

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

Quorum *
Shri S.K.Chaturvedi, Chairperson
Petition No. 96/2013
Date of Order 26.09.2014

In the matter of

Petition for ARR and Tariff Determination for FY 2013-14, Review for FY 2012-13, Provisional True-up for FY 2011-12 and True-up for FY 2009-10 & 2010-11 of ED- Puducherry.

And

Electricity Department, UT of Puducherry

.....Petitioner/ Respondent

Versus

1. Snam Alloys Pvt. Ltd.
2. Chemfab Alkalis Ltd.
3. Pulkit Metals Pvt. Ltd.
4. Meenakshi Steels
5. AKS Alloys Pvt. Ltd.
6. Kannappan Iron and Steel Co. Pvt. Ltd.
7. National Oxygen Ltd.
8. Sumangala Steels Pvt. Ltd.
9. Inox Air Products Ltd.
10. AML Steel Ltd.
11. JBA Steels Pvt. Ltd.

.....Respondents/ Appellants

Present for Petitioner

1. Sh. D. Ravi, Superintending Engineer, ED- Puducherry.
2. Sh. A.S. Jitendra Rao, Executive Engineer, ED- Puducherry.
3. Sh. Ritesh Yadav, Manager, M/s Deloitte.

Present for Respondents

1. Sh. Shridhar Prabhu, Advocate, For- R-1, R-2 and R-9

Order

The Electricity Department – Puducherry- Licensee herein petitioner filed petition no. 96/2013 for approval of ARR and determination of tariff for FY 2013-14, review for FY 2012-13, provisional true – up for FY 2011-12, and true – up for FY 2009-10 & 2010-11 before this Commission.

The Commission after hearing all stakeholders and as per Section 86 (1) (a) of Electricity Act, 2003, JERC (Conduct of Business) Regulations, 2009 and JERC (Terms and Conditions for Determination of Tariff) Regulations, 2009 vide order dated 10.04.2013 approved ARR and determined tariff for FY 2013-14, review for FY 2012-13, provisional true – up for FY 2011-12, and true – up for FY 2009-10 & 2010-11.

Snam Alloys Pvt. Ltd & Ors. herein respondents filed Appeal No. 111/2013 titled Snam Alloys Pvt. Ltd & Ors. Vs. JERC & Anr before Hon'ble APTEL against the order dated 10.04.2013 passed by the Commission in petition no. 96/2013.

The Hon'ble APTEL vide Judgment dated 22.08.2014 partly allowed and partly dismissed the Appeal No. 111/2013. The Summary of findings of the Hon'ble APTEL given in para no. 38 of the Judgment are as under:-

Quote

“i) Violation of principles of natural justice and transparency:

The Joint Commission has followed the procedure as laid down under Section 64 of the Electricity Act before passing the impugned tariff order. The data and information sought by the Joint Commission from the Distribution Licensee after the public hearing was in the process of prudence check for which no further public notice was necessary. Findings of this Tribunal in judgment dated 09.04.2013 in Appeal no. 257 of 2012 will apply in the present case. However, as decided in the judgment dated 09.04.2013, the Joint Commission may consider to review and amend its Regulations so as to have a provision of putting the information furnished by the licensee or the generating company to the Joint Commission subsequent to the filing of the Petition which has been made public or after the public hearing is over, as the case may be, on its Website.

ii) Non-consideration of net impact of UI in the ARR:

We do not feel that the procedure adopted by the Joint Commission in the matter is perverse or illegal. UI mechanism is not meant for sale of surplus power. The present Regulations of the Central Commission also do not permit UI beyond the specified quantum in the interest of grid security. Therefore, we do not find any reason to interfere in the matter. However, we feel that in future the Joint Commission should take into account the anticipated availability from all the approved sources with which power procurement has been tied up by the Electricity Department also consider the fixed and variable charges in the Power Purchase Cost and work out the surplus energy available for sale outside the Union Territory of Puducherry and the likely rate and the revenue it is expected to fetch in the market keeping in view the short term market data available in public domain to have more realistic assessment of the ARR and to avoid any controversy. The Joint Commission is also directed to true up the Power Purchase Cost and revenue from sale of surplus power by the Electricity Department in the true up for the FY 2013-14.

iii) Consideration of grant-in-aid by the Central Government:

We are of the view that the Joint Commission has simply allowed the amount of arrears paid by the Electricity Department to TANGEDCO towards Power Purchase Cost for the past period in the ARR without considering the objections raised by the objectors and without giving any valid reasons. We feel that the matter has to be reconsidered by the Joint Commission in light of the relevant documents and the submissions made by the parties. We, therefore, remand the matter to the Joint Commission to consider all facts and the submissions made by the Appellants on this issue and to pass the reasoned order without being influenced by its earlier finding after hearing all the parties. We want to make it clear that we are not giving any opinion on the merits of the issue as we feel that the matter has to be re-examined by the Joint Commission.

iv) Retrospective application of the Tariff order:

In the present case the proceedings for determination tariff for FY 2013-14 commenced during the previous year. The public hearing was also completed in March 2014. The billing for the month of April 2014 will be raised only during May 2014. We feel that the findings of this Tribunal in Appeal no. 179 of 2012 will apply to the present case. Accordingly, we do not find any reason to interfere with the finding.”

Unquote

The Commission in the light of above observations, findings and directions restored the Petition no. 96/2013 on 26.08.2014 and sent hearing notices to the parties for today dated 26.09.2014. The Commission received submissions from the petitioner in the form of Affidavit dated 22.09.2014.

The Commission held hearing on 26.09.2014 at Commission's Headquarters at Gurgaon. The representative of the respondents prayed for some time for filing submissions in support of the objections of the respondents.

The Commission considered the prayer of the respondents and acceded the same. The Commission scheduled hearing on 28.10.2014 at 11:00 AM.

Sd/-
(S.K.Chaturvedi)
Chairman
Member (Vacant)

- * As per Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 "Quorum is two". Whereas as per proviso of Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 if Chairperson or the Member is prevented from attending hearing of which he has been given notice the Member or the Chairman as the case may be attending the meeting shall validly constitute the Quorum. Post of the Member is vacant. According to provisions of Section 93 of the Electricity Act, 2003 no act or proceedings of the appropriate Commission shall be questioned or invalidated merely on the ground of existence of any vacancy or defect in the Constitution of the appropriate Commission. So the Chairperson only constitute a valid Quorum.

Certified Copy

(Keerti Tewari)
Secretary