

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

Appeal no. 248 of 2012

Dated: 7th January, 2014

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

In the matter of:

**West Central Railway
General Manager Office
IIIrd Floor Electrical Branch
Madhya Pradesh**

....Appellant(s)

Versus

**1. Rajasthan Electricity Regulatory
Commission
Vidhyut Viniyamak Bhawan
Near State Motor Garage
Shankar Marg Bhawan
Jaipur – 302 001**

....Respondent(s)

**2. Jaipur Vidyut Vitran Nigam Ltd.
Vidyut Bhawan, Janpath
Jaipur, Rajasthan**

**....impleaded
Respondent(s)**

Counsel for the Appellant (s):

**Ms. Geetanjali Mohan
Ms. Mansi Gautam**

Counsel for the Respondents (s):

**Mr. C.K. Rai
Mr. Mahipal
Mr. Bipin Gupta
Mr. Ravin Dubey
Mr. Sunil K Bansal**

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by West Central Railway challenging the tariff order dated 8.8.2012 passed by the Rajasthan Electricity Regulatory Commission (“State Commission”) for the FY 2012-13 wherein the tariff for Railway traction has been increased effective from 8.8.2012. The State Commission is the Respondent no.1. Jaipur Vidyut Vitran Nigam, the distribution licensee, is the Respondent no.2.

2. The brief facts of the case are as under:

2.1 The Appellant avails Extra High Tension (‘EHT’) power supply at 132 kV for electric traction from the Respondent no. 2.

2.2 The distribution licensees in Rajasthan filed petitions for determination of Annual Revenue Requirement ('ARR'), wheeling charges and revision of retail supply tariff under Section 62 and 64 of the Electricity Act, 2003 for the FY 2012-13 on 19.12.2011.

2.3 After issuing public notice and holding the public hearings and considering the objections and suggestions of the stakeholders, the State Commission passed the impugned order dated 8.8.2012. However, the Appellant neither sent their suggestions and objections on the petition of the Respondent no.2 nor participated in the public hearing.

2.4 In the impugned order the State Commission has increased the fixed charges for industrial category HT-5 in which the Railway traction also falls from Rs. 125 per

kVA to Rs. 140 per kVA and energy charges Rs. 5 per kWh to Rs. 5.50 per kWh effective from 8.8.2012.

2.5 Aggrieved by the tariff hike for the industrial category HT-5 which includes the Railway traction, the Appellant has filed this Appeal.

3. The Learned Counsel for the Appellant has made the following submissions:

3.1 Railway traction should be treated as a separate category because of its peculiar nature and importance. The State Commission has clubbed the Railway traction with HT (5) Industrial consumers whereas in many States the Railway traction is treated as a separate category.

3.2 The tariff for Railway traction is unreasonably high and does not reflect the cost to serve and is not in consonance with Section 61(g) of the Electricity Act, 2003 and clause 8.3 of the National Tariff Policy.

3.3 Railway is a public utility and plays an important function of providing mass transportation. This Tribunal in judgment in appeal nos. 78 of 2005, 148 of 2007 and 124 of 2008 has observed that the railways serve the public at large and should be supplied electricity at reasonable price.

3.4 Railway traction draws electricity from the distribution licensee at 220/132 KV and, therefore, there are hardly any transmission losses. The Appellant has also incurred the cost of infrastructure of stepping down of voltage to the required level of 25 KV at which the electric traction operates. The Appellant has also

incurred extra expenditure for balancing the system by providing neutral sections at short intervals. As the transmission and distribution losses are negligible in case of Railway traction, the cost of supply should be much less compared to many other HT category consumers.

3.5 The State Commission is also mandated by the Electricity Act and the National Tariff Policy to reduce cross subsidy gradually and to decide tariff which is reflective of cost of supply which has been ignored by the State Commission.

3.6 The State Commission has also ignored that the Railway traction load is evenly distributed over the day and it draws power round the clock i.e. even during off peak period thus improving the system operation.

- 3.7 The State Commission has worked out cross subsidy on the basis of overall average cost of supply and not on the basis of actual cost to supply against the dictum laid by the Tribunal in the various cases.
4. On the above issues we have heard Learned Counsel for the Respondent no.1 and Respondent no.2 who supported the tariff determined by the State Commission for Railway traction. We shall be discussing their contentions in the following paragraphs.
5. In view of the contentions of the parties, the following question would arise for our consideration:
- i) Whether the State Commission should have created a separate category for Railway traction instead of including Railway traction in HT industrial category?

