

**4Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**Appeal No. 60 of 2013 and
Appeal No. 61 of 2013**

Dated: 26th November, 2013

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

In the matter of:

Appeal No. 60 of 2013

**Daman Industries Association ... Appellant (s)
DIA Complex, GDDIDC Industrial Estate
Somnath, Daman – 396 215**

Versus

- 1. Electricity Department of Daman & Diu ...Respondent(s)
Daman & Diu, Power Building
2nd Floor, Daman – 396 210**
- 2. Joint Electricity Regulatory Commission,
for the State of Goa & Union Territories
2nd Floor, HSIIDC Office Complex
Gurgaon – 122 016 (Haryana)**

**Counsel for the Appellant(s) : Mr. M.L. Lohaty
Ms. Gargi Bhatta Bharali
Mr. Paban K. Sharma**

**Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Varun Pathak
Mr. Anish Garg, Dir. (JERC)**

Appeal No. 61 of 2013

**Wellknown Polyesters Ltd. ... Appellant (s)
Nirmal building, "B" Wing
14th Floor, Bckbay Reclamation
Nariman Point, Mumbai – 400 021**

Versus

- 1. Electricity Department of Daman & Diu ...Respondent(s)
Daman & Diu, Power Building
2nd Floor, Daman – 396 210**
- 2. Joint Electricity Regulatory Commission,
for the State of Goa & Union Territories
2nd Floor, HSIIDC Office Complex
Gurgaon – 122 016 (Haryana)**

**Counsel for the Appellant(s) : Mr. M.L. Lohaty
Ms. Gargi Bhatta Bharali
Mr. Paban K. Sharma**

**Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Varun Pathak
Mr. Anish Garg, Dir. (JERC)
Mr. Rajiv Amit, Dir. (JERC)
Mr. Ankit Jain, Rep. (JERC)**

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

Appeal nos. 60 of 2013 and 61 of 2013 have been filed by Daman Industries Association and Wellknown Polyesters Ltd. respectively challenging the Tariff Order dated 25.8.2012 passed by Joint Electricity Regulatory Commission (“Joint Commission”) only with regard to a) increase in tariff of the High Tension industrial consumers, b) direction to shift industries having more than 1500 kVA load to 66 kV supply and c) directions for submission of demand draft as security deposit in place of Bank Guarantee.

2. The Appellants are Industries Association/HT industrial consumer. The Electricity Department of Daman and Diu (“Electricity Department”) is the Respondent no.1. The Joint Commission is the Respondent no.2.

3. The brief facts of the case are as under:-
- (A) The Electricity Department of Daman & Diu filed its Aggregate Revenue Requirement (ARR) on 25.11.2011 for determination of tariff for FY 2012-13.
- (B) On 29.2.2012, this Tribunal in Appeal no. 169 of 2011 filed by the Daman Industries Association allowed the Appeal in part and set aside the formula specified by the Joint Commission for Power Purchase Cost Adjustment.
- (C) The State Commission after public hearing and considering the objections and suggestions of the objectors passed the impugned tariff order dated 25.8.2012 regarding redetermination of retail tariff for FY 2011-12, provisional Truing up of FY 2010-11, tariff

for FY 2012-13 for Electricity Department of Daman & Diu in which the tariff for HT industrial consumers for FY 2012-13 was increased. The Joint Commission in the impugned order also gave effect to the findings of this Tribunal in judgment dated 29.2.2012 in Appeal no. 169 of 2011.

(D) Aggrieved by the impugned order dated 25.8.2012, the Appellants have filed these Appeals.

4. Since the issues raised in the Appeals are similar and the impugned order is the same, a common judgment in both the Appeals is being rendered.

5. The Appellants have made the following submissions:

(A) The tariff for the Appellant's category (HT Industrial – HT(A) General) has been increased abnormally by

- about 45 % and even beyond that proposed by the Electricity Department (R-1) thereby giving tariff shock to the consumers in this category.
- (B) The Transmission & Distribution loss worked out by the Joint Commission at 186.56 MU (9.25%) is apart from being erroneous is also unrealistic. As against this, the T&D loss for Dadra & Nagar Haveli is only 6.25%.
- (C) The tariff for HT industrial consumers for Union Territory of Dadra & Nagar Haveli is much less than the tariff for the same category in Daman & Diu even though the power purchase cost of the two Union Territories is almost the same.
- (D) The system of security has been changed from Bank Guarantee to Demand Draft even though the earlier system of Bank Guarantee was working well. This has

unnecessarily caused strain on the finances of the industry. While the industry has to submit only a minimal percentage of the amount in bank for obtaining Bank Guarantee, the requirement of deposit is 100%, thereby substantially denting the working capital of the industries.

