

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 80 of 2013

Dated: 25th October, 2013

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

In the matter of:

- 1. Jaipur Vidyut Vitran Nigam LimitedAppellant(s)
Vidyut Bhawan, Janpath
Jaipur – 302 005**
- 2. Jodhpur Vidyut Vitran Nigam Limited
New Power House
Industrial Area, Jodhpur– 342 003**
- 3. Ajmer Vidyut Vitran Nigam Limited
Old Power House
Hatthi Bhatta, Jaipur Road
Ajmer – 305 001**

Versus

- 1. Rajasthan Electricity RegulatoryRespondent(s)
Commission
'Vidyut Viniyamak Bhawan
Near State Motor Garage
Sahakar Marg
Jaipur – 302 005**

- 2. Rudraksh Energy Ltd.
R-15A, Yudhister Marg
C-Scheme, Jaipur – 302001**
- 3. M/s. J.K. Laxmi Cement Ltd.
Jay Kaypuram, Distt Sirohi
Rajasthan – 307001**
- 4. M/s. Chambal Fertilizers & Chemicals Ltd
Gadepan, Kota – 325208
Rajasthan**
- 5. M/s. Manglam Cement Limited
Morak Distt.-326520
Kota, Rajasthan**
- 6. M/s. Rajasthan Textile Mills Association
B-1, Nawalkha Apartments
Bharat Mata Path
Jamnalal Bajaj Marg
'C'-Scheme, Jaipur – 302001**
- 7. M/s. Hindustan Zinc Ltd.,
Yashad Bhawan
Udaipur – 313004**
- 8. M/s. Ulta Tech-Cement Limited
Kotputli – 303108
Rajasthan**
- 9. M/s. Rajasthan Vidyut Vikas Sansthan
303, Crown Square
Gandhi Parth, Queens Road
Vaishali Nagar, Jaipur – 302021**

10. **M/s. PHD Chamber of Commerce and Industry
PHD House, 4/2/SIRI Institutional Area
August Kranti Marg
New Delhi – 110 016**

11. **Shri Shanti Prasad
41-A, RSEB Officer's Colony
D-Block Vaishali Nagar
Jaipur 302 021**

12. **Shri Y.K. Bolia
Director
M/s. Samta Power
S.F.1, Gayatri Nagar
Hirj Magri Sector – 5
Udaipur – 313 002**

Counsel for the Appellant (s):

**Mr. Pradeep Misra
Mr. Suraj Singh
Mr. Manoj sharma
Mr. Daleep Kumar Dhayani**

Counsel for the Respondents (s):

**Mr. R.K. Mehta
Mr. Antaryami Upadhyay
Mr. R.R. Pathak
Mr. P.N. Bhandari**

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

Whether the State Commission was correct in declining to approve the proposal of the Distribution Licensees to levy Time of Day Tariff for the HT Industrial Consumers, is the issue raised in this Appeal. The Distribution Licensees of Rajasthan are the Appellants who have challenged the order of the Rajasthan State Electricity Regulatory Commission dated 8.11.2012 rejecting the proposal of the Distribution Licensees to introduce Time of Day (“ToD”) Tariff for the HT industrial consumers. The Commission is the Respondent no.1. Respondent nos. 2 to 12 are the Consumers and the Consumer’s Associations.

2. On 28.2.2013, the Appellants filed a petition bearing Petition no. 316 of 2012 before the State Commission for approval of Time of Day (“ToD”) Tariff for HT industries (medium and large category) in the State of Rajasthan. The State Commission after giving public notice and after considering the objections and suggestions received during the public hearing disposed of the petition by order dated 8.11.2012 observing that the Commission is unable to accept the proposal of the Distribution Licensees for levy of Time of Day (“ToD”) Tariff.

3. Aggrieved by the above order of the State Commission dated 8.11.2012, the Distribution Licensees have filed this Appeal under Section 111 of the Electricity Act 2003 (Act No. 36 of 2003).

4. The Appellants have made the following submissions:

i) Section 62 (3) of the Electricity Act, 2003 provides that the State Commission can differentiate in the tariff according to various factors which include the time at which the supply is required. Thus, under Section 62(3) the State Commission can frame the tariff for consumption of electricity during any specified time. The National Tariff Policy also stipulates that the State Commission has to encourage ToD meters for consumers with a minimum load of 1 MVA. The Central Electricity Authority's Regulations on Installation and Operation of Meters, 2006 also provide for ToD metering.

ii) The State Commission failed to consider that the Appellants have produced median curve based on restricted power of supply during peak hours. If the normal supply to the industrial sector is taken into account there will be more consumption during peak

hours as industrial sector is not allowed to use power during peak hours.

iii) The State Commission has also failed to appreciate that the Appellants have submitted the ToD proposal with neutral effect on Annual Revenue Requirement. In spite of the relevant data being produced by the Appellants, the State Commission did not allow ToD tariff.

