**JOINT ELECTRICITY REGULATORY COMMISSION**

**FOR THE STATE OF GOA AND UNION TERRITORIES**

**GURGAON**

 **Quorum**

Shri M.K. Goel, Chairperson

Smt. Neerja Mathur, Member

 **Review Petition No. 238/2017**

 **Date of Admission: 22.08.2017**

**Date of Hearing: 01.09.2017**

**Date of Order: 28.05.2018**

**In the matter of:**

Review of Cross subsidy Surcharge determination notified in Hon’ble JERC Tariff Order dated 29.05.2017 in Petition No. 222/2017 for UT of Daman & Diu under Regulation 74 of JERC (Conduct of Business) Regulations, 2009.

**And in the matter of:**

Wellknown Polyester Limited

Dabbel Industrial Estate, Co-op Society, Dabhel, Daman. **….. Review Petitioner**

**And in the matter of:**

The Executive Engineer, Electricity Department, Vidyut Bhavan,

Daman & Diu. **…. Respondent**

**Present:**

**For the Petitioner**

1. Ms. Priya Dwivedi, Advocate, Wellknown Polyester
2. Shri Gaurav Nand, Consultant, Wellknown Polyester
3. Shri Rajan Kumar Roy, Team Leader (PTC India)

**For the Respondent**

None

**ORDER**

The Review Petitioner through this Review Petition has sought the review of the impugned Tariff Order dated 29.05.2017 in Petition No. 222/2017 on the issues of:-

1. Cross Subsidy Surcharge
2. Cost of generating stations / plants have not been considered after prudence check and their cross certification have not been referred in the impugned Tariff Order.

The Commission heard the Review Petitioner at length.

The Review Petitioner submitted that the Commission has erred in computing the value of ‘T’ and ‘C’ component in the formula of Cross Subsidy Surcharge as per the New Tariff Policy notified by the Central Government. While calculating the value of ‘T’ component which is the applicable tariff payable by the relevant category, the Commission erred in calculating the tariff payable by the Open Access consumers to the Electricity Department, Daman & Diu for taking out the true value of Cross Subsidy component from the difference of average tariff and average cost of supply.

The Review Petitioner further submitted that the Electricity Department, Daman & Diu is already collecting the demand / fixed charges from all Open Access HT/EHT consumers even when such consumers are procuring the power through Open Access. Further, all the Open Access consumers of Daman & Diu are paying demand / fixed charges on its full contract demand. Thus, the calculation of ‘T’ component for compensating the Electricity Department should be on the basis of difference of tariff in terms of variable energy charges only as the tariff is a two part component (Fixed Charges on contract demand / load plus Energy Charges) among which one part i.e. fixed charges, Open Access consumers are already paying to the Electricity Department.

The Review Petitioner further submitted that many States have calculated Cross Subsidy Surcharge as per National Tariff Policy formula where the respective DISCOMS are not charging fixed charges from the Open Access consumers on their contract demand. Even the recently notified DERC Open Access guidelines has stated in its Open Access Order dated 01.06.2017 that fixed charges would not be levied on the quantum of electricity sought for Open Access.

The Review Petitioner further submitted that Electricity Department is recovering an amount of Rs 112 crores toward fixed charges from the Open Access consumers. Thus, the Electricity Department is required to be compensated only towards the tariff of energy charges applicable for HT consumers. The Cross Subsidy Surcharge shall be calculated in the following manner:-

|  |  |  |  |
| --- | --- | --- | --- |
| **Particulars** | **Revenue****(Rs Crores)** | **Sale** **(MUs)** | **RS/Kwh** |
| Tariff Approved Rates for FY 2017-18 for all HT consumers (including both Fixed & Energy Charges) | 699.95 | 1499.91 | 4.67 |
| Less: Tariff towards Fixed Charges charged by ED, Daman & Diu from all HT/Open Access consumers | 112 |  |  |
| **Tariff Payable (T) by HT Consumers for CSS calculation: T** | 587.95 | 1499.91 | **3.92** |

 The Review Petitioner further submitted that the Commission has notified high Cross Subsidy Surcharge of Rs 0.52/Kwh on Open Access consumers for the FY 2017-18 whereas the earlier Cross Subsidy Surcharge was only Rs 0.28/Kwh for FY 2016-17. This abnormal increase in the Cross Subsidy Surcharge from Rs 0.28/Kwh to Rs 0.52/Kwh has made the Open Access unviable for the consumers of Daman & Diu and also eliminated competition from this territory of Industrial belt of India.

