Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 35 of 2012

Dated: 25th May, 2012

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member

In the matter of:

The Electricity Department **.... Appellant (s)**
Power House Building
2nd Floor, Kathiria, Nani Daman
Union Territory of Daman – 396 210

Versus

Joint Electricity Regulatory Commission **..... Respondent (s)**
'Vanijya Nikunj', 2nd Floor
Udyog Vihar, Phase – IV
Gurgaon – 122 016

Counsel for the Appellant (s) : Mr. M.G. Ramachandran
Mr. Anand K. Ganesan
Ms. Swapna Seshadri

Counsel for the Respondent (s) : Mr. Dinesh Kapoor
Mr. Aditya Kr. Singhal
Mr. R. Sharma

JUDGEMENT

MR. RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by the Electricity Department, Daman and Diu against the order dated 03.10.2011 passed by the Joint Electricity Regulatory Commission ("Joint Commission") determining the Annual Revenue Requirement and tariff for the Appellant for the FY 2011-12.

2. The Appellant is a Department of the Government of India undertaking the activity of distribution and retail supply of electricity in the Union Territory of Daman and Diu. For the development of the Union Territory of Daman and Diu, the Government of India has issued various policies giving incentives to the manufacturing sector. Consequently, a large number of manufacturing units have been established in the Union Territory. Accordingly, the consumption pattern of electrical energy in the Union Territory comprises of 93% by industrial consumers and rest 7% consumption by all other categories including domestic, commercial and agriculture. The consumption of domestic and agriculture category of

consumers is very small and constitute only about 4% and 1.8% respectively of the total consumption.

3. In pursuance of Section 61 of the Electricity Act, 2003, the Joint Commission has framed the Tariff Regulations, 2009. In accordance with the Tariff Regulations, the Joint Commission took up the matter of approving ARR and tariff of the Appellant for the FY 2011-12. By order dated 3.10.2011 the Joint Commission disposed of the tariff petition and approved ARR and tariff of the Appellant for the FY 2011-12.

4. In the impugned tariff order the State Commission has enhanced the tariff of the Domestic and Agriculture categories substantially. The Joint Commission also notified a Power Purchase Cost Adjustment formula providing for adjustment of variation in the cost of power purchase by the Appellant to all the categories of consumers except the Agriculture and BPL consumers.

5. Aggrieved by the above impugned order, the Appellant filed a review petition before the Joint Commission which was

dismissed by order dated 4.11.2011, holding that there was no error apparent on the face of the record.

6. Aggrieved by the main impugned order dated 3.10.2011, the Appellant has filed this Appeal.

7. The Appellant has raised the following issues in the Appeal:-

7.1 **Tariff shock to domestic and agriculture consumers:-** The State Commission failed to appreciated that the tariff order mainly affected the Domestic, Below Poverty Line ("BPL"), agriculture and commercial categories which consume only 3.8%, 0.16% and 1.79% respectively of total electricity consumption. The Joint Commission erred in fixing the tariff in a manner that caused substantial tariff shock to the Domestic, BPL and agriculture consumers, when the revenue on this account to the Appellant is not much. Besides minuscule consumption, such categories also do not contribute to the growing electricity requirement of the Union Territory. Similarly, the Power Purchase Cost Adjustment

formula devised by the Appellant would also adversely affect the domestic consumers.

7.2 **Supply at designated voltage level:** The Joint Commission in the impugned order has directed that supply to consumers having contracted load above 1500 kVA shall necessarily be at 66 kV and the supply at 11 kV can only be for consumers having contracted load between 100 kVA to 1500 kVA. These directions would lead to undue hardship and difficulty as no distinction has been made between the existing and new consumers. There are large number of existing consumers whose load is in excess of 1500 kVA and who are being supplied at 11 kV presently. Such consumers have installed the switchgear and transformers, etc., at 11 kV at considerable expense. The Appellant has also laid 11 kV network to supply to them at 11 kV. If the supply voltage of these consumers is shifted to 66 kV, the same would involve expenditure to the tune of Rs.10 crores in construction of 66 kV sub-station for the consumer as well as the Appellant. The Appellant will also have to lay down 66 kV lines to supply such consumers which besides substantial expenditure will

also create right of way related problems. Laying of 66 kV transmission line is also not feasible for many existing consumers considering the location of consumer premises, density of population, etc. Discretion should be available to the Appellant for such supplies.

