

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

Quorum
Shri S.K.Chaturvedi, Chairperson
Petition No. 165/2015
Date of Order: 30.06.2015

In the matter of

Petition for Review of Order dated 31.03.2015 passed by Joint Electricity Regulatory Commission for the State of Goa and UTs in Petitions No. 151 of 2014 and 154 of 2014 for approval of Aggregate Revenue Requirement and Determination of Tariff of Electricity Department, Daman & Diu for FY 2015-16.

And in the matter of

Wellknown Polyester Ltd.,
Dabhel Industrial Estate, Co-op Society, Dabhel, Daman

..... **Petitioner**

And in the matter of

Electricity Department, UT of Daman & Diu
Respondent

.....

Argued by

For Petitioner

1. Shri Gaurav Nand, Consultant, Well Known Polyester Ltd.
2. Shri Vaibhav Saini, Well Known Polyester Ltd.
3. Shri Atul Srivastav, Well Known Polyester Ltd.

ORDER

The Petitioner - Wellknown Polyester Ltd., has filed the present petition for Review of Order dated 31.03.2015 passed by Joint Electricity Regulatory Commission for the State of Goa and UTs in Petitions No. 151 of 2014 and 154 of 2014 for approval of Aggregate Revenue Requirement and Determination of Tariff of Electricity Department, UT of Daman & Diu for FY 2015-16.

The brief facts giving rise to the present Review Petition are that Electricity Department, UT of Daman & Diu hereinafter referred as the Respondent filed Petitions No. 151 of 2015 and 154 of 2014 for approval of Business Plan for control period of FY 2015-16 to FY 2017 – 18 and determination of Tariff for FY 2015-16 of the Respondent – Licensee for the area of UT of Daman & Diu.

The Commission vide order dated 31.03.2015 passed in Petitions No. 151 of 2014 and 154 of 2014 approved Annual Revenue Requirement for FY 2015-16 and determined tariff for FY 2015-16 of the Respondent for the area of UT of Daman & Diu.

The Petitioner has filed the present petition for review of the order dated 31.03.2015 stating that the Petitioner is a power intensive industry situated at Dabhel Industrial Estate, Co-operative Society, Dabhel, Daman with its Registered Office at Nirmal Building, 'B' Wing, 18, Floor, Backway Reclamation, Nariman Point, Mumbai – 400021. The Petitioner is a permanent HT Category consumer of the Respondent and also procuring power competitively through open access as per the JERC Regulations and Electricity Act.

The Petitioner is the biggest open access consumer of UT of Daman and Diu. The Commission in the order under review determined very high cross subsidy surcharge of Rs 0.94/Kwh on open access consumers. The Commission for FY 2014-15 determined cross subsidy surcharge @ 0.12/Kwh only for open access consumers of UT of Daman & Diu. In this way, the Commission increased cross subsidy surcharge of open access consumers of more than 700% and approximately 8 times from the previous year. Whereas, the National Tariff Policy and the Electricity Act have provides that the cross subsidy surcharge shall be progressively reduced. The case of the Petitioner further is as under:-

Quote

- i. *"Value of 'C' taken in the determination of cross subsidy surcharge was not calculated in accordance with the National Tariff Policy (NTP) formula. Value of 'C' shall be taken for the costliest plants corresponding to 5% of the total MUs purchased. As per the data approved for FY 2015-16 , costliest plants include the thermal power plants of MSTPS-I (Mauda Super Thermal Power Station), KHSTPP-II (Khalgaon Super Thermal Power Station) and the Bhilai plant corresponding to 5% MUs purchase approved for the Electricity Department while Commission in its calculation for determination of cross subsidy considered the cost of only Bhilai power plant which was even lower as compared to the costs of MSTPS-I and KHSTPP-II thermal plants which led to higher determination of cross subsidy by Hon'ble Commission for FY 2015-16. Average cost for MSTPS-I is Rs 6.47/kwh and for KHSTPP-II is Rs 4.70/kwh (page No. 84 of the tariff order for Daman & Diu dated 31.03.2015, refer Annexure – III) from the approved figures which is costlier than the average cost taken by Hon'ble Commission for the Bhilai Power plant.*

'C' component shall be calculated considering the weighted average costs of these costliest power plants as stated in the National Tariff Policy. Weighted average cost of these three costliest power plants is Rs 4.28/kwh which is to be taken in the 'C' component for determining the cross subsidy surcharge. It is humbly requested to consider the weighted average cost of Rs 4.28/kwh for the costliest power plants (5% margin) in the 'C' component while determining cross subsidy through NTP formula for FY 2015-16. This practice has also been followed by other State Electricity Regulatory Commissions while determining CSS through NTP formula.

