

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 8 of 2021

Case of Adani Electricity Mumbai Limited (Distribution) seeking clarification on applicability of Tariff to Hotels pursuant to Government of Maharashtra Resolution dated 3 December, 2020

Coram

Sanjay Kumar, Chairperson
I.M.Bohari, Member
Mukesh Khullar, Member

Adani Electricity Mumbai Limited (Distribution)	:Petitioner
Vs	
1. Maharashtra State Electricity Distribution Company Limited	:Respondent No.1
2. Brihanmumbai Electric Supply and Transport Undertaking	:Respondent No.2
3. The Tata Power Company Limited (Distribution)	:Respondent No.3
4. Mindspace Business Parks Pvt Limited	:Respondent No.4
5. Gigaplex Estate Private Limited	:Respondent No.5
6. KRC Infrastructure and Projects Pvt Ltd	:Respondent No.6
7. Nidar Utilities Panvel LLP	:Respondent No.7
8. Maharashtra Airport Development Company Limited	:Respondent No.8
9. Industries, Energy and Labour Department, Government of Maharashtra	:Respondent No.9

Appearance

For Petitioner: -	Shri. Vivek Mishra (Rep)
For Respondent No.1	Shri. Ashish Singh (Adv)
For Respondent No.2	Shri. N.N Chougule (Rep)
For Respondent No.3	Shri. Peyush Tandon (Rep)
For Respondent No.4, 5 &6	Shri. Nitin Chunarkar (Rep)
For Impleaded Respondent No.7	None
For Impleaded Respondent No.8	Shri Vasant Pande (Rep)
For Impleaded Respondent No.9	None

ORDER

Date: 8 April, 2021

1. Adani Electricity Mumbai Limited (Distribution) (**AEML-D**) has filed this Petition being Case No.8 of 2021 on 30 January, 2021 under Section 86 (1) (a) read with Section 62 (1) (3) of Electricity Act, 2003 (**EA, 2003**) and Regulation 13 the of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 and MERC Order in Case No. 325 of 2019 dated 30 March 2020 with respect to MERC (Multi Year Tariff) Regulations 2019 seeking clarification on applicability of Tariff to Hotels pursuant to Government of Maharashtra (**GoM**) Resolution dated 3 December 2020.

2. **AEML-D's main prayers are as under:**

a) *In view of the Government Resolution Number: TDS2020 / 9 / Pr. Kr. 502 /Tourism dated 03.12.2020, the Hon'ble Commission may clarify whether AEML Distribution can re-classify Hotels, meeting the criteria as specified in the said GR of Govt. of Maharashtra, under 'LT III: LT- Industry' or 'HT I: HT –Industry', as the case may be, for the purpose of charging electricity tariff.*

b) *In the event, the Hon'ble Commission approves that such hotels need to be charged Industrial tariff, then any under-recovery of revenue may be allowed as pass through, during Mid-Term Review.*

c) *Hon'ble Commission may provide any other clarification or direction as the Hon'ble Commission deems fit.*

3. **AEML-D in its Petition has stated as follows:**

3.1 This Petition has been filed seeking clarification on applicability of Tariff to Hotels registered with Central Government's Department of Tourism in view of the Government of Maharashtra's Resolution (**GR**) TDS2020/9/Pr. Kr. 502 / Tourism dated 03 December 2020 applicable from 1 April 2021.

3.2 The Commission has approved the Tariff Schedule for FY 2020-21 to FY 2024-25 vide the Multi Year Tariff (**MYT**) Order dated 30 March 2020 in Case No. 325 of 2019. As per the approved Tariff schedule, the Commission has categorized hospitality, leisure, hotels/restaurants, and guest houses under 'LT II: LT – Non-Residential or Commercial' or 'HT II: HT- Commercial' category of the Tariff and accordingly AEML-D has applied the said Tariff to all such usage depending upon LT or HT connection.

3.3 Pursuant to the decision taken in the Cabinet of GoM on 5 November 2020, the Department of Tourism and Cultural Affairs, GoM vide Resolution TDS2020 / 9 / Pr.

Kr. 502 / Tourism dated 3 December, 2020 has resolved that electricity and other charges and taxes shall be levied on hotel businesses at industrial rates.