7.3 **Bad debts:** The Joint Commission has restricted the provision of bad debts to 1% of the outstanding arrears of the Appellant for the previous year and not to the receivables of the Appellant. Thus, only Rs.0.4 Crores has been allowed as bad and doubtful debts as against Rs.6.6 Crores claimed by the Appellant. The State Commission should have allowed the bad and doubtful debts upto 1% of the total receivables as per the Regulations.

8. On the above issues the State Commission has filed reply.

8.1 We have heard the Ld. Counsel for the Appellant and the Ld. Counsel for the Joint Commission.

9. In the light of the submissions made by the Ld. Counsel for Appellant and the Ld. Counsel for the Joint Commission, the following questions would arise for our consideration:-

i) Whether the Joint Commission has erred in increasing the retail supply tariff for the domestic, BPL and agriculture consumers resulting in tariff shock for these categories of consumers?

ii) Whether the Joint Commission has erred in providing for variation in tariff of domestic consumers with Fuel and Power Purchase Cost Adjustment determined in accordance with the formula decided in the Tariff Order?

iii) Whether the Joint Commission was correct in directing the Appellant to supply all the consumers with the contracted load exceeding 1500 kVA at a voltage of 66 kV without considering the practical problems with respect to supply to the existing consumers and the substantial expenditure required for such change?

iv) Whether the Joint Commission has erred in restricting the Bad and Doubtful debts to 1% of the outstanding arrears in contravention to the Tariff Regulation?

10. The first issue is regarding tariff shock to domestic and agriculture consumers.

11. The contention of the Ld. Counsel for the Appellant is that the Joint Commission has failed to appreciate the clauses 5.5.3 of the Tariff Policy according to which the increase in tariff should be gradual so that there is no tariff shock. Further there is no rationale for increasing the tariff for such consumers so substantially, when there is no significant impact on the revenue of the Appellant.

12. We notice that the Joint Commission in the impugned order has increased the tariff for domestic category by 41% to 60% in different slabs of energy consumption and for agriculture consumers with connected load upto 10 HP by 400% and for agriculture consumers with load beyond 10 HP and upto 99 HP by 200% resulting in tariff shock. For LIG consumers in

domestic category the increase in tariff is by 400%. The sharp increase in tariff has been resorted to with a view to keep the tariff of all the categories of consumers within ± 20% of the average cost of supply, as per article 8.3 of the Tariff Policy.

13. Similar issue has been decided by this Tribunal in its judgment dated 28.2.2012 in Appeal no.159 of 2011 in the matter of Shankarbhai Dhavlu Waghmare Vs. JERC & Another relating to retail tariff of the Union Territory of Dadra & Nagar Haveli which also has consumption pattern of industrial and other categories of consumers similar to that of Daman and Diu. The relevant extracts of the judgment are reproduced below:

"14. Bare reading of this Regulation 6 reproduced above would reveal that the Commission has neither specified the manner in which cross subsidies are to be reduced and nor has indicated any Roadmap with intermediate mile stones for reduction of cross subsidies. The Sub-regulation (1) of Regulation 6 provides the methodology to evaluate cross subsidy and Sub-regulations (2) states that cross subsidy would be reduced within 'reasonable' period. It is important to note that the Tariff Policy was notified in January 2006 and it required cross subsidies to be reduced gradually and brought within ± 20 % of average cost of supply by the end of year 2010-11. Thus the policy makers gave a transition period of 5 years to bring down the cross subsidies within reasonable and sustainable levels so as to reduce it

gradually without giving 'Tariff Shock' to any category. However, the Commission in this case brought down the same by a single stroke by substantially increasing the tariff for subsidized categories giving 'Tariff Shock' to these consumers. By doing so, the Commission has followed the 'letter' and not the 'Spirit' of the Policy."

