

- i. Low cost power allocation to Jodhpur Discom
- ii. Prompt Payment Rebate
- iii. Definition of "Hostels"
- iv. Definition of "Industries"

1.5 In their written/oral submission a few stakeholders submitted that proposal of JVVNL with regard to prompt payment rebate and hostels definition may be allowed. However, majority of stakeholders submitted that a review of an Order may be considered by the Commission u/s 94 (1) (f) of the Electricity Act, 2003 read with Order XL VII Rule 1 of Civil Procedure Code (CPC) on the following grounds:

- a. Discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or
- b. Some mistake or error apparent on the face of the record, or
- c. For any other sufficient reason.

1.6 We have considered the submissions of the Petitioner and stakeholders in light of the section 94(1)(f) of Electricity Act, 2003 read with relevant provisions of CPC.

Issue No. (i): Low cost power allocation to Jodhpur Discom

Petitioner's Submission:

1.7 Rajasthan Discoms since unbundling have been following the same principle for power purchase allocation among themselves where the ratio for allocation is set up considering the pattern of consumption among Discoms. The three Discoms of Rajasthan prepared their Financial Projections and targets under UDAY based on the existing power allocation ratios in use. All three Discoms have committed to attain profitability by the Financial Year 2018-19 in the tripartite MoU signed under the UDAY scheme. As such any change in the cost of power purchase at this stage will

adversely impact the efforts made by the Jaipur Discom to achieve the envisaged targets. Similarly, Jodhpur Discom had also committed to achieve profitability by FY 2018-19 considering the same power purchase allocation.

Commission's Analysis

- 1.8 The Commission after considering the ARR of three Discoms in the way forward section of its order dated 28.05.2018 has observed as under:

"It is observed that Jodhpur Discom is showing highest deficit among three Discoms because it is making highest sale to Agriculture Category though it purchases electricity at same rate. Therefore State Govt. may consider to review allocation of existing PPA(s) among Discoms to provide benefit of low cost PPA(s) to Jodhpur Discom which may reduce its input cost."

- 1.9 This observation is advisory in nature and it is for the State Government to consider such allocation. Discom may present its case before the State Government. As far as the present review petition is concerned Discom has neither pointed out any error apparent nor provided any new information which satisfies the conditions for review of the impugned order.

Issue No. (ii): Prompt Payment Rebate

Petitioner's Submission:

- 1.10 There are instances wherein three holidays including Saturday and Sunday fall within the period of seven working days (quite likely in five day week scenario) and the total duration becomes ten days. This causes confusion as according to seven working days the entitlement is for 0.15% while at the same time the consumers also becomes eligible for an incentive of 0.35% since having made payment before ten days of due date.
- 1.11 The incorporation of the concept of seven working days into the billing software is creating practical difficulties. Hence there is a vital need to modify the above mentioned clause.

Commission's Analysis

- 1.12 The Commission has dealt with the issue of Prompt Payment Rebate in its order dated 28.05.2018 and observed as under:

“With regard to prompt payment rebate, it is observed that the existing provision is already clear regarding the prompt payment rebate and does not require any change.”

- 1.13 It is observed that the arguments on the above aspects now submitted by the Petitioner in the review petition are the same as submitted during the earlier proceedings which the Commission has already considered while passing its order. Same point cannot be argued again in the Review petition. Discom has neither pointed out any error apparent nor provided any new information which satisfies the conditions for review of the impugned order.

Issue No. (iii): Definition of Hostels

Petitioner's Submission:

- 1.14 Discom had proposed to add the following clause in the applicability of Non Domestic Tariff schedule:

“Residential spaces with upto 3 rooms or 6 beds, whichever is less, being used as hostel will not be considered as hostel and Domestic Tariff will be applicable to such connections.”

- 1.15 In the Tariff order for FY 2014-15 the Hon'ble Commission had said that the hostels maintained by charitable institutions or attached the educational institutions would be covered in Domestic tariff. It has been observed in some cases where students are living in residential places in the capacity of tenants, the Discom officers at the time of vigilance, have prepared Vigilance Checking Reports and placed the same under Non-Domestic category. This causes a lot of confusion and the consumers have to go through subsequent hassles.

- 1.16 The above mentioned proposal are made so as to bring the clarity in the applicability of Hostels so that the consumers of the Discom are not subjected to such difficulties and uncertainty

Commission's Analysis

- 1.17 The Commission has dealt with the issue of Definition of Hostels in its order dated 28.05.2018 and observed as under:

"With regard to definition of Hostel, the Commission is of view, the proposal will bring in subjectivity and arbitration in implementation. Hence, Commission has not accepted the proposal of Discoms."