- ii) Whether the Appellant is entitled to tariff based on voltage-wise cost of supply?
- iii) Whether the cross subsidy should have been computed on the basis of voltage-wise cost of supply instead of overall average cost of supply?
- iv) Whether the tariff fixed by the State Commission for Railway traction is arbitrary and illegal with excessive cross subsidy?

6. All the above questions are interwoven and, therefore, we would be considering them together.

7. Learned Counsel for the State Commission has stated that the submission of railways that since they have particular nature and importance and, therefore, entitled to a separate category of tariff has been dealt with by this Tribunal in Appeal no. 11 of 2011 and in judgment reported as 2012 ELR APTEL 1041 Union of India

through Southern Railway Vs. Tamil Nadu Electricity Regulatory Commission and another. Railway is already given various special benefits such as continuous supply without interruptions, voltage rebate, 5 to 10% additional demand if the maximum demand is exceeded only once in a period of half an hour during a month, rebate of 5% on energy charges on new railway sections electrified after 17.12.2004, etc. The State Commission is also not bound by practice followed by other States in having a separate category for Railway traction.

8. Learned Counsel for the State Commission has further argued that the Tariff Policy provides for the State Commission notifying the road map with a target that latest by the end of 2010-11 tariffs are within $\pm 20\%$ of the average cost of supply. The State Commission's Tariff Regulations, 2009 provides that the average cost

of supply and realization from a category of consumer shall form the basis of estimating the extent of cross subsidy. While determining the tariff, the State Commission has duly considered the Tariff Policy and its own Tariff Regulations. The State Commission has acted in consonance with the provisions of the Electricity Act, 2003, Tariff Policy and Tariff Regulations. The average realization for Railway traction category is 103.2% of the average cost of supply and is well within $\pm 20\%$ of average cost of supply. Further, the tariff for large industry/Railway traction has been revised only twice during the last 12 years that too in line with increase in average cost of supply.

9. Learned Counsel for the Respondent no. 2 has argued that the implementation of separate tariff for Railway was never prayed for by the Appellant during the

course of the tariff determination proceedings before the State Commission. The Appellant neither filed any objections nor appeared before the State Commission in public hearing and, therefore, the present prayer in appeal is not maintainable. The increase in tariff for Railway traction is marginal and is due to increase in cost of supply. The cross subsidy with respect to average cost of supply is only 3.10% which is well within $\pm 20\%$ of the average cost of supply. For supply voltage at 33 KV, 132 KV and 220 KV, the State Commission has already provided rebate of 3%, 4% and 5% respectively in view of the fact that the transmission and distribution losses reduce for supply at higher voltage levels. Thus, if the impact of high voltage rebate is accounted for the cross subsidy for Railway traction will be negative.

10. We have carefully considered the submissions made by the Appellant and the Respondents.

11. We notice that the Appellant neither filed any suggestions and objections nor participated in the public hearing in the proceedings of tariff determination before the State Commission, therefore, there was no occasion for the State Commission to consider the proposal now given by the Appellant in this Appeal for creation of a separate consumer category for Railway traction. By not creating a separate category for Railway traction, the State Commission has not violated any provision of the Electricity Act, or Tariff Policy or the Tariff Regulations. Admittedly in some other States the State Commissions have created a separate category for Railway traction. However, this could not be a sufficient ground for accepting the contention of the Appellant for directing the State Commission to

consider creation of a separate consumer category for the Appellant for FY 2012-13. The State Commission is not bound by the practices followed by other State Commissions as held by this Tribunal in the case of Union of India through Southern Railway Vs. Tamil Nadu Electricity Regulatory commission & Another reported as 2012 ELR APTEL 1041.

12. Even though the Appellant had not raised the issue of voltagewise cost of supply before the State Commission, the State Commission has considered the issue in the impugned order as some stakeholders had raised the issue of computation of voltagewise cost of supply in view of the directions of the State Commission to the distribution licensees and the judgment of this Tribunal in the matter of Tata Steel Ltd. Vs Orissa Electricity Regulatory Commission. The response of the distribution licensees and observations of the State

Commission as given in the impugned order are reproduced below:

"2.4.2 *Petitioners' Response:*

At present, Petitioners are not in a position to calculate voltage wise cost of supply. In compliance to the directives of the Commission the Petitioners have already initiated steps to implement studies for calculation of voltage wise cost of supply.