"16. Clause 5.5.3 of National Electricity Policy stressed upon the need of reduction of cross subsidies as over the last few decades cross-subsidies had increased to unsustainable levels. It further states that the Cross-subsidies hide inefficiencies and losses in operations of licensees and therefore there is an urgent need to correct this imbalance without giving tariff shock to consumers. The existing cross-subsidies for categories of consumers would need to be reduced progressively and gradually. Conjoint reading amendment to Section 61(g) with Clause 5.5.3 of National Electricity Policy would make it clear since the cross subsidies hide the inefficiencies and true losses in the operation of the licensees, these need to be reduced gradually without giving tariff shock to subsidized category of consumers. In the present case the distribution losses are around 6-7% only, which are one of the minimum in the country. Therefore, it cannot be held that distribution licensee is inefficient and prevailing cross subsidies are hiding its inefficiencies and system losses. The cross subsidies in this case are present to meet other social obligations. The consumer mix in this UT is highly skewed in favour of industrial consumers with about 97% of total sale of power in the area of supply. With this consumer mix, 1% cross subsidy provided by the subsidising category would result in 32% cross subsidy to subsidized category. Conversely, restricting cross subsidy to subsidized category within 20% would mean 0.6 % cross subsidy from subsidizing category i.e. virtually eliminating cross subsidy from subsidizing consumers. Provision of restricting cross subsidy to +/- 20% in Tariff Policy is applicable to areas where proportion of both the categories, subsidizing and subsidized, are comparable. The same yard stick cannot be applied in areas where consumer mix is highly biased in favour of one category.

17. In view of our findings elaborated above, we are of the opinion that the Commission has not determined the tariff in accordance with the provisions of the Act, its own Tariff Regulations and Policies for the following reasons:

I. The Commission was required to be guided by the National Electricity Policy and Tariff Policy while framing Tariff Regulations under Section 61 of the Act and principles of these policies are to be incorporated in the Regulations itself. Once the Regulations have been framed, the Commission is bound to follow its own Regulations.

II. Tariff Regulations framed by the Commission did not take in to account the important features of the Policies viz., the cross subsidies are to be reduced gradually and brought down to a level of +/- 20% within five years. For which the Commission was required to lay down Roadmap with intermediate Mile Stones.

III. The Commission has followed the provisions of Tariff Policy by 'Letters' and not by 'Sprit' of these Policies and that too while determining the tariff under Section 62 of the Act and not while framing the Regulations as required of it under Section 61 of the Act.

IV. Therefore, it cannot be held that since the Commission has followed statutory provisions of the Act, tariff increase cannot be said to give tariff shock."

"20. Perusal of above table would reveal that where as the tariff of subsidized categories has increased substantially, the tariff for main subsidizing category viz., HT Industrial Category has not been touched at all. It is also noted that the 2nd Respondent had proposed increase in tariff for subsidizing categories only and had published public notice accordingly. In these notices there was no mention of impending substantial increase in tariff for Domestic and Agricultural Categories. Obviously when their tariff was not

proposed to be enhanced, the consumers of these categories would not participate in the process. The Commission, however, totally disregarded the proposals of the 2nd Respondent which had been published and determined tariff giving tariff shock to subsidized categories of consumers. We are not conveying or suggesting that the Commission is bound by the proposals of the licensee. We are just expressing that the final approved tariff should have some semblance with the proposals which were published by the licensee or the Commission."

"22. In the light of our findings above, we deem it fit to remand back the impugned Tariff Order with the direction to redetermine the tariff for all the categories in view of our observations given above."

14. The above finding of the Tribunal will also apply to the present case. We accordingly set aside the impugned order and remand the matter to the Joint Commission for re-determination of tariff.

15. The second issue is regarding Power Purchase Cost Adjustment ("PPCA") formula.

16. The Tribunal by order dated 29.02.2012 in Appeal no.169 of 2011 in the case of Daman Industries Association Vs. Electricity Department of Daman and Diu and Another has

already set aside the PPCA formula directing the Joint Commission to determine the said formula afresh. The relevant extracts of the judgment are reproduced below:-

> *"(ii) The formula specified by the Joint Commission in the impugned order is set aside as it is inconsistent with the conditions specified therein and the Tariff Regulations. However, we have given some directions to the Joint Commission in paragraph 10.6 above in regard to allowing the Power Purchase Cost Adjustment to the respondent no.1."*

Accordingly, this issue does not survive.

