

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 66 of 2011

Dated: 3rd April, 2012

Present: HON'BLE MR. JUSTICE P S DATTA, JUDICIAL MEMBER
HON'BLE MR. V J TALWAR, TECHNICAL MEMBER,

- 1 Madhya Pradesh Poorva Kshetra Vidyut Vitran Company Limited
 - 2 Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Limited
 - 3 Madhya Pradesh Paschim Kshetra Vidyut Vitran Company Limited
- Appellants

Versus

- 1 Madhya Pradesh Electricity Regulatory Commission
 - 2 All India Induction Furnace Association (MP Chapter)
 - 3 HJI Division of Orient Paper Mills
- Respondents

Counsel for Appellant(s): Mr M G Ramachandran
Ms Sneha Venkatramani

Counsel for Respondent(s): Ms. Surbhi Sharma for R-1
Ms. Sampada Narang for R-2

JUDGMENT

MR. V J TALWAR TECHNICAL MEMBER

1. “Should the State Commission revise any formula or otherwise the tariff in the middle of the tariff year after having determined the revenue requirements and consequently the tariff to meet the revenue requirements and that too retrospectively which may cause financial burden/cash flow problems to the Licensee including the cost reflecting tariff will not be recovered by the licensees?” This is the question posed for consideration in this Appeal.
2. The Appellants are the distribution Licensees in the State of Madhya Pradesh. Madhya Pradesh Electricity Regulatory Commission (State Commission) is the 1st Respondent herein. 2nd and 3rd Respondents are the consumers of electricity.
3. Aggrieved by the Order dated 7.10.2010 passed by the State Commission the Appellants have filed this Appeal.
4. Brief Facts of the Case are as under:
 - a. On 18.5.2010, the State Commission passed an Order determining the total Annual Revenue Requirements (ARR) of the Appellants for the year 2010-11 and consequently the tariff to be charged to different categories of consumers including Industrial consumers to meet such revenue requirements.
 - b. Like the earlier Tariff Orders, the State Commission had formulated the Incentive Schemes for higher Load Factor and Power Factor in this Tariff Order also and had also laid down the formulae for calculation of the load factor and Power Factor of the consumer. However, the formula for calculation of load factor was modified

- c. Subsequently, on a review petition filed by 2nd & 3rd Respondents, the State Commission reverted back to the formula that was used in the earlier orders for calculation of consumer load factor retrospectively by the impugned Order passed on 7.10.2010.
 - d. Aggrieved by the revision of formula for calculation of load factor of the consumer, the Appellants have filed this Appeal.
5. The learned Counsel for the Appellants has urged the following contentions challenging the impugned order passed by the Central Commission:-
- a) In order to provide for greater relief to certain categories of consumers, the State Commission had modified the formula for calculation of load factor. Such modification has resulted into higher incentive to such categories of the consumer. However, it also resulted in the recoveries of lesser revenues by the Appellants as compared to the Revenue Requirements determined by the State Commission for the Appellants in the Tariff Order Dated 7.10.2010.
 - b) The said amendment in the formula has made retrospectively effective from 1.6.2010 resulting in the refund of the amount already collected by the Appellants for the period effective from 1.6.2010.
 - c) The State Commission has not made any provision for recovery of shortfall in the Appellant's ARR caused by the higher incentive payable to effective categories from other sources and thus, affecting the cash flow and causing prejudice to the Appellants including the cost reflecting tariff being not set for the Appellants.

6. The learned Counsel for the Respondent refuted the claim of loss of revenue made by the Appellant and submitted the following :
- a) The retail supply tariff is based on the ARR approved by the Commission considering the projections made by the distribution licensees in their tariff petitions. The said petitions did not take into account the impact of any rebate, penalties and accruals on account of minimum consumption etc. on the revenues of the distribution licensees and therefore not accounted for while approving the ARR.
 - b) The Impact of load factor incentives, power factor incentives /penalty as well as other such provisions in the tariff order were not reckoned while determining revenue requirement and expected revenue receipts. These are invariably taken care of at the time of true up wherein any surplus /deficit in revenue is considered in tariff of subsequent years.
 - c) The Commission did not revise the fixed charges and energy charges and they continued to remain unchanged. Thus, the contention of the petitioner that the Commission had revised the energy charges has no merit.
 - d) The alleged reduction in revenue, although not supported by any documents but assuming, for the arguments sake, to be correct, would constitute only a very small percentage of the approved ARR and thus does not warrant any dispensation other than appropriately dealing the same at the time of true-up along with all the elements of revenue and expenses.

