inefficiency the operation of the respondent. In the circumstances when the total revenue requirement of the respondent has not been challenged, the claim that the tariff should be equivalent to the tariff of a neighboring distribution licensee may not be correct.
5. It is however stated that the Union Territory of Daman & Diu and the respondent relies primarily on the revenues from the industrial consumers and the growth of the industries and their sustained development is in the interest of the economy of the Union Territory as well as the viable operations of the respondent. The respondent has also received several requests for permanent disconnection from the industrial consumers. The details of such applications are attached hereto and marked as Annexure A.
6. In the circumstances, it is stated that while the revenue requirement of the respondent need to be protected, any rationalization of the tariff for the industrial consumers at the discretion of the Hon'ble Commission to make the tariff more competitive is a positive suggestion and may be considered by the Hon'ble Commission within the framework of the Electricity Act, the National Tariff Policy and the Regulations framed thereunder.
7. It is however respectfully submitted that any rationalization of the tariff ought not to place any additional burden on the domestic or agricultural consumers who constitute a miniscule part of the total demand in the Union Territory and also ought not to affect the revenue requirements of the respondent.

Unquote

The Commission held hearings on 18.07.2013, 29.07.2013 and 22.08.2013. The Commission has gone through the petition, additional affidavit of the petitioner, reply filed by the respondent- ED- Daman & Diu, the main petition and order dated 22.03.2013 under review carefully and thoroughly and also heard counsel/ representatives of the parties at length and found that the petitioner is aggrieved mainly on following two issues:-

a. The tariff of HT industrial (Ferro Metallurgical/ Steel Melting/ Steel Re-rolling Power intensive) is higher in Daman & Diu as compared to that in Dadra and Nagar Haveli by Rs. 1.25/- unit.
b. The tariff design i.e. design of fixed charges and energy charges of HT industrial (Ferro Metallurgical/ Steel Melting/ Steel Re-rolling Power intensive).

The Commission first of all is going to examine the first issue as to whether the higher tariff of HT industrial (Ferro Metallurgical/ Steel Melting/ Steel Re-rolling Power intensive) in Daman & Diu compared to Dadra and Nagar Haveli is prudent or not?

The respondent in para no. 4 of its reply dated 24.07.2013 submitted as under:-

Quote

"The ground of challenged place by the petitioner that the tariff in the Union Territory of Daman & Diu is higher than the tariff in the Union Territory of Dadra and Nagar Haveli may not be relevant to consider for the determination of tariff by the Hon'ble Commission. The total revenue requirement of each distribution licensee varies in accordance with the cost and expenditure incurred by each distribution licensee. Merely because another distribution licensee has a lower tariff on account of the revenue requirement being low cannot by itself be a ground to challenge the revenue requirement and the tariff as determined by the Hon'ble Commission for the respondent. The petitioner has not pointed out any imprudence or inefficiency the operation of the respondent. In the circumstances when the total revenue requirement of the respondent has not been challenged, the claim that the tariff should be equivalent to the tariff of the neighboring distribution licensee may not be correct."

Unquote

The Commission after application of mind on the facts and circumstances of the petition and reply is in agreement of the submission made by the respondent that ED- Dadra & Nagar Haveli and ED- Daman & Diu are two different licensees having different geographical locations, areas, socio- economic conditions, infrastructure, consumer-mix, energy sales, T&D Losses, Power Purchase Costs, O&M Costs, Interest and finance charges etc., therefore, both the licensees have their separate ARRs, which results into different tariff design for both the licensees.

The Commission has gone through the tariff orders of ED-Daman & Diu dated 22.03.2013 and ED-Dadra and Nagar Haveli dated 25.03.2013 for FY 2013-14. The ARRs of ED-Dadra & Nagar Haveli vis-à-vis ED- Daman & Diu as approved by the Commission respective tariff orders of both the licensees for FY 2013-14 is reproduced:

(Rs. in Crs.)

