

**JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Quorum

Shri M.K. Goel, Chairperson
Smt. Neerja Mathur, Member

Petition No. 231/2017

Date of Hearing: 18.04.2017

Date of Order: 09.05.2017

In the matter of:

Review of Cross Subsidy Surcharge determination notified in Hon'ble JERC Tariff Order dated 06.04.2016 for UT of Daman & Diu, under Regulation 74 of JERC (Conduct of Business) Regulations, 2009

And in the matter of:

Indian Energy Regulatory Services,
T-44, Karampura, Near Haryana Dharamshala,
NEW DELHI – 110 015.

.... Petitioner - 1

Vs.

The Executive Engineer,
Electricity Department,
UT OF DAMAN & DIU.

... Respondent

Present

For the Petitioner

1. Ms. Priya Dwivedi, Advocate
2. Shri Gaurav Nand , Legal Consultant

For the Respondent

None.

Petition No. 232/2017
Date of Hearing: 18.04.2017
Date of Order: 09.05.2017

In the matter of:

Review of Cross Subsidy Surcharge determination notified in Hon'ble JERC Tariff Order (in Petition no. 193/2016) dated 07.04.2016 for UT of DNH under Regulation 74 of JERC (Conduct of Business) Regulations, 2009.

And in the matter of:

Indian Energy Regulatory Services,
T-44, Karampura, Near Haryana Dharamshala,
NEW DELHI – 110 015.

.... Petitioner -1

Vs.

The Executive Engineer,
Electricity Department,
UT OF DADRA & NAGAR HAVELI.

.... Respondent

Present

For the Petitioner

1. Ms. Priya Dwivedi, Advocate
2. Shri Gaurav Nand , Legal Consultant

For the Respondent

None.

Petition No. 233/2017
Date of Hearing: 18.04.2017
Date of Order: 09.05.2017

In the matter of:

Application for Review of Decision / Order of the Commission in DNHPDCL ARR Petition No. 193/2016 for True-up of FY 2014-15, Review of FY 2015-16, ARR for 1st MYT Control Period (FY 2016-17) under Para 74 of Chapter X of Conduct of Business Regulations, 2009 of JERC

And in the matter of:

Association of Polyester Continuous Polymerization,
Industry of D & N H; Silvassa (For Brevity also known as APCPI),
7/8 Utkarsh Hotel, Silvassa Naroli Road, Athal,
UT OF DADRA & NAGAR HAVELI – 396 235.

.... Petitioner-2

Vs.

The Executive Engineer,
DNH Power Distribution Corporated Ltd.,
UT OF DADRA & NAGAR HAVELI.

.... Respondent

Present

For the Petitioner

1. Shri P.R. Mehta, Partner, Drashti Power
2. Shri K.K. Bhatia, Partner, Drashti Power
3. Shri Rajan Kumar, Team Lead, PTC India Ltd.
4. Shri Paresch Datta, APCPI
5. Shri Abhishek M., APCPI
6. Shri Mohsin Sattar, APCPI
7. Shri K.J. Mody, APC

For the Respondent

None.

ORDER

Ms. Priya Dwivedi, Learned Counsel for the Review Petitioner - 1 sought the review of the Cross Subsidy Surcharge (CSS) determined by the Commission for the FY 2016-17 in its Tariff Order dated 06.04.2016 for the UT of Daman and Diu and in Tariff Order dated 07.04.2016 for the Union Territory of Dadra & Nagar Haveli.

The Review Petitioner submitted that the Cross Subsidy Surcharge (CSS) is to be determined according to the formula provided in the National Tariff Policy, 2016, as mentioned below:-

$$S = T - [C / (1 - L / 100) + D + R]$$

The Commission has inadvertently erred in determining the CSS in its impugned Tariff Order dated 06.04.2016 for UT of Daman & Diu and impugned Order dated 07.04.2016 for Union Territory of Dadra & Nagar Haveli; and has not applied the formula properly.

In the said formula, the Commission has inadvertently ignored the division sign "/" in applying the CSS formula to be placed after the "C" component resulting in incorrect calculation of Cross Subsidy Surcharge of Rs 0.42/kWh for Union Territory of Daman and Diu inadvertently applying the following formula:-

$$S = T - [C (1 - L / 100) + D + R]$$

However, on application of the correct formula, the Cross Subsidy Surcharge would be Rs 0.28/kWh only. Similarly in case of the Union Territory of Dadra & Nagar Haveli the correct CSS on appropriate application of formula would come to Rs 0.11/kWh as against Rs 0.22/kWh calculated in the impugned Order.

The Review Petitioner - 1, has accordingly prayed for the following in Petition no. 231/2017:-

1. Review the Cross Subsidy Surcharge determined for FY 2016-17 in the impugned Tariff Order dated 06.04.2016 for the Union Territory of Daman & Diu;
2. Apply the proper National Tariff Formula for determining Cross Subsidy Surcharge for FY 2016-17;
3. Pass such orders or directions, which this Commission deems fit considering the present facts and circumstances of the case.

The Review Petitioner – 1 has prayed for the following in Petition no. 232/2017.

1. Review the Cross Subsidy Surcharge determined for FY 2016-17 in the impugned Tariff Order dated 07.04.2016 in Petition no. 193/2016 for the Union Territory of Dadra & Nagar Haveli;
2. Apply the proper National Tariff Formula for determining Cross Subsidy Surcharge for FY 2016-17;
3. Pass such orders or directions, which this Commission deems fit considering the present facts and circumstances of the case.

