

Ref. Review Petition No. 214/06  
In  
Case No. 181/04

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|--------------|--|---|
| Present for: | HPSEB:   | Er.C.M.Walia, CE( Comml)<br>Er.R.K.Punshi,Director (SERC) |
|              | HP Govt.:  | Sh.Peeyush Verms,Adv.<br>Sh.Arun Sharma, Sr.Asstt.        |
|              | M/s Amba Metals Ltd.<br>Kala Amb,                    | Sh.O.C.Sharma, Advocate<br>Sh.R.S.Thakur, Advocate.       |
|              | M/s J.B.Rolling Mills (P) Ltd.<br>Kala Amb.          |   |
|              | M/s Saboo Ispat (P) Ltd.,<br>Kala Amb.               |   |
|              | M/s Amba Shakti Ispat Ltd.<br>Kala Amb.              |   |
|              | M/s H.M. Steel Ltd.,<br>Kala Amb,                    | Sh.Ankur Dass Sood,Adv.                                   |
|              | M/s Rama Steels Ltd.,<br>Barotiwala.                 |   |
|              | PIA Parwanoo:<br>M/s Horological Components Pvt.Ltd: | Sh.D.R.Sood.  |
|              | CII :  | Sh.D.R.Sood.  |
|              | Indus Hospital, Shimla:                              | Capt. J.S.Thakur.   |
|              | Consumer Representative:<br>(u/s 94 of the EA,2003)  | Sh.P.N.Bhardwaj.  |

**ORDER**

**(This case was last heard on 16<sup>th</sup> December, 2006 and decision reserved)**

1. On the appeal in 175 of 2005 before the Appellate Tribunal by BBN Industries Association, Parwanoo Industries Association, CII Chandigarh, Hotel Windsmoor (CS consumer) Parwanoo, Harological Components Pvt. Ltd. (SMS Consumer) Parwanoo against the tariff order dated 29.9.2005, Hon'ble Appellate Tribunal considered the following three issues:

- A. Whether the levy of “Reform Surcharge” of 5% on the electricity bills of consumers is sustainable in law?
  - B. Whether the Commission has acted illegally in increasing the demand charges on the members of appellant society?
  - C. Whether the levy of “Harmonic Injection Penalty” on certain consumers is justified, sustainable in law and as per regulations?
2. On these issues the findings of the Appellate Tribunal are as under: -
- “(i) On issue ‘A’ we hold that the first respondent has neither jurisdiction nor authority to “levy Reform Surcharge.”
  - (i) On issue ‘B’ regarding increase in demand charges we allow the appeal to limited extent as above and remand the matter to the first respondent for de novo consideration in the light of our discussions.
  - (ii) On issue ‘C’ we allow the appeal holding that there is no authority to levy harmonic injection penalty and the levy of said penalty by the tariff order, is set aside.”

From the above it is abundantly clear that the Hon’ble Appellate Tribunal has disposed off two issues regarding ‘Levy of Reform Surcharge’ and the ‘levy of harmonic injection penalty’. Regarding issue ‘B’ the appeal has been allowed to a limited extent and the matter regarding determination of maximum demand charges has been remanded for de novo consideration of this Commission.

3. One of the relief sought by the appellants was to:

Quash the formula adopted by the Commission for calculating demand charges, wherein instead of adopting 80% of the contract demand, the Commission has adopted 100% of the contract demand and also quash the demand charges hike in SMS, Commercial and HT supply.

The Hon’ble Appellate Tribunal for Electricity have stated that the rationale and relevance of the fixed charge is a well established and accepted principle in the electricity sector. Fixed charges are recovered as part of the fixed cost of the electricity so that at least a part of fixed cost is recovered, even if there is no consumption by the consumer. In this context the observations made by the Hon’ble Appellate Tribunal for Electricity(para 24-26) read as under: -

- “24. It seems to us that the fixed charges levied on the consumer should reflect the cost of capacity requirement of the consumer, after considering the fixed cost of such system and diversity of load on the system. This logical approach would necessarily result in varying demand charges for different

category of consumers and, therefore, there is no question of discrimination against the appellants. In view of this position we decide that our interference is not called for in this respect with the impugned tariff order.

25. We now turn to the basis of calculation of maximum demand. Maximum demand of a consumer in any billing period will depend on its simultaneous requirement of power. Depending on loading, season, weather conditions, variation in output etc, load varies. No load can remain constant throughout the billing period and load variations are imminent, howsoever perfect load estimation by the consumer may be. Due to such practical considerations and technical position, generally maximum demand is considered higher of the actual Maximum Demand and certain percentage (less than 100) of the Contract Demand.
  26. In view of the above we conclude that the Commission ought to reconsider this aspect of the maximum demand calculating according to law. We decide this issue in favour of the appellant to the extent mentioned above and remand it to the Commission for reconsideration. ”
4. Accordingly the Commission vide reference case No.214/2006, decided to hear all the interested/affected parties on 18.11.2006, including stake-holders in the tariff petition of FY 2005-06 registered as Case No. 181/2004.
  5. During the hearing Sh.D.R.Sood appearing on behalf of CII, BBN Industries Association and Parwanoo Industries Association pointed out the change in the formula for calculation of demand charges in earlier tariff i.e. the Tariff Orders for FY 2001-02 and that for FY 2004-05. The formula in the FY 2001-02 and 2004-05 was demand charges rate x 80% of contract demand or maximum recorded demand during the billing period (which-ever is higher) and in FY 2005-06 was demand charges rate x contract demand or maximum demand during the billing period (whichever is higher). He stated that on account of the change in the formula, there has been a further increase in demand charges. The new formula gives no such flexibility as a result of which the consumers will end up paying penalties for overdrawls. Mr. Sood has also contended that the approach adopted by other SERCs in A.P., Orissa, M.P. and Maharastra in calculating demand charges is on the basis of maximum demand recorded or 75% - 80% of the contract demand (whichever is higher).
  6. Mr.Sood has further asserted that the consumers are at the disadvantage as instead of paying for actual consumption, they are required either to pay on the basis of the contract demand (which is always higher)or to pay penalties for overdrawls.
  7. During the hearing on 16.12.2006, Sh.D.R.Sood pleaded that there was no problem so long as 80% of contract demand was being considered in tariff orders for FY 2001-02 and FY 2004-05. There was no problem for charging with even 100% contract demand