 The Review Petitioner prayed to the Commission to consider the value of ‘T’ in the formula of Cross Subsidy Surcharge after making due adjustment towards the fixed / demand charges recovered by the Electricity Department, Daman & Diu from all HT / Open Access consumers.

 Raising the second issue, the Review Petitioner submitted that the Commission has not undertaken the prudence check for the various charges (Fixed and Variable Charges) of the generators from whom cost of supply has been considered for arriving at the value of ‘C’ for the Cross Subsidy Surcharge determination. Cost of the generator plants has not been considered after prudence check and their cost certification has not been referred in the impugned Tariff Order, which led to drastic reduction in their costing without any costing certification referred in the Tariff Order of Daman & Diu. NSPCL Bhilai’s costing has been reduced drastically in the impugned Tariff Order by reducing the cost towards variable charges by almost 50% of the costing approved in the previous Tariff Order for FY 2016-17. It is requested to review the costing of generators including both fixed and variable charges for the calculation of ‘C’ for cost of supply of power and accordingly Cross Subsidy Surcharge shall be calculated after considering the revised and corrected value of ‘C’ in the formula.

 The Review Petitioner further submitted that value of ‘T’ would be determined as follows:-

Surcharge formula:

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

 Value of ‘T’ would be derived as follows:-

|  |  |  |  |
| --- | --- | --- | --- |
| **Particulars** | **Revenue****(Rs Crores)** | **Sale** **(MUs)** | **Rs/Kwh** |
| Tariff Approved Rates for FY 2017-18 for all HT consumers (including both Fixed & Energy Charges) | 699.95 | 1499.91 | 4.67 |
| Less: Tariff towards Fixed Charges charged by ED, Daman & Diu from all HT/Open Access consumers | 112 |  |  |
| **Tariff Payable (T) by HT Consumers for CSS calculation: T** | 587.95 | 1499.91 | **3.92** |

 So, ‘T’ = 3.92, shall be taken for the calculation of Cross Subsidy Surcharge

 Hence, corrected Cross Subsidy Surcharge as per new Tariff Policy would be calculated as follows:-

|  |  |  |
| --- | --- | --- |
| **Cross Subsidy Surcharge** | **Unit of Measurement** | **HT & EHT Industry** |
| T | Rs Per Kwh | 3.92 |
| C | Rs Per Kwh | 3.69 |
| D | Rs Per Kwh | 0.38 |
| L | % | 1.81% |
| R | Rs Per Kwh | 0 |
| **Surcharge** | **Rs Per Kwh** | -0.21 |

**Hence, the Cross Subsidy Surcharge for FY 2017-18 after making requisite correction in the calculation would be Zero (0) for Open Access Consumers of Daman & Diu.**

 The Review Petitioner further submitted that errors are apparent on the face of the record and warrants review of the impugned Tariff Order dated 29.05.2017.

 The Commission has considered the submissions made by the Review Petitioner. The Commission has also examined the records placed before it along with relevant provisions of the Electricity Act, 2003 and Rules and Regulations made thereunder and the impugned Tariff Order dated 29.05.2017.

 The Commission‘s Power to review its own Orders flow from Section 94(1)(f) of the Electricity Act, 2003 and are the same as those conferred on a Civil Court under Order 47, Rule 1 of the Code of Civil Procedure (CPC).