2.4.3 *Commission's view:*

The Commission has noted with concern the inability of the Petitioners to calculate voltage-wise cost of supply. The Petitioners should explain the reasons for the same and indicate a time frame within which this work would be completed."

13. Thus, the State Commission has not considered the voltage-wise of supply. The State Commission has also determined the cross subsidy with respect to average cost of supply.

14. We do not agree with the contention of the Appellant that the tariff has to be determined according to the cost of supply or voltage-wise cost of supply. This Tribunal in the various judgments including judgment dated 30.5.2011 in Appeal no. 102 of 2010 & batch in the matter of Tata Steel Vs. Orissa Electricity Regulatory Commission has clearly held that the tariff need not be the mirror image of actual cost of supply or voltage-wise cost of supply. The voltage-wise cost of supply has to be determined to compute and reflect the cross subsidy transparently and to ensure that the cross subsidy is not increased but only reduced gradually. However, the variation of categorywise tariff with respect to overall average cost of supply has also to be determined to satisfy the provision of the Tariff Policy that the tariffs are within $\pm 20\%$ of the average cost of supply (overall) by FY 2010-11.

15. According to the Respondents, Tariff Regulation 126 of the State Commission provides that average cost of supply and realization from a category of consumer shall form the basis of estimating the extent of cross subsidy and that the Commission shall endeavour to determine the tariff in such a manner that it progressively reflects the average cost of supply and the extent of cross subsidy to any consumer category is within the range of $\pm 20\%$ of average cost of supply by the FY 2010-11.

16. We agree that the State Commission has to determine the average cost of supply and to ensure that the tariffs are within $\pm 20\%$ of the average cost of supply (overall average cost of supply) to satisfy the provision of its Tariff Regulations and Tariff Policy. However, the voltage-wise cost of supply has also to be determined to transparently determine the cross subsidy with

respect to actual cost of supply. Accordingly, we direct the distribution licensees to furnish the necessary data to the State Commission in the future tariff/ARR exercise and the State Commission shall determine the voltage-wise cost of supply in line with the dictum laid down by this Tribunal in various cases including Tata Steel case, to transparently reflect the cross subsidy. However, we are not suggesting that the tariffs should have been fixed as mirror image of actual cost of supply or voltage-wise cost of supply or that the cross subsidy with respect to voltage-wise cost of supply should have been within $\pm 20\%$ of the cost of supply at the respective voltage of supply. The legislature by amending Section 61(g) of the Electricity Act by Act 26 of 2007 by substituting 'eliminating cross subsidies' has expressed its intent that cross subsidies may not be eliminated.

17. The Tariff Policy provides that the State Commissions have to notify a road map for reduction of cross subsidy to ensure that tariffs are within $\pm 20\%$ of the cost of supply by FY 2010-11. From the example given in the Tariff Policy, it is clear that the intent of the Tariff Policy is to ensure that the tariffs should at least be $\pm 20\%$ of the overall average cost of supply by FY 2010-11. However, the Tribunal in the various judgments has laid down the dictum that the 'cost of supply' as referred to in Section 61(g) of the 2003 Act is the actual or voltage-wise cost of supply and not average (overall) cost of supply for the distribution licensee. Thus, actual or voltage-wise cost of supply has also to be determined to transparently reflect the cross subsidy and to ensure that the cross subsidy with respect to actual cost of supply or voltage-wise cost of supply is gradually reduced. Therefore, the State Commission has also to determine the voltage-wise cost of supply to

transparently reflect the cross subsidy and to ensure that the cross subsidy is gradually reduced and not increased.

18. We notice from the impugned order that in the present case the tariff for the Large industry is 1.79% above the overall average cost of supply for the Respondent no. 2. Thus, the tariff is well within $\pm 20\%$ of the average cost of supply, in consonance with the provisions of the Tariff Policy.