or maximum demand as availed during the billing period. The problem has arisen due to penalty element imposed on contract demand violation in the tariff order for FY 2005-06.

8. Sh.O.C.Sharma, Advocate representing various Industrial Units said that by levying demand charges on 100% contract demand or actual maximum demand has increased the demand charge by 25%. He also pleaded for reduction in demand charge for HT/EHT consumers.

9. Consumer representative Sh.P.N.Bhardwaj submitted that for maintaining the grid discipline and proper operation of the system the consumers should restrict to the contract demand and for violation of the same, the penalty should be heavy. However, in his opinion the Commission could have considered the shifting of contract demand from 80% to 100% in a phased manner only to give them more opportunity to assess their revised contract demand, although it is not obligatory for the Commission to do so.

10. The limited issue with the Commission is to review the formula for applying contract demand charges and contract demand violation charges (CDVC). It is an accepted principle that through two part tariff in case of distribution system, part of the fixed charge on account of assets involved for supply of power are recovered through demand charges. The licensee has to install the equipment, such as transformers and associated switchgear, apart from the HT/LT lines etc. to meet the load requirement and committed contract demand of the consumers and reserve that capacity of the system for these consumers. Moreover, these assets are also required to be maintained. Apart from this, the licensee has also to plan long term power purchase from various generating stations, from within and outside the State to meet the committed demand of the consumers, where the cost for purchase of power also includes the fixed cost of the generation plants. Moreover, the daily load dispatch schedules of the system are required to be sent through SLDC to NRLDC and drawal of power in deviation of these schedules during low frequency regime may result into heavy payments of UI charges. Therefore, the load forecast, in daily schedule of dispatch, depends on an accurate assessment of demand. Moreover, unnecessary projection of unrealistic demand not only ends up by paying extra charge by the existing consumers but it also results in blocking the available capacity of the supply system which could be made available to the prospective consumers in waiting. Commission is, therefore, of the view that although loads of the consumers do not remain constant, the consumers can well assess the maximum demand as accurately as possible, based on which they should enter their contract demand. Further in case they have at any time entered the contract demand in the agreement with the licensee, they should be given the opportunity to revise the same within their sanctioned load, twice a year.

11. In the earlier tariff orders for FY 2004-05 and FY 2001-02, it was only with the intention of giving them the opportunity to assess their demand accurately in future, that an 80% factor was built in. Since the introduction of two part tariff in the initial years was at a stabilizing stage. It seems that the kind of stabilization required has probably not been achieved in the perception of the consumers. Perhaps some more time is required for consumers to be able to inculcate this perception.

12. There are, also, two other aspects which need to be taken into account. Firstly, the Commission in the year 2006-07 had decided to reduce the tariff across the spectrum for all categories of consumers. The fact that the formulation change has led to greater payouts for industry has led to a defeat of the attempt on the part of the Commission to reduce tariffs and the impact of the reduced tariffs has been willy-nilly negated to some extent. It would, therefore, be in the interest of the overall system if marginal status quo ante could be restored and adequate time made available to the consumers to undertake a greater stabilisation stage. Secondly, cogent reasons have been given by the Hon'ble Appellate Tribunal to continue with a percentage of contract demand in keeping with the situation prevailing vis-a-vis other States of the country.

13. In view of the above, to give consumers more time to assess and fulfil the contract demand as near to their maximum demand and as economically advantageous to them, the Commission, while maintaining a balance between the stabilization requirements and the perception of industry, is of the view that the following formulation will meet the ends of justice:-

- (a) Demand charges would be levied on actual maximum recorded demand in a month in any 30-minute interval or 90% of contract demand whichever is higher. Accordingly, a rectification statement in addition to these orders also be forwarded to the licensee.
- (b) Applicability of the above would be with effect from the date of applicability of tariff for the FY 2005-06/FY 2006-07 periods and adjustment of the bills of consumers would be done in FY 2007-08 and the impact on account of this previous year will be effectively met within the ARR for 2007-08 which is under consideration of the Commission.
- (c) Consumers should be allowed to revise their contract demand within the limits of their sanctioned load twice a year.

14. The file is consigned to record room.

**Dated: 17.01.2007**

**(Yogesh Khanna)**

Chairman