Section 94 of the Electricity Act, 2003 provides that:

*“The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code or Civil Procedure,1908 (5 of 1908) in respect of the following matters, namely:-*

*…. (f) reviewing its decisions, directions and orders;”*

 Order 47, Rule 2 of CPC mandate that a Court of review may allow a review on three specific grounds which are as under

1. *If there are mistakes or errors apparent on the face of the record, or*
2. *On discovery of new and important matter or evidence which, after due diligence was not within knowledge of the aggrieved person or evidence could not be produced at the time of making the order, or*
3. *For any other sufficient reasons which are analogous to the above two grounds.*

Under Order 47, Rule 1, CPC Order / judgment may be opened to review inter-alia, if there is a mistake or an error apparent on the face of record. An error which is not self –evident has to be detected by process of reasoning and such an error can hardly be said to be an error apparent on the face of the record, justifying the Court to exercise its power of review under the above said provisions. However, an error must be one which speaks for itself and is glaring and difficult to be ignored. A review Petition has a limited purpose and cannot be allowed to be an appeal in disguise and it cannot be exercised on the ground that the decision was erroneous on merits. But simultaneously the materials on record, which on proper consideration may justify the claim, cannot be ignored. The law has made clear the distinction between what is an erroneous decision and an error apparent on the face of the record.

 The Commission has also re-examined the impugned Tariff Order on the issues raised in this Review Petition and has noted that the Commission had calculated the Cross Subsidy Surcharge using the formula prescribed in the new Tariff Policy, 2016:

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

 T is the Tariff payable by the relevant category of consumers, including reflecting the Renewable Purchase Obligation;

 C is the per unit weighted average cost of power purchase by the Licensee, including meeting the Renewable Purchase Obligation;

 D is the aggregate of transmission, distribution and wheeling charge applicable to the relevant voltage level

 L is the aggregate of transmission, distribution and commercial losses, expressed as a

 percentage applicable to the relevant voltage level

 R is the per unit cost of carrying regulatory assets.

 The Cross Subsidy Surcharge compensates the Distribution Licensee for loss of cross subsidy, which is already built into the tariff. The above formula calculates the per unit value of difference between the average tariff realization and cost to supply electricity to a consumer at a particular voltage level to arrive at a per unit value of cross subsidy surcharge (per unit amount contributed by the subsidising category to the subsidised category).

 The formula has been applied by the Commission in the manner prescribed in the Tariff Policy, where T is the tariff payable and hence consists of both variable and fixed charges.

 On the second issue regarding the prudence check for the various charges of the generators, it has been noted that while approving the power purchase cost for the FY 2017-18, the Commission had considered the relevant Tariff Orders issued for generating entities by CERC and JERC, operational norms specified for the generating stations in the CERC/JERC Tariff Regulations, share of the Distribution Licensee in the generating station, most recent variable cost of the generating stations and other costs based on the past trends. The per unit power purchase cost projected by the Commission and actual power purchase can change due to

1. Revision in the Tariff Order issued by the CERC/JERC;

2.Variation in the PLF of the plant (which will impact the per unit fixed cost of the generating station);

3. Change in fuel cost; and / or

4. Past arrears if any.

 In view of the above, it is clear that the Commission has correctly determined the Cross Subsidy Surcharge as per the formula prescribed in the Tariff Policy, 2016. The Commission is not inclined to accept the contentions of the Review Petitioner which are factually and legally in-correct and also lacks merit. The Commission is of the considered view that the Review Petitioner has no case on the issues raised in this Review Petition. The Commission further noticed that there is neither any error apparent on the face of the record nor any new matter or evidence was produced by the Review Petitioner which was not within the knowledge of the Review Petitioner at the time of making the Order. The Review Petition is therefore liable to be dismissed. Accordingly, the Review Petition is dismissed.

 Ordered accordingly.

 Sd/- Sd/-

**(NEERJA MATHUR) (M.K. GOEL)**

 **MEMBER CHAIRPERSON**

Certified Copy

Sd/-

(Rajesh Dangi)

Secretary