- 1.18 Discom have neither pointed out any error apparent nor provided any new information which satisfies the conditions for review of the impugned order

Issue No. (iv): Definition of Industries

Petitioner's Submission:

- 1.19 Discom had proposed the addition of the following definition of Industry without change in any other condition of the respective schedule.

"This tariff shall be applicable to Industrial Consumers and the following consumers but not limited XX.....XX.*

**Industrial consumers are consumers engaged in the physical or chemical transformation of materials, substance or components into new products. The materials, substances or components transformed are raw materials that are products of agriculture, forestry, fishing, mining or quarrying as well as products of other manufacturing activities."*

- 1.20 In many cases the field officials ask the consumers to apply under the NDS category as the type of industry for which the connection is applied for is not mentioned in the "Applicability" for industrial category.

- 1.21 For instance manufacturing of paper plates, paper bowls, water purifying plants etc. do not find any applicability in the industrial category and accordingly the consumers are asked to apply under the NDS category.

1.22 The definition of Industry as per various sources has been shown as under:-

- i. **Oxford Dictionary-** "Economic activity concerned with the processing of raw materials and manufacture of goods in factory."
- ii. **Sec2(j) of the Industrial Disputes Act 1974-** "industry is any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen"
- iii. **MSME Policy-**"The enterprises engaged in manufacture or production of goods pertaining to any industry specified in the first schedule to the industries (Development and Regulation Act, 1951) or employing plant and machinery in the process of value addition to the final product having a distinct name or character or use. The Manufacturing Enterprise is defined in terms of investment in Plant and Machinery"
- iv. **Wikipedia-** "Industry is the production of goods or related services within an economy"
- v. **Cambridge Dictionary-** "The companies and activities involved in the process of producing goods for sale especially in factory or special area"

1.23 As per the gist of the above definitions the following definition is proposed to be inserted in the Tariff for Supply of Electricity to remove the difficulties.

"Industry is an establishment which is engaged in processing of raw material and manufacturing of goods by using equipment operated from electricity."

Commission's Analysis

1.24 The Commission has dealt with the issue of Definition of Industries in its order dt. 28.05.18 and observed as under:

"With regard to definition of industry, the definition as existing is well settled and the Commission is of view, that it does not require any change. Therefore, the Commission has not accepted the proposal of Discoms."

- 1.25 Discom have neither pointed out any error apparent nor provided any new information which satisfies the conditions for review of the impugned order. Instead, the Discom has made a fresh proposal which cannot be considered in the review petition.

Commission's View

- 1.26 The Commission observes that under Section 94 (1) (f) of the Electricity Act, 2003 read with Order XL VII Rule 1 of Civil Procedure Code (CPC), a review of an order can be undertaken only on the following grounds:
- (i) Discovery by the applicant of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or
 - (ii) On account of some mistake or error apparent on the face of the record, or
 - (iii) For any other sufficient reason.
- 1.27 Hon'ble APTEL in its judgement dated 17.04.2013 has culled out various decisions of Hon'ble Supreme Court regarding scope of reviewing of an order. Hon'ble APTEL has noted that review proceedings are not by way of an Appeal and have to be strictly confined to the scope and ambit of Order XL VII Rule 1 of CPC.
- 1.28 In view of judgement dated 17.04.2013 of Hon'ble APTEL and Order XL VII Rule 1 of CPC the Petitioner is not entitled to seek a review of an order passed by the Commission merely for the purpose of re-hearing of the matter and to obtain a fresh decision on the case.

- 1.29 In the present petition, the Petitioner could neither point out any error apparent nor provide any new information which satisfies the conditions for review of the impugned order. Further, the arguments on various aspects now submitted by the Petitioner in the review petition are the same as submitted during the earlier proceedings. The Commission has already considered the submissions now being made and passed its order. Therefore, the review sought by the Petitioner is not admissible.
- 1.30 If the Discom intends to raise such issues afresh the proper course would be to submit proposals at the time of filing of tariff petition with detailed justifications.
- 1.31 The review petition stands disposed of in the above terms.

(Prithvi Raj)
Member

(S.C. Dinkar)
Member

(Shreemat Pandey)
Chairman

ANNEXURE-A

1. Sh. Y.K. Bolia
2. Sh. G.L. Sharma
3. Sh. D D Agarwal
4. Sh. B.M. Sanadhya
5. Sh. Ramesh Chandra Sharma

ANNEXURE-B

1. Sh. Sandeep Singh, Advocate for petitioner
2. Sh. B.M. Sanadhya
3. Sh. G.L. Sharma
4. Sh. D D Agarwal
5. Sh. Ramesh Chandra Sharma