

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

IA No. 309 of 2014 in
Appeal no. 204 of 2014

Dated: 3rd September, 2014

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

In the matter of:

Hisar Industries Association ... Appellant(s)

Versus

Haryana Electricity Regulatory Commission
& Ors. Respondent(s)

Counsel for the Appellant(s): Mr. Amit Kapur
Ms. Pallavi Mohan
Mr. R.K. Jain
Ms. Richa Sharma (Rep.)

Counsel for the Respondent(s): Mr. Varun Pathak
Mr. Samir Malik for R.2
Mr. G. Saikumar for R.3

ORDER

In the above IA no. 309 of 2014, the Applicant/Appellant has prayed for grant of stay of demand notice dated 08.08.2014 for cross subsidy surcharge raised by the Distribution Licensee as well as for the grant of stay of the impugned order dated 29.05.2014 of Haryana Electricity Regulatory Commission determining the ARR and distribution and retail supply tariff for FY 2014-15 in respect of the Distribution Licensees of Haryana.

2. We have heard the Learned Counsel for the Applicant/Appellant and the Respondents Distribution Companies. Shri Amit Kapur, Learned Counsel for the Applicant/Appellant in his oral submissions has restricted the prayer for stay to only retrospective revision of cross subsidy for open access and the demand notice dated 08.08.2014 for recovery of cross subsidy surcharge from 01.04.2014 to 31.05.2014. The

tariff order is dated 29.05.2014 whereas the cross subsidy is being levied retrospectively from 01.04.2014 for the open access transactions done in the past based on the then prevailing cross subsidy surcharge.

3. Shri Amit Kapur, Learned Counsel for the Applicant/Appellant has made the following submissions in support of his prayer for stay of retrospective levy of cross subsidy surcharge.

i) The State Commission in the impugned order dated 29.05.2014 has failed to prescribe the date on which the revised tariff would become effective. In the absence of such direction, the Distribution Companies have made the levy of tariff charges effective retrospectively. The tariff ought to have been made effective from 29.05.2014 or 01.06.2014. Pursuant to the impugned order dated 29.05.2014 Dakshin Haryana Discom served a demand notice dated 08.08.2014 on one of the members of the Appellant Association in

- respect of cross subsidy surcharge for the period 01.04.2014 to 31.05.2014. This demand notice is illegal.
- ii) The previous tariff order dated 30.03.2013 for the FY 2013-14 clearly indicates that the tariff determined under that order shall remain effective till it is revised/amended by the State Commission. Therefore, the tariff order dated 30.03.2013 was effective till passing of the impugned order on 29.05.2014.
 - iii) The cross subsidy surcharge for open access is not a tariff according to the definition given in the Tariff Regulations which clearly indicates that the tariff is schedule of charges for generation, transmission and distribution and retail supply of electricity.
4. Shri Varun Pathak, Learned Counsel for the Distribution Companies referred to the relevant paragraph of the impugned tariff order which clearly indicated that the revised tariff would be applicable from 01.04.2014. He

also referred to judgment of this Tribunal dated 31.05.2013 in Appeal no. 179 of 2012 in the matter of Kerala High Tension and Extra High Tension Industrial Electricity Consumers Association Vs. KSERC & Anr. and judgment dated 22.08.2014 in the Appeal no. 111 of 2013 in the matter Snam Alloys Pvt. Ltd. & Ors. Vs. JERC & Anr. wherein the Tribunal upheld retrospective application of the tariff order by the State Commission. According to him in the present case the Distribution Companies had filed petition in December 2013 and public notice was issued in December 2013/January 2014 and the public hearings were held before the commencement of the FY 2014-15. Therefore, the finding of the Tribunal in the above cases regarding retrospective application of the tariff order would apply to the present case also.

5. We have considered the submissions made by both the parties and carefully examined the documents

- submitted by them. We also referred to the Tariff Regulations which provide that the tariff would come into force from the date indicated in the tariff order.
6. We do not find prima facie case for granting stay in respect of retrospective revision of cross subsidy surcharge which was determined on the basis of the retail supply tariff decided in the impugned order. However, it is made clear that the recovery of the cross subsidy surcharge by the Distribution Companies will be subject to the final outcome of the main Appeal. Accordingly the IA No. 309 of 2014 in Appeal no. 204 of 2014 is dismissed.
7. Post the main Appeal for hearing on 15.09.2014.

(Rakesh Nath)
Technical Member

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REPORTABLE/NON-REPORTABLE
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(Justice M. Karpaga Vinayagam)
Chairperson