17. The third issue is regarding voltage level for supply to consumers with connected load exceeding 1500 kVA.

18. According to Ld. Counsel for the Appellant shifting of supply to higher voltage levels will require substantial financial investment by the consumers as well as the Appellant and will create right of way related problems. Even if such mandate is to be given, it should apply to new consumers for whom transformers/sub-stations and other equipments need

to be established for the first time and not for the existing consumers for whom investments have already been made.

19. According to Ld. Counsel for the State Commission, the earlier tariff order for FY 2010-11 also had similar provision for supply, which was decided on the basis of the notification dated 26.7.2004 submitted by the Appellant with its Tariff Petition. Similar provision has been made for the FY 2011-12.

20. Let us first examine the notification dated 26.7.2004 issued under the provision of the Electricity Act, 1910. The relevant provision is reproduced below:-

> *"6. Supply to consumers having connected load between 100 kVA to 1500 kVA will be generally at 11 kV and for more than 1500 kVA at 66 kV. However, the voltage of supply shall be at the discretion of the department."*

At the time of issuing of the above notification the Joint Commission had not been constituted and it became operational only in the year 2008.

21. The Tariff Order for the FY 2010-11 provided for the following under general terms and conditions of the tariff schedule.

"Supply to consumers having contracted load between 100 kVA to 1500 kVA will be generally at 11 kV and for more than 1500 kVA at 66 kV. The consumer who requires load more than 25000 kVA, the voltage of supply shall be at 220 kV level."

22. The petition filed by the Appellant for the ARR and tariff for the FY 2011-12 before the Joint Commission also proposed the above provision of tariff order for FY 2010-11 to be continued in the FY 2011-12.

23. The Joint Commission in the impugned order has decided the condition of supply for the FY 2011-12 as under:-

"Supply to consumers having contracted load between 100 kVA to 1500 kVA will be at 11 kV and for more than 1500 kVA at 66 kV. The consumer who require load more than 25000 kVA, the voltage of supply shall be at 220 kV level."

24. We notice that the order regarding the supply voltage has been passed by the Joint Commission on the basis of the petition filed by the Appellant. Thus the Appellant could not

blame the Joint Commission for specifying the voltage levels for consumers with load exceeding 1500 kVA. However, the Joint State Commission has made only slight modification with conditions of supply in the impugned order. Instead of supply will be "generally at 11 kV" as indicated in the previous order and the petition, the impugned order states that the supply "will be at 11 kV." However, there is no discussion in the impugned order regarding shifting of the existing consumers having load more than 1500 kVA from 11 kV to 66 kV.

25. Regarding supply to existing consumers which may have to shift to higher voltage as a consequence of the impugned direction of the Joint Commission, it may consider the issues raised by the Appellant regarding difficulties faced in the change over and after hearing the concerned parties i.e. the Appellant and the consumers, and considering the cost benefit analysis in change over of the existing consumers to higher voltage decide the matter. Accordingly, we remand the matter relating to change over of the existing consumers to higher voltage to the Joint Commission.

26. The fourth issue is regarding bad debts.

27. According to the Ld. Counsel for the Appellant the Joint Commission should have allowed bad debts upto 1% of the receivables as per the Regulations instead of restricting it to 1% of the outstanding arrears.

28. Ld. Counsel for the Joint Commission relied on the findings of the Joint Commission in the impugned order.

29. Let us first examine the Regulations. The relevant provision of the Regulation in reproduced below:-

"28. Bad and Doubtful Debts

The Commission may, after the generating company / licensee gets the receivables audited, allow a provision for bad debts up to 1% of receivables in the revenue requirement of the generating company / licensee."

According to the above Regulation, the Joint Commission may allow bad debts upto 1% of receivables after the licensee gets the receivables audited.