5. The Respondent nos. 5, 6 and 8 have made the following submissions:-

i) In Rajasthan, the electricity consumption curve is almost flat because of the entire agricultural load is met during night time. Hence there is no well established peak/off peak hours in Rajasthan. Thus, what is sought to be achieved in many States through ToD tariff is

- already being successfully operated in Rajasthan for decades without ToD tariff.
- ii) The ultimate aim is not ToD mechanism but to have a near flat consumption curve. If Rajasthan is already having a flat curve then there is no necessity of introducing ToD.
 - iii) The Distribution Licensees have no reliable data to justify the introduction of ToD tariff and change the system which is operating satisfactorily for the last several decades.
6. The State Commission has also filed the reply and written submissions in support of the impugned order.
7. We have heard Mr. Pradeep Misra, Learned Counsel for the Appellants, Shri P.N. Bhandari, Learned

Counsel for the Respondent nos. 5, 6 and 8 and Shri R.K. Mehta, Learned Counsel for the State Commission.

8. In view of the submissions made by the parties, the only question that would arise for our consideration is whether the State Commission was correct in rejecting the proposal of the Distribution Licensees for introduction of time of the day tariff for HT industrial consumers?

9. Let us examine the impugned order. The relevant observations and findings of the Commission in the order are summarized as under:
 - i) ToD tariff cannot be applied unless the detailed load analysis justifies the introduction of ToD tariff.

ii) The purpose of ToD is to reduce peak demand and fill up the valleys in the demand curve of the distribution companies.

iii) The State Commission has carried out the detailed load analysis of the median load curves submitted by the distribution companies. The actual peak and off-peak consumption hours have been compared with the peak and off-peak hours proposed by the distribution companies for levy of ToD tariff.

iv) The State Commission has tabulated all the results of its analysis of peak hours and off peak hours from the data furnished by the Distribution Licensees and has concluded that no clear relationship between the peak hours proposed by the distribution companies and median load curve based on consumption is established. Further, off-peak hours coincide with the

proposed off-peak hours only during 3 months (December, January and February) out of 12 months.

v) The peak consumption in the State in most of the time blocks of 15 minutes duration has been during hours different than peak hours proposed by the distribution companies. More or less similar position emerges in respect of off peak hours proposed by the distribution companies except in 3 months of the year.

vi) Though the distribution companies have stated that load curve is restricted but they have not furnished unrestricted load curve showing the cut imposed during various periods and clearly bringing out of the peaks and valleys in the system by superimposing load shedding and power cuts imposed by them.

- vii) The distribution companies have stated that purchase costs are higher during peak hours proposed by them. However, this alone is not a reasonable ground for higher tariff during peak hours unless it is established that licensees are required to buy additional short term power during the proposed peak hours and the quantum of such purchases at additional cost justifies the said higher tariff during peak hours. No such analysis and justification has been furnished by the distribution companies.
10. On the above basis, the State Commission rejected the proposal of the Distribution Licensees for levy of ToD tariff.
11. We feel that ToD tariff is a commercial mechanism to incentivise the consumers to maximise their consumption during off-peak hours and disincentivise

them to consume more during peak hours. The ToD tariff gives commercial signal to the consumers to shift the load from peak and non-peak/non-off peak hours to off peak hours and help in flattening load curve of the distribution utility by chopping the peaks and filling up the vally during off peak hours. This ultimately helps the distribution utility to minimize the total generation capacity required to meet its demand and reduce its power purchase cost.

12. We find that in this case, the State Commission, has correctly come to the conclusion that the ToD tariff is not justified based on the data submitted by the Distribution licensees. The load curve of the Appellants is generally flat almost throughout the year barring short periods in a few months. The peak is generally not coinciding with the proposed peak hours and also the off peak is not coinciding with the proposed off peak

hours except during 3 winter months. Further, the State Commission has also indicated that the Appellants have not furnished data to establish that they were required to buy additional short term power during the proposed peak hours and the quantum of such purchase and additional cost justify higher tariff during peak hours. We find that the Appellants have not been able to establish their case for implementation of ToD tariff.

13. Admittedly, the State Commission is empowered to levy ToD tariff. The advantages of ToD tariff for flattening of load curve with a view to reduce generation capacity requirement and reducing cost of power are also not denied by the Respondents. What is being contested is whether the ToD tariff is justified keeping in view the load profile of the distribution licensees. The State Commission after analysing the data submitted by the

Appellants in support of their case for levy of ToD tariff for HT industrial consumers has correctly come to the conclusion that the same is not justified. Therefore, the general arguments regarding the benefit of ToD tariff will not be of any relevance.

14. We feel that the Appellants have not been able to establish their case for introduction of ToD tariff for the present. However in future in case need arises for introduction of ToD tariff, the Distribution Licensees may approach the State Commission with the supporting data and justification and in that case the State Commission shall reconsider the matter.

15. Summary of our findings:-

- i) **The Appellant have not been able to establish their case for introduction of TOD tariff. However, in**

future if the need arises for introduction of TOD tariff, we have given liberty to the Distribution Licensees to approach the State Commission with supporting data and justification.

16. In view of above the Appeal is dismissed with liberty to the Appellants to approach the State Commission if any need arises for introduction of TOD in future. However, there is no order as to costs.

17. Pronounced in the open court on this 25th day of October, 2013.

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

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REPORTABLE/NON-REPORTABLE

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