The Review Petitioner -1 has also requested the Commission to condone the delay in filing the present Petition inter alia citing Section 114 of the Code of Civil Procedure under Order 47, Rule 1 which lays down the grounds for filing the review and that based on facts and circumstances, 'sufficient cause' involving question of 'substantial justice' exists for condonation of delay and Section 94 (1) (f) vesting powers on the Commission to review its decisions.

Shri P.R. Mehta, appearing for the Review Petitioner no. – 2, being Association of Polyester Continuous Polymerization Industry of Union Territory of Dadra & Nagar Haveli in Review Petition No. 233/2016 has submitted that there are the following two errors in the impugned Tariff Order dated 07.04.2016 of Union Territory of Dadra & Nagar Haveli:-

1. The formula has a typographical error, with reference to the correct formula given under the National Tariff Policy, 2016, reproduced as under:-

$$S = T - [C (1 - L / 100) + D + R]$$

Whereas the correct formula provided under the National Tariff Policy, 2016 is as follows:-

$$S = T - [C / (1 - L / 100) + D + R]$$

From the above, it is clear that the division sign "/" after 'C' is missing in the formula applied.

2. The Calculation based on the parameter given under the impugned Order and on application of correct formula comes to Rs 0.11/kWh as against Rs. 0.22/kWh mentioned under the impugned Order as follows:-

$$S = T - [C / (1-L/100) + D + R]$$

$$S = 4.16 - [3.82 / (1-2.86/100) + 0.12+0]$$

$$S=4.16 - (3.93+0.12)$$

Rs 0.11/kWh.

Thus, it is clear from the above that the correct Cross Subsidy Surcharge for the FY 2016-17 should be Rs 0.11/kWh as against Rs 0.22/kWh.

The Review Petitioner – 2 has accordingly prayed for the following:-

1. Condone the delay of about 306 days in submission of application for review of the impugned order dated 07.04.2016 in Petition No. 193/2016.
2. Hold and declare that the Cross Subsidy Surcharge for the FY 2016-17 shall stand revised to Rs 0.11/kWh as applicable from 01.04.2016 and
3. Direct the DNHPDCL to revise the Cross Subsidy Surcharge recovered till date and pass on necessary adjustment / Refund to all concerned Open Access user consumers.
4. Pass on any other relief as may deem necessary.

Both the Review Petitioners have submitted that the Commission has inadvertently omitted the division sign in the formula prescribed under the National Tariff Policy, 2016 which led to higher determination of the Cross Subsidy Surcharge for the FY 2016-17; and requested the Commission to rectify the mistake by applying the Cross Subsidy Surcharge formula appropriately and accordingly revise the Cross Subsidy Surcharge.

The Review Petitioners further submitted that the Commission is empowered under Section 94(1)(f) of the Electricity Act, 2003 to review its decisions, directions and Orders and that this mistake is apparent on the face of the record which is one of the grounds under section 114 of the Civil Procedure Code under Order 47, Rule 1 of the Civil Procedure Code for reviewing the Order.

Considering the facts and merit in the submission of the Review Petitions, the Commission had condoned the delay in filing these Review Petitions and admitted these Review Petitions on 29.03.2017. The Commission listed the Review Petitions for hearing on 18.04.2017 after issuing notices to the Review Petitioners and the Respondents.

The Commission took notice that none of the Respondents were present in the hearing held on 18.04.2017 in the Court Room of the Commission. On being enquired, the Review Petitioners confirmed the delivery of the Review Petition(s) to the Union Territory of Daman and Diu and Union Territory of Dadra and Nagar Haveli by e-mail/hand delivery/Registered Post well within time. The Commission also takes serious note of the fact that there has been no representation from the Union Territory of Daman & Diu and Union Territory of Dadra & Nagar Haveli nor any request for grant of leave of absence or their comments in the Petition.

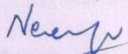
The Commission observed that in all these Review Petitions, the issue regarding an error in determining the Cross Subsidy Surcharge through the formula notified in the National Tariff Policy, 2016 has been raised. Since the issue in all these Petitions has been the same, the Commission heard all the Review Petitions together and decided to issue a common Order.

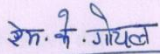
The Commission has considered the submissions made by both the Review Petitioners. It has also examined the records placed before them along with relevant provisions of the Electricity Act, 2003 and Rules and Regulations made thereunder. The Commission's power to review its own Orders flows from Section 94 (1) (f) of the Electricity Act, 2003 and are the same as those conferred on a civil court by the Code of Civil Procedure (CPC). These have been spelt out in Section 114, read with Order 47, Rule 1 of the CPC under which a judgment may be open to review, inter-alia, if there is a mistake or an error apparent on the face of record. Further, the error should be such that its continuance would strike at the roots of justice.

The Commission has noted that inadvertently, the division sign was omitted from the CSS formula envisaged under the National Tariff Policy, 2016 which led to higher determination of the Cross Subsidy Surcharge. The Commission has recalculated the Cross Subsidy Surcharge which comes to Rs 0.28/kWh for the Union Territory of Daman & Diu and Rs 0.11/kWh for Union Territory of Dadra & Nagar Haveli.

In view of the above, the Commission hereby approves Cross Subsidy Surcharge of Rs 0.28/kWh for the FY 2016-17 for the Union Territory of Daman & Diu and Rs 0.11/kWh for the FY 2016-17 for the Union Territory of Dadra & Nagar Haveli. The Commission also directs the Electricity Departments of Daman and Diu and Dadra and Nagar Haveli to refund/adjust the excess Cross Subsidy Surcharge charged from the open access consumers in the subsequent 3 monthly bills appropriately under intimation to the Commission.

Ordered accordingly.


(NEERJA MATHUR)
MEMBER


(M.K. GOEL)
CHAIRPERSON