S. No.	Particulars	DNH	D&D
1.	Net Revenue Requirement	2133.21	878.05
2.	Less: Revenue from existing tariff	2078.93	889.03
3.	Net Gap/ (Surplus)	54.28	(10.97)
4.	Gap/ (Surplus) for the previous year(s)	(57.13)	101.35
5.	Total Gap	(2.84)	90.38

The Commission found that there is gap of Rs. 90.38 Crs. on account of truing –up for FY 2010-11 & FY 2011-12 and review of for FY 2012-13 after submission of audited account and fixed asset register by ED- Daman & Diu. Whereas in case of ED-Dadra and Nagar Haveli this gap is not considered due to non- submission of fixed asset register by ED- Dadra & Nagar Haveli.

Therefore, the Commission is of the opinion that the reason for different tariff of HT industrial (Ferro Metallurgical) in Dadra & Nagar Haveli and Daman & Diu is prudent.

The Commission now is examining the second issue of tariff design of HT industrial (Ferro Metallurgical) for Daman & Diu.

The Commission has examined and gone through the tariff order dated 22.03.2013 of ED-Daman & Diu and tariff order dated 25.03.2013 of ED- Dadra and Nagar Haveli for FY 2012-13 and found that there had been different tariff for HT industrial (Ferro Metallurgical) in Daman & Diu and Dadra and Nagar Haveli for FY 2012-13 as shown below:-

Particular	D&D		DNH	
Demand Charges	2012-13	2013-14	2012-13	2013-14
Upto Contract Demand	Rs. 550/KVA	Rs. 550/KVA	Rs. 500/KVA	Rs. 500/KVA
Energy Charges				
First 300 units/ KVA	Rs. 3.30/ Unit	Rs. 3.85/ Unit	Rs. 2.70/ Unit	Rs. 2.70/ Unit
Next 200 units/ KVA	Rs. 4.00/ unit	Rs. 4.55/ Unit	Rs. 3.40/ Unit	Rs. 3.40/ Unit
Above 500 Units/ KVA	Rs. 4.25/ Unit	Rs. 4.80/ Unit	Rs. 3.70/ Unit	Rs. 3.70/ Unit

The Commission has gone through and examined the tariff proposal of the respondent ED- Daman & Diu in its ARR for FY 2013-14 and observed that the respondent ED- Daman & Diu itself proposed tariff for HT industrial (Ferro Metallurgical) as under:

Particulars	Unit Rate
Upto Contract Demand	Rs. 550/KVA
Energy Charges	
First 300 units/ KVA	Rs. 3.87/ Unit
Next 200 units/ KVA	Rs. 4.57/ Unit
Above 500 Units/ KVA	Rs. 4.82/ Unit

The Commission also examined fixed & variable components of ARR approved vide tariff order dated 22.03.2013 as shown in the table below and observed that out of total ARR of Rs. 878.05 Crores and Rs. 404.73 Crs (which is approximately 46% of the total ARR) contributes towards fixed cost.

Aggregate Revenue Requirement (ARR) approved for FY 2013-14 (Rs. in Crs.)

S. No.	Particular	Fixed Cost	Variable Cost	Total
1.	Power purchase cost	356.83	470.34	827.17
2.	Employee Costs	7.92	-	7.92
3.	A& G Expenses	3.57	-	3.57
4.	R&M Expenses	6.08	-	6.08
5.	Depreciation	15.77	-	15.77
6.	Interest on finance charges	6.84	-	6.84
7.	Interest on working capital	8.76	-	8.76
8.	Interest on security deposit	0.86	-	0.86
9.	Return on NFA	5.84	-	5.84
10.	Provision for bed dept	4.45	-	4.45
11.	Total Revenue Requirement	416.92	470.34	887.24
12.	Less: Non Tariff Income	9.19	-	9.19
13.	Net Revenue Requirement	407.73	470.34	878.05

The Commission further observed that Rs. 407.73 Crs being the fixed liability of the respondent ED- Daman & Diu must be realized through fixed/demand charges of the designed tariff for sustainability of ED- Daman & Diu. In other words, to achieve this, the tariff has to be designed in such a way that the fixed/ demand charge contributes 46% of the total revenue.