- ii. *Hon'ble JERC has taken the average cost of Bhilai plant at Rs 3.86/kwh for calculating the 'C' component for determining the cross subsidy surcharge for FY 2015-16 while the landed cost to Electricity Department from the Bhilai Plant comes out to be Rs 4.10/kwh after adjusting transmission losses of Daman. Hon'ble Commission considered this cost at plant periphery but it should be taken as the landed cost to Electricity Department. It is worth mentioning that Hon'ble JERC considered the landed cost of the Bhilai plant to Electricity Department after adjusting the transmission loss of Daman while determining the cross subsidy in earlier tariff orders for FY 2013-14 and for FY 2014-15. Commission in this tariff order did not take the landed cost and hence, determined a higher cross subsidy as the component goes lower for not considering the landed cost of the Bhilai plant. Commission is humbly requested to correct those errors and complying with the practice notified in its earlier tariff orders for cross determination for FY 2013-14 and for FY 2014-15. Extracts of the those tariff orders regarding the cost calculated in 'C' component and the cross subsidy determination are attached with this Petition as Annexure – II.*
- iii. *In terms of the Hon'ble JERC Tariff Order dated 31.03.2015, National Tariff Policy and the Electricity Act, there is no legality in increasing the cross subsidy surcharge for FY 2015-16. It is the violation of its own tariff order dated 31.03.2015 and the Electricity Act, as the Hon'ble JERC in its Tariff Order dated 31.03.2015 for the UT of Daman and Diu has not notified any tariff hike for FY 2015-16 as the Electricity Department was running in the cumulative surplus of Rs 98.97 crore. So, any variation/hike in the cross subsidy was not legally required considering the submissions of the Department and the tariff approved by the Commission for the various category of consumers. Relevant quoted from the Hon'ble JERC Tariff Order dated 31.03.2015 are given below:-*

"In view of the cumulative surplus of Rs 98.97 crore at the end of FY 2015-16, at the existing tariff levels, the Commission is of the view that the tariff hike for FY 2015-16 is not required and for the present, the existing tariff for FY 2014-15 may be continued for further for the period FY 2015-16."

Hon'ble JERC passed the order after the submission made by the Electricity Department in its ARR petition. When there is no increase / variation in the tariff for all the categories of consumers, this interprets that there is no additional burden of subsidized tariff on Department, so the question of increasing the cross subsidy does not apply in the present scenario. This will lead to illegal/undue profit to the Electricity Department at the cost of Open Access consumers which is against the principle of the Electricity Act and the tariff policy for determination of tariff.

Again, if we refer the load (MUs) analysis from the Commission's tariff order dated 31.03.2015 at page no. 66 & 67 of the tariff order, there is a marginal increase of 9 MUs in the load of subsidized categories of consumers (Domestic, LIG, Agriculture) against an high increase of 109 MUs in the HT/EHT industrial load. There is an net increase in the HT/EHT industrial load of 100 MUs for the FY 2015-16, so, there is no requirement of increasing the cross subsidy at the existing tariffs.

Commission itself approved the revenue from the sale for FY 2015-16 at table no. 6.61 on page no. 115 of the Tariff Order dated 31.03.2015 for the various category of consumers. While it approved the revenue addition of Rs 4.57 cr from the subsidized consumers (Domestic, LIG, Agriculture) and on the other side it approved Rs 57.73 cr as revenue addition from the HT/EHT industrial consumers. This means there is a net addition in the revenue of Rs 53 cr from the EHT/HT industrial consumers, so the question of increasing the cross subsidy does not arise on the legal applicability fo the cross subsidy imposition.

When there is no cost incurred towards subsidy on Electricity Department, then, the question of increasing the cross subsidy on open access consumers loses the applicability on the grounds of law as it will only lead to undue profit to the Electricity Department at the cost of consumer's loss which is against the Electricity Act 2003. It needs a careful review and we humbly request Hon'ble JERC to review the cross subsidy determination and same shall not be increased as per the approved figures by the Commission in the tariff order and the in-principle spirit of the Electricity Act and the National Tariff Policy. Commission is requested to follow the trajectory of cross subsidy reduction as envisaged in the Electricity Act.

In view of the aforesaid (JERC) Tariff Order dated 31.03.2015, Electricity Act and the National Tariff Policy), we most humbly request the Hon'ble JERC to review the Cross Subsidy Surcharge (CSS) determination by nullifying the hike approved for CSS in order dated 31.03.2015."

Unquote

The Commission in tariff orders for FY 2013-14 and 2014-15 notified cross subsidy surcharge of Rs 0.59/kwh and Rs 0.12/kwh respectively and followed trajectory of progressively reduction of cross subsidy as provided under the Electricity Act and National Tariff Policy. The Commission in the order under review did not approve any tariff hike to any of the consumer category and also approved net addition of HT/EHT industrial load of 100 MUs for FY 2015-16. Therefore, there is no rational or validity in increasing the cross subsidy surcharge for open access consumers for FY 2015-16. The Hon'ble APTEL also in various judgments asked for reduction of cross subsidies of all categories. The Forum of Regulators, which is coordinating agency amongst the State Electricity Regulatory Commissions, also kept agenda of reduction in cross subsidy surcharge on priority. Therefore, the Commission is prayed to review its order dated 31.03.2015 and eliminate the cross subsidy charges of the open access consumers.