- (E) The State Commission has given directions for shifting/switching over from 11 kV supply to 66 kV for the consumers with connected load of more than 1500 kVA. Neither the Electricity Department nor the consumers are in a position to implement the same. The direction to shift to 66 kV supply is not only discriminating but also unsustainable when considered in the light of the facts that both the Electricity Department and the consumers do not have space and facilities to implement the shifting and similarly placed consumers have been given the choices either to shift

- or continue to receive supply at the existing 11 kV supply line.
6. The Electricity Department (R-1) and the joint Commission (R-2) have filed their replies and written submissions. The Learned Counsel for the Respondents made their oral submissions in support of the impugned order.
 7. We have heard Shri M.L. Lahoty, Learned counsel for the Appellants, Shri Anand K. Ganeshan, Learned Counsel for the Electricity Department (R-1) and Shri Varun Pathak representing the Joint Commission.
 8. Based on the contentions of the parties, the following questions would arise for our consideration:

- i) Whether the tariff determined by the Joint Commission for HT industrial consumers is unsustainable?

 - ii) Whether the Joint Commission is correct in directing the HT Industrial consumers with connected load of above 1500 kVA to change over from 11 kV to 66 kV considering the practical difficulties involved in the change over?

 - iii) Whether the Joint Commission is correct in directing the HT industrial consumers to deposit Demand Draft for the security as against the earlier system of Bank Guarantee?
9. Let us discuss these issues one by one. The first issue is regarding determination of tariff for HT industrial category.

10. According to Shri M.L. Lahoty, Learned Counsel for the Appellants, the increase in tariff for the HT industrial HT(A) - General category is exorbitantly high resulting in tariff shock and is unsustainable as the T&D loss has been determined at 9.25% and the tariff is much higher than that determined for Dadra & Nagar Haveli, the other Union Territory.

11. According to Mr. Anand K. Ganesan, Learned Counsel for the Electricity Department (R-1) the retail supply tariff has been correctly determined by the Joint Commission taking into account the cost and expenditure incurred by the Electricity Department in distribution and supply of electricity. The cost and expenditure incurred by the Electricity Department are not being disputed by the Appellants in the present Appeal. In such circumstances, merely because the tariff determined for a different distribution licensee

based on its ARR is lower it cannot be the reason to interfere with the tariff determined by the Joint Commission for the Respondent no.1. It is also incorrect that the source of power and nature of cost and expenditure incurred by the distribution licensee in the Union Territory of Dadra & Nagar Haveli are almost identical to Daman & Diu. The power purchase cost and the other costs for the two distribution licensees are separate. Further, the ARR of the Respondent no.1 for the FY 2012-13 as approved by the Joint Commission is Rs.792.10 crores out of which Rs.770.09 crores (97%) is power purchase cost, which is uncontrollable.

12. Shri Anand K. Ganesan has further argued that the loss level has been challenged by the Appellant merely because the loss level determined for the Respondent no. 1 is higher than the loss level for the other distribution licensee in UT of Dadra & Nagar Haveli.

The contention of the Appellants that there should be a separate loss level for the consumers taking supply at 66 kV is also incorrect as out of total consumption of electricity in the UT of Daman & Diu, about 95% is by industrial consumers and negligible quantum of 2-3% is by agriculture and domestic consumers.

13. According to Learned Counsel for the Joint Commission, the loss level determined for another licensee by the Joint Commission has no applicability on the T&D losses for the Respondent no.1. Further, the increase in tariff was effected to cover up the admitted revenue gap and power purchase cost which has been dealt with in the impugned order. The Joint Commission has also followed the principles laid down by this Tribunal in OP 1 of 2011 in determining the ARR of the Respondent no.1.

14. We have carefully considered the submissions made by the parties. We find that the Learned Counsel for the Appellants has not made any submissions regarding any specific infirmity in any component of the expenditure allowed in the ARR of the Electricity Department except that the distribution losses fixed and the tariff for the Appellant's category decided by the Joint Commission are high as compared to the other Distribution Licensee in the Union Territory of Dadra and Nagar Haveli. We do not think that it can be a valid reason to challenge the tariff for retail supply determined by the State Commission for the Respondent no.1.
15. We also find that the Joint Commission has given a detailed reasoning for fixing the intra-State transmission and distribution losses at 9.25%. The distribution loss fixed by the Joint Commission for the Respondent no.1 for the FY 2011-12 was 9.75%. The Respondent no. 1

had suggested T&D loss level of 9.7% for FY 2012-13. However, the Joint Commission decided T&D loss reduction of 0.5% for FY 2012-13 over the target fixed for FY 2011-12 and fixed the loss level for intra-State transmission and distribution at 9.25% for FY 2012-13. Thus, we find that the Joint Commission has given valid reasons regarding determination of T&D losses. On the other hand the submissions of the Appellants are vague and without any substance.