30. The Appellant in its petition had claimed Rs.6.61 Crores towards previous bad and doubtful debts which was 1% of the proposed ARR of Rs.661.42 Crores.

31. The Joint Commission in the impugned order has held as under:-

"The ED-DD has projected the provision for bad and doubtful debts at Rs. 6.61 crore for FY 2011-12 as detailed in the Table 5.24 below:

Table 5.24: Provision for bad and doubtful debts projected by ED-DD for FY 2011-12

(Rs. crore)

Particulars	***FY 2011-12***
Annual revenue requirement	*661.42*
Provision for bad & doubtful debts as % of receivables	*1%*
Provision for bad & doubtful bets	*6.61*

Source: Table 25 of Petition

The ED-DD has submitted that the provision for bad and doubtful debts has been considered at 1% of the revenue requirement.

Commission's Analysis

The ED-DD has furnished the arrears due from consumers at Rs. 40.28 crore at the end of Feb 2011.

Regulation 28 of JERC (Terms and condition for Determination of Tariff) Regulations, 2009 read as follows:

"The Commission may, after the generating company / licensee gets the receivables audited, allow a provision for bad debts upto 1% of receivables in the revenue requirement of the generating company / licensee".

The receivables obviously mean the debtors for electricity supplied i.e. arrears outstanding but not the receivables equivalent to the ARR. These receivables are to be duly audited for considering any provision for bad debts.

Accordingly, 1% percent of arrears amount of Rs. 40.28 crore works out as Rs. 0.40 Crore

The Commission, accordingly, approves provision for bad and doubtful debts at Rs 0.40 crore for the year 2011-12 as against Rs. 6.61 crore projected by EDDD."

32. In our opinion "the receivables" indicated in the Regulation 28 are the total receivables at the current tariff rate and not the arrears outstanding. The information sought as per format 18 of the Regulations relating to audited amount of receivables bad and doubtful debts will not infer that the allowance of bad debts has to be limited to 1% of the arrears outstanding. However, the State Commission has the discretion to allow bad debts upto 1% of the receivables after the licensee gets

the receivables audited. It is not binding on the Joint Commission to allow 1% of the receivables a bad debts. The licensee has also not indicated if the audited accounts for the previous year were submitted to the Joint Commission.

33. In view of above, we do not want to interfere with the order of the Joint Commission in regard to bad debts. However, the Joint Commission may reconsider the provision for bad debts after the audited accounts are submitted by the Appellant in the Truing up

34. <u>Summary of our findings:</u>

i) Regarding tariff shock to domestic and agriculture consumers, the findings of the Tribunal in its judgment dated 28.2.2012 in Appeal no.159 of 2011 will squarely apply to the present case. Accordingly, we set aside the impugned order and remand the matter to the Joint Commission for re-determination of tariff.

ii) The Power Purchase Cost Adjustment formula has already been set aside by this Tribunal in its judgment dated 29.02.2012 in Appeal no.169 of 2011 in the case of Daman Industries Association Vs. Electricity Department of Daman & Diu and Another with direction to the Joint Commission to re-determine the formula afresh. Accordingly, this issue does not survive.

iii) Regarding supply voltage for HT consumers, we direct the Joint Commission to consider the issue of shifting of the existing consumers to higher voltage as a consequence of the impugned order and decide the matter after hearing all concerned and considering cost benefit analysis of such transfer. Accordingly, this matter is remanded back to the Joint Commission.

iv) According to Regulation 28, the Joint Commission may after considering the audited account for receivables allow bad and doubtful debts upto 1% of

receivables. The receivables here refer to the total receivables and not outstanding arrears. However, providing 1% for bad debts in the ARR is not binding on the Joint Commission. The Appellant has also not indicated if the audited accounts were submitted to the Joint Commission. Accordingly, we do not want to interfere with the findings of the Joint Commission in this regard. However, the Joint Commission may reconsider the provision of bad debts after the audited accounts are submitted by the Appellant in the Truing up.

34. Accordingly, the Appeal is allowed to the extent indicated above. No order as to costs.

Pronounced in open court on 25th of May, 2012.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE/NON-REPORTABLE

mk