The Petition was received in the Commission on 14.05.2015. The Petition was generally found in line with the JERC (Conduct of Business) Regulations, 2009 and Electricity Act, admitted the Petition on 20.05.2015 and numbered as Petition No. 165/2015.

The Commission sent notice to the parties for hearing for 25.06.2015 at 11.00 A.M. at Commission's HQ. But the Respondent despite service of the hearing notice did not appear before the Commission on 25.06.2015 and also did not file reply to the review petition.

The Commission held hearing on 25.06.2015 in the HQ of the Commission. The Commission heard Shri Gaurav Nand, Consultant for the Petitioner at length and has gone through the Petitions No. 151/2014 and 154/2014, order under review, the review petition and accompanying documents carefully and thoroughly. The Commission has also applied mind to the facts of the petition and relevant provisions of the JERC Regulations and Electricity Act. The Commission observed that the Commission has power to review its own orders under Regulation 74 of the JERC (Conduct of Business) Regulations, 2009.

Before proceeding further, it is worthwhile to reproduce the provisions of Regulation 74 of the JERC (Conduct of Business) Regulations, 2009 which is reproduced as under:-

Regulation – 74

Review of the decisions, directions and order

- a. The Commission may at any time on its own motion or on the application of any of the persons or parties concerned, within 45 days of the making of any decision, direction or order, review such decisions, directions or orders and pass such appropriate orders as the Commission thinks fit:

Provided that power of review by the Commission on its own motion shall be exercised limited to correction of clerical or typographical errors.

- b. An application for such review shall be filed in the same manner as a Petition under Chapter II of these regulations.

From bare reading of the provisions of Regulation 74 of the JERC (Conduct of Business) Regulations, it is evident that the Commission has powers to review its own orders.

The Commission observed that in the order dated 31.03.2015, the Commission has approved power purchase of 49.01 MU from MSTPS-I at total cost of Rs. 31.73 crore, per unit cost works out as Rs. 6.47 per kWh. Similarly the Commission also approved power purchase of 7.18 MU from KHSTPP-II at cost of Rs. 3.38 crore, per unit cost works out as Rs. 4.71 per kWh. Whereas the Commission while calculating Cross Subsidy Surcharge, considered only Power Purchase cost of Rs. 3.86 per kWh as costliest power purchase from the Bhillai. The Tariff Policy provides for considering the top 5% costliest power purchase in the formula for determining the cross subsidy.

Therefore, the Commission is of the opinion that it is required to correct the calculation of the Cross Subsidy Surcharge as determined in the Order dated 31.03.2015. It is also required to consider the cost of power purchase at the periphery of the Respondent only as the factor related to transmission and distribution losses of the area of UT of Daman & Diu is already considered in the formula for the determination of Cross Subsidy Surcharge.

In the light of the above facts and circumstances the Table No. 7.11 of the Order dated 31.03.2015 (Page No. 124) is replaced by the Table below:-

Table 7.11: Calculation of "C"

Particulars	Year	Energy Procured (MU)	Average Rate (Rs/kWh)	Total Power Purchase Cost (Rs. Crore)
MSTPS-I	FY 15-16	49.01	6.47	31.73
KHSTPP-II	FY 15-16	7.18	4.71	3.38
Bhillai	FY 15-16	39.07	4.01	15.67
TOTAL	FY 15-16	95.26	5.33	50.78

Similarly, the Table No. 7.12 of the Order dated 31.03.2015 (Page No. 125) is replaced by the Table below:-

Table 7.12: Approved Cross Subsidy Surcharge for FY 2015-16

Cross Subsidy Surcharge	UoM	FY 2015-16
T	Rs Per kWh	5.19
C	Rs Per kWh	5.33
D	Rs Per kWh	0.30
L	%	2.27%
Surcharge 'S'	Rs Per kWh	-0.56

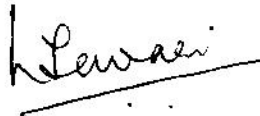
Accordingly, the Cross Subsidy Surcharge for the FY 2015-16 of open access consumers of the area of UT of Daman & Diu comes as 'Nil'. Therefore, the order under review is corrected accordingly.

Regarding other submission of the petitioner about gradual reduction in the Cross Subsidy Surcharge of open access consumers of the area of UT of Daman & Diu and victimization of the open access consumers, the Commission is of the opinion that the Open access Charges including the Cross Subsidy Surcharge are required to be determined in accordance with the JERC Regulations and policies prevailing from time to time. Hence, there is no illegality or infirmity in the order under review on this issue. Therefore, the prayer of the petitioner to review the order dated 31.03.2015 on this issue is repelled.

In the light of above observations and findings, the Review Petition stands disposed off.

Sd/-
(S.K.CHATURVEDI)
CHAIRPERSON

(CERTIFIED COPY)



(KEERTI TEWARI)
SECRETARY