16. We also do not think that T&D loss level of 9.25% is high by any standard. Further, we do not find any substance in the contention of the Appellant that the line loss for HT consumers is 0.3%. As noted by the State commission, 94% of the consumption is by the HT industrial consumers at high voltage. Therefore, bulk of the energy lost in Transmission & Distribution in the system would be on account of supply to HT

industrial consumers. Thus, we find no reason to interfere with the findings of the Joint Commission regarding T&D loss.

17. We also find that the Joint Commission has determined the ARR of the Respondent no. 1 after detailed analysis of the various components of the expenditure projected for FY 2012-13, and the revenue gap as a result of provisional true up of FY 2010-11 and review of ARR of FY 2011-12, including the power purchase cost. For FY 2012-13, against the Net Revenue Requirement of Rs. 792.10 crores, the Power Purchase Cost alone is Rs. 770.09 crores (97%) which is an uncontrollable cost. The other expenditure in operation and maintenance, depreciation, interest and finance charges, interest on working capital, return on net fixed assets, etc., are meager compared to the power purchase cost. The revenue gap worked out by the Joint Commission for

the FY 2012-13 as difference of ARR and the annual revenue from the retail supply tariff at then existing tariff is Rs. 191.55 crores.

18. We find that the Joint Commission has also determined the revenue gap of Rs. 77.82 Crores for the previous years after provisional true up of accounts for FY 2010-11 and review of ARR for FY 2011-12. Accordingly, the total revenue gap determined by the Joint Commission i.e. the revenue gap of the ARR determined for FY 2012-13 and the revenue gap of the previous years as a result of true up/review of ARR of previous years, to be made up by increase of tariff is Rs. 269.38 crores. Thus, the additional revenue to be generated by means of increase in tariff is about 44.85% of the revenue expected at the then prevailing tariff.

19. It is also noticed that the average cost of supply for FY 2012-13 for the Electricity Department as approved in the impugned tariff order is Rs. 4.33 per kWh which is 30.4% higher than the approved average cost of supply of Rs.3.32 per kWh for FY 2011-12 as determined in the previous tariff order dated 3.10.2011. We also find that the average revenue realization at the revised tariff for FY 2012-13 as a percentage of average cost of supply of FY 2012-13 for the HT Industrial - HT (A) General category of the Appellants for different slabs of consumption is 105 to 113%. Thus, the tariff for the category of the Appellants is well within $\pm 20\%$ of the average cost of supply in consonance with the Tariff Policy.
20. In fact that the State Commission has determined the ARR and tariff for the Appellant's category after considering its Tariff Regulations, Tariff Policy, provisions of the Electricity Act and the dictum laid

down by this Tribunal in OP 1 of 2011 and other judgments. Therefore, we do not find any infirmity in the impugned tariff order passed by the Joint Commission.

21. We also do not find any merit in the argument of the Learned Counsel for the Appellants regarding comparison of tariff with that of the other Electricity Department for Dadra & Nagar Haveli. The difference in ARR and tariff of Daman & Diu and Dadra & Nagar Haveli is inevitable due to difference in consumer mix, geographical area, T&D losses, allocation of power from various sources of power generation, network costs, establishment and employees cost, etc., of both the Distribution Utilities. The ARR and tariff of Dadra & Nagar Haveli has been determined separately and cannot be straightway compared with the tariff of the Respondent no. 1. Nevertheless, the following

paragraph in the impugned order would clarify the position:

“The Commission has observed that even though the consumer mix of DD and DNH (two licensees under a common administrator except for Diu which is a small island area) are very similar, yet their average cost of supply vary considerably.

The approved ACOS for FY 2012-13 for DD is Rs. 4.33/kwh vis-à-vis Rs. 3.89/kWh for ED-DNH for FY 2012-13 being 11.32% higher than DNH. Even though the Commission has tried to keep the tariffs identical in both the utilities as both have similar geographic conditions and are under the control of the same administrator except for Diu; approximately 11% difference in the ACOS compels that if increase in average tariff in ED-DNH is 20%, the increase in tariff for FY 2012-13 for ED-DD will have to be (20%+11%=31%) approximately 31%.”

22. Thus, the Joint Commission has explained that the average cost of supply in Daman & Diu is Rs. 4.33 per kWh as compared to Rs. 3.89 per kWh in Dadra & Nagar Haveli i.e. average cost of supply in Daman & Diu is higher by 11.32%. Thus if the increase in average tariff in Dadra & Nagar Haveli is 20%, the

increase in tariff in Daman & Diu will be approximately 31%.