The Commission examines the tariff design of HT industrial (Ferro Metallurgical) category. The proposed tariff vis-à-vis approved tariff is shown in the table below:-

Category/cons-umption slab	Proposed Tariff		Approved Tariff		Approved		Demand Charges (Rs. in Crs)	Variable Charges	Total Revenue
HT Industrial (Ferro Metallurgical)	Demand Charges (Rs./ KVA)	Energy Charges (Rs/Unit)	Demand Charges (Rs./ KVA)	Energy Charges (Rs/Unit)	Demand (KVA)	Sales (MU)			
First 300 units/KVA		3.87		3.85		87.27		33.60	
Next 200 units/KVA	550.00	4.57	550.00	4.55	25603	41.48	16.90	18.87	
Above 500 units/KVA		4.82		4.80		7.88		3.78	
Total							**16.90**	**56.25**	**73.15**

The Commission observed that from the above table it is clear that the total estimated revenue of Rs. 73.15 Crs. from HT industrial (Ferro Metallurgical), the demand charge's contribution @ Rs. 550/KVA comes to Rs. 16.90 Crs. which is 23% of the total revenue from such category as against minimum requirement of 46% for continued sustainability of ED- Daman & Diu. It is also seen that the tariff has been designed in semblance of the proposal of the respondent after public hearing. It is also seen that the same demand charge was applicable in FY 2012-13 and no hike in the demand charge has been done in the tariff order dated 22.03.2013.

Therefore, the Commission did not find any error in tariff design of ED-Daman & Diu in the tariff order dated 22.03.2013 for FY 2013-14.

The petitioner has prayed to rationalize the tariff by way of bringing down the demand charges from Rs. 550/KVA to Rs. 100/KVA.

The respondent in para no. 3 of its reply dated 24.07.2013 has submitted as under:-

Quote

"The issue of tariff design is the discretion of the Hon'ble Commission and so long the revenue requirements of the respondent are protected and the respondent is not made to suffer on this count, the issue raised by the petitioner is to be considered at the discretion of the Hon'ble Commission. It is however stated that the present petition ought not to in any manner affect the recovery of the total revenue requirement of the respondent."

Unquote

The Commission has already observed that there is no error in the tariff design of ED- Daman & Diu for FY 2013-14 for the said category. Therefore, the Commission is of the considered opinion that reduction of demand charges from Rs. 550/KVA to Rs. 100/KVA for HT industrial (Ferro Metallurgical) without affecting the ARR for FY 2013-14 is not feasible on following grounds:-

a. First of all the same will lead to substantial increase in tariff of all the consumer categories if revenue gap so arises is bridged through inter-category; or
b. The energy charge of the petitioner category will substantially increase which will lead to tariff shock, if, the revenue gap so arises in bridged through intra- category.

In the light of above discussion and observations, the Commission is of the opinion that the order passed by the Commission is in line with the Electricity Act, 2003, National Electricity Policy and JERC Regulations. There is no illegality or infirmity in the order under review. Therefore, there is no scope for review of the order and there is no merit in the petition. So the petition fails and is here by dismissed.

Sd/-
(S.K.Chaturvedi)
Member
Chairperson (Vacant)

***** Post of the Chairperson is vacant. As per proviso of Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 for review of its own orders "Coram is all Members". Whereas according to provisions of Section 93 of the Electricity Act, 2003 no act or proceedings of the appropriate Commission shall be questioned or invalidated merely on the ground of existence of any vacancy or defect in the Constitution of the appropriate Commission. So the Member only constitute a valid quorum.

Certified Copy
Sd/-

(Rajeev Amit)
Director (Engg.)