e) It may also be mentioned that there are myriad provisions in the tariff order for penalty and incentives such as exceeding contract demand, recovery minimum charges for consumption below specified levels, load factor incentive, power factor incentive and penalty, prompt payment, late payment surcharge etc. As incidence of penalty or incentive depends on number of factors, its quantitative assessment is neither filed by the licensee in their ARR and tariff proposals nor taken into account in assessment of revenue.

7. In the light of the rival contentions urged by the parties, the relevant question as to “Should the State Commission revise any formula or otherwise the tariff in the middle of the tariff year after having determined the revenue requirements and consequently the tariff to meet the revenue requirements and that too retrospectively which causes financial burden/cash flow problems to the Appellants including the cost reflecting tariff will not be recovered by the licensees?”

8. It is true that the Annual Revenue Requirement (ARR) of the licensee is determined by the State Commission based on the projections made by the licensee. Once the ARR of a licensee is determined, retail tariff is adjusted so as to fully recover the ARR so determined. The provisions of incentives payable to consumers and penalties recoverable from the consumers are not factored in the ARR since these elements depend on many factors. For instance, Load Factor incentive would vary from consumer to consumer and may also vary from month to month. Similarly, Late Payment Surcharge payable by consumers would also depend upon amount of the consumer’s bill and delay in payment of bill by the consumers. Therefore, these elements cannot be projected to any reasonable accuracy and

accordingly are not factored into the ARR of the Licensee. The impact of incentives and penalties are taken into account at the time of carrying out “True up” exercise for the relevant year.

9. It is also true that the incentives payable to the consumers would have to be made by the Licensee during the year and out of its own revenues. It would reflect on its cash flow. However, as contended by the Respondent, the amount involved would only be a small percentage of total revenue of the licensee.
10. In the present case the State Commission had been using certain formula for calculating consumer load factor. Consumers with higher load factor were provided with some rebate to encourage the consumers to achieve higher load factor. However, this formula was modified by the State Commission in its Tariff Order for the year 2010-11. This modified formula resulted in lesser incentive to the consumers for improvement in power factor. This anomaly was brought out to the knowledge of the State Commission by the affected consumers and the State Commission, after carrying out detailed analysis, reverted back to the old formula for determining the consumer load factor. The correction in load factor formula was effected retrospectively from the date of Tariff Order. The Appellant has contended that midterm change in formula and that too retrospectively has resulted in reduction in its revenue recovery and caused cash flow.
11. As brought out above, the incentives and penalties are not accounted for in the ARR of the Licensee. As such any change in methodology to calculate incentive would not have any impact on the ARR of the utility. The main grievance of the Appellant is that the formula had been modified during the

year which has resulted in reduction in its revenue recovery and cash flow. Assuming that the State Commission had not modified the formula at the first instance in the Tariff Order itself could the Appellant have any grievance in that case? Would that had made any change in Revenue Requirement of the Appellant and caused any difference to its cash flow? The answer to both the questions would be in the negative. Where the formula had not been modified at the first instance or the modified formula had been corrected retrospectively, there would not be any change in the ARR and in the cash flow of the Appellant. Thus the grievance of the Appellant in this case is unfounded.

12. However, we agree with the contention of the Appellant that the State Commission should not make any midterm amendment in the Tariff Order that might have adverse impact on the ARR of the Licensee unless it is absolutely necessary. In the event the State Commission considers it appropriate to amend the Tariff during the year for any urgent or imminent reason, the State Commission should provide consequently the revenue from other sources for the Licensee to recover, in order to maintain its revenue requirements;
13. Subject to the observations made in the body of the judgment the Appeal is dismissed. However, there is no order as to costs.

(V J Talwar)
Technical Member

(Justice P S Datta)
Judicial Member

Dated 3rd April 2012

Reportable/~~Not Reportable~~