19. This Tribunal in the judgment dated 30.5.2012 in Appeal no. 182 of 2011 in the matter of M/s. Rajasthan Steel Chambers Vs. Rajasthan Electricity Regulatory Commission has held as under:

“23. The 1st Respondent State Commission in its reply has provided a table showing category wise cross subsidies as per last tariff order dated 17.12.2004 and the

impugned order dated 8.9.2011. The said table is set out below:

.....
24. *Perusal of the above table would reveal that cross subsidies have been reduced for all the subsidising categories. It also reveals that cross subsidies have been brought within the permissible limit of $\pm 20\%$ of average cost of supply except for the non-domestic category. Thus the essential requirement in reducing the cross subsidies and bringing them within $\pm 20\%$ of average cost of supply has been achieved except for one category of consumers.*

25. *Thus the essential requirements of the Act and the Tariff Policy have been achieved. This question is also answered against the Appellants accordingly.”*

20. The above judgment has also been followed by the Tribunal in the judgment dated 20.5.2013 in Appeal no. 88 of 2012 in the matter of Tata Tele Services Ltd. New Delhi Vs. Rajasthan Electricity Regulatory Commission & Ors.

21. The findings in the above judgments will squarely apply to the present case.

22. It has been pointed out by the Learned Counsel for the State Commission that in the present case the average realization from Railway traction category is 103.20% of the average cost of supply. Thus, the tariff of the Appellant is well within $\pm 20\%$ of the average (overall) cost of supply in terms of the Tariff Policy. Further, it has been brought to our notice by Learned Counsel for the Respondent no.2 that Railway traction is also entitled to high voltage rebate of 5% at 220 KV and 4% at 132 KV. Thus, the Railway traction has been given rebate for reduced transmission and distribution loss by providing for high voltage rebate. If this rebate is accounted for, the tariff of Railway traction will be more or less at the average (overall) cost of supply.

23. We find that the energy charge and demand charge of the Railway traction has been increase by about 10% and 12% respectively to recover the revenue gap caused by increase in power purchase cost and other costs of the distribution licensees. Thus, we do not find that there has been unreasonable or abnormal increase in the tariff of the Appellant.

24. Thus, we do not find that the tariff fixed by the State Commission for Railway traction is arbitrary or illegal.

25. Summary of our findings:

i) There was no occasion for the State Commission to consider the proposal given by the Appellant in this Appeal regarding creation of a separate consumer category for Railway traction as the Appellant neither filed any suggestions and objections nor participated in the public hearing in the tariff

determination proceedings before the State Commission. By not creating a separate category for Railway traction the State Commission has not violated any provisions of the Electricity Act or Tariff Policy or the Tariff Regulations. Creation of separate category for Railway traction in other States is not a sufficient ground for accepting the contentions of the Appellant of creation of a separate category for the Appellant for FY 2012-13 as the State Commission is not bound by the practices followed by other State Commissions as held by this Tribunal in its judgment reported as 2012 ELR APTEL 1041.

- ii) The State Commission has determined the cross subsidy with respect to average (overall) cost of supply in accordance with its Tariff Regulations and has also satisfied the provision of the Tariff**

Policy by keeping the tariff of the Appellant with \pm 20% of the average (overall) cost of supply. However, the voltage-wise cost of supply has also to be determined to transparently determine the cross subsidy with respect to actual cost of supply or voltage-wise cost of supply and to ensure that the cross subsidy is gradually reduced and not increased in terms of the dictum laid down by this Tribunal in Tata Steel Ltd. and other cases. We, accordingly, direct the distribution licensee that it would furnish the necessary data to the State Commission in future ARR/tariff determination and the State Commission shall determine the voltage-wise cost of supply to transparently reflect the cross subsidy with respect to actual cost of supply or voltage-wise cost of supply in accordance with the dictum laid down by this Tribunal.

iii) We find that the average realization of Railway traction is 103.20% of the average cost of supply. Thus, the tariff of the Appellant is well within $\pm 20\%$ of the average cost of supply in terms of the Tariff Policy. Further, the Railway traction supply at 220 and 132 KV is also entitled to High voltage rebate at 5% and 4% respectively in view of reduced transmission and distribution losses at higher voltage. Thus, we do not find the tariff fixed for the Railway traction as arbitrary or illegal.

26. In view of above the Appeal is dismissed as devoid of any merit with some directions to the State Commission and the distribution licensee for future regarding determination of voltage-wise cost of supply. No order as to costs.

27. Pronounced in the open court on this 7th day of
January, 2014.

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

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REPORTABLE/~~NON-REPORTABLE~~
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