23. We also do not find any force in the argument of the Learned Counsel of the Appellants that the tariff fixed by the Joint Commission for the Appellant's category is higher than the proposed by the Electricity Department (R-1). The Joint Commission is not expected to adopt the tariff as proposed by the distribution licensee mechanically. The Joint Commission has to carry out the prudence check of the ARR proposed by the distribution licensee and apply its mind while fixing the retail supply tariff. We find that the Joint Commission has examined the ARR and tariff proposal of the Electricity Department and determined the ARR and retail supply tariff to the Appellants' category according to the provisions of Act, Tariff Policy, Tariff Regulations

and the dictum laid down by this Tribunal in various judgments.

24. Accordingly, we hold that the tariff determined by the Joint Commission for the Appellants category is perfectly legal. The first issue is, thus, decided against the Appellants.

25. The second issue is regarding change over in supply from 11 kV to 66 kV for industrial consumers having contracted load of more than 1500 kVA.

26. This issue was considered by the Tribunal in its judgment dated 25.5.2012 in Appeal no. 35 of 2012 in the matter of the Electricity Department, Union Territory of Daman Vs Joint Electricity Regulatory Commission. The Tribunal in its judgment in Appeal no. 35 of 2012

had given the following directions to the Joint Commission.

“34. Summary of our findings:

i)

ii)

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)

27. We find from the impugned order that the Joint commission has given the following directions to the Electricity Department of Daman & Diu in pursuance of the directions of this Tribunal in Appeal no. 35 of 2012:

“19. Shifting of existing consumers to higher voltage: In compliance of the Hon’ble APTEL judgment 35/2012, as regards the issue of shifting of existing consumers to higher voltage, the Petitioner is directed to provide the following information to the Commission by November 30’ 2012.

- a) The Supporting data on the number of existing consumers at 11 kV having contracted demand above 1500 kVA.*
- b) Maximum contracted demand sanctioned to the existing consumers as referred in point no. 1 above*
- c) Cost benefit analysis of shifting to higher voltage of the existing consumers as referred to in point no. 1 above.”*

28. Thus, the Electricity Department had to submit the desired information to the Joint Commission by 30.11.2012 to reconsider the issue. As the matter is under consideration of the Joint Commission we do not propose to give any further directions in the matter except that the Joint Commission should decide the matter expeditiously.

29. The last issue is regarding mode of security deposit.

30. This issue was dealt by the Tribunal in its judgment dated 10.5.2013 in Appeal no. 40 of 2013 wherein the Joint Commission was directed to consider whether the case for relaxation of regulations was made out.

31. It has been submitted by the Learned Counsel for the Joint Commission that the Joint Commission in Petition no. 81 of 2012 and petition no. 106 of 2013 has decided to relax the provisions of the Electricity Supply Code Regulations, 2010 and allow security in the form of bank guarantee and fixed deposit for new or existing connections and the case of Appellants shall also be considered on merits as and when the Joint Commission is approached by way of an appropriate petition.

32. In view of the submissions made by the Learned Counsel for the Joint Commission, this issue would not survive in this Appeal.

33. Summary of our findings:

- i) We do not find any reason to interfere with the tariff determined by the Joint Commission for the Appellants' category.**

- ii) Regarding the directions of the Joint Commission to change over from 11 kV to 66 kV supply for HT industrial consumers with contracted load of more than 1500 kVA, the matter is already under consideration of the Joint Commission in pursuance of the directions of this Tribunal in judgment dated**

25.5.2012 in Appeal no. 35 of 2012. Therefore, we do not want to give any further directions in the matter except that the Joint Commission should decide the matter expeditiously.

- iii) The third issue regarding mode of security deposit would not survive in view of the submissions made by the Learned Counsel for the Joint Commission that Joint Commission in Petition no. 81 of 2012 and petition no. 106 of 2013 has decided to relax the provisions of the Electricity Supply Code Regulations, 2010 and allow security in the form of bank guarantee and fixed deposit for new or existing connections and the case of Appellants shall also be considered on merits as and when the Joint Commission is approached by way of an appropriate petition.**

34. In view of above, the Appeal is dismissed with regard to determination of tariff. However, issue relating to change over in supply to higher voltage is disposed of with some directions as indicated above. The matter regarding security deposit would not survive in this Appeal in view of the submissions made by the Joint Commission. No order as to costs.

35. Pronounced in the open court on this 26^h day of
November, 2013.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

√
REPORTABLE/NON-REPORTABLE
mk