- 3.4 The GR states that electricity rates on all hotels which are registered with the Department of Tourism, Government of India (**GoI**) are to be levied at industrial rate. It is further stated that the hotels which are not registered with the tourism department, all the said taxes /charges shall be levied at industrial rates, only after compliance with the norms of basic minimum standards, which are to be developed by an Expert Committee.
- 3.5 After notification of the aforesaid GR, AEML-D, being the Distribution Licensee, is receiving various enquiries/communications from hotel operators for applicability of Tariff post 1 April, 2021.
- 3.6 Regulation 13 of the MERC ((Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 allows Distribution Licensee to classify or reclassify a consumer into Commission's approved categories based on the 'usage of supply' by such consumers. As per the MYT Order dated 30 March, 2020, in Case No. 325 of 2020 for AEML-D, the presently approved Tariff category for hotels / restaurants is Commercial. Accordingly, AEML-D is charging electricity Tariff to such premises at commercial rates.
- 3.7 In view of the aforesaid, it is requested to give clarity whether AEML-D should re-classify the hotels that are meeting the criteria as specified in the said GR of GoM, under LT/HT Industry and charge tariffs accordingly.

4. Tata Power Co. Ltd (Distribution) (TPC-D) in its submission dated 2 March, 2021 has stated that:

- 4.1 It is also seeking clarification for applicability of industrial Tariff to the hospitality sector instead of commercial Tariff in lieu of the GoM's GR dated 3 December 2020 and is supporting the stand taken by AEML-D.

5. Brihanmumbai Electric Supply & Transport Undertaking (BEST) in its submission dated 5 March, 2021 has stated that:

- 5.1 As per the MYT Order for BEST, the present approved tariff category for hotels / restaurants is Commercial. Accordingly, BEST is charging electricity tariff to such premises at commercial rates.
- 5.2 As per the GR dated 03 December 2020, it seems that GoM has kept the eligibility for industrial tariff only for the registered hotels and there is no clarity about electricity Tariff, electricity duty (ED) and tax on sales of electricity (ToSE) for other hotels / restaurants . At present, it is very difficult for the Distribution Licensee to reclassify only registered hotels into industrial Tariff category even though the usage of supply of

other hotels / restaurants are same. In view of above, BEST supports the proposal of AEML-D.

5.3 If the Commission approves that such hotels need to be charged industrial Tariff, then any under-recovery of revenue may be allowed as pass through, during Mid-Term Review.

6. Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) in its submission dated 23 March 2021 has stated that:

6.1 The Commission has approved the Tariffs after considering the expected increase in sales including resultant power purchase and increase in costs of operations. Supply to Hotel has been considered under the commercial category in the MYT Order for the 4th control period. The sales figures are based on historical trends of electricity consumption by hotels which are under commercial category. Therefore, any deviation from the approved methodology of revenue recovery will result into under recovery of the revenue requirement. This under recovery would again be required to be passed on to the consumers during truing up exercise leading to increase in their Tariff without them being at fault.

6.2 A small number of consumers cannot have the benefit at the cost of other common consumers. Such modification / changes in the MYT structure would affect the different classes of consumers as the additional burden will get passed on to them by increasing their Tariffs.

6.3 The Commission in its Order dated 23 September , 2008 in Case No. 31 of 2008 had ruled as under:

“.....Classification under Industry for tax purposes and other purposes by the Government of Maharashtra shall apply to matters within its jurisdiction and have no bearing on the tariffs determined by the Commission under the EA 2003.”

6.4 The Commission while deciding the tariff categorisation of IT and ITeS Units had referred to an APTEL Judgment dated 12 February, 2020 in Appeal No. 337 of 2016 wherein it was ruled that tariff categorisation cannot be based on any certification under Policy and it should be based on criteria specified under Section 62 (3) of the EA, 2003. Accordingly, the Commission has removed the requirement of having certification under GoM Policy for claiming Industrial Tariff for IT and ITeS Units.

6.5 Thus, any decision by GoM should not have any bearing on the Tariff determined by the Commission as per the provisions of the EA, 2003.

6.6 In order to balance the revenue from commercial category as approved by the Commission, GoM needs to provide subsidy to the extent of financial impact of hotels being charged at industrial Tariff so that the impact of the same will not get passed on to the other consumers.

7. Maharashtra Airport Development Company Ltd. (MADC) in its submission dated 24 March, 2021 has stated that:

7.1 There are no hotels in MIHAN Area under MADC Deemed Distribution License jurisdiction and MADC is not affected party in this Petition.

8. Mindspace Business Park Pvt. Ltd, Gigaplex Estate Pvt. Ltd and KRC infrastructure and Projects Pvt. Ltd in its submission dated 26 March, 2021 has stated that:

8.1 KRC deemed Distribution Licensees operate in limited SEZ area and they have consumer base of IT/ITeS consumers and restaurant services which in turn are serving to the employees working in the IT/ ITeS companies. KRC deemed Distribution Licensees are supporting the stand of AEML-D for reclassification of the consumers pertaining to hotels / restaurant.

9. At the time of E hearing held on 30 March 2021, Petitioner and Respondents reiterated their submission made in the Petition/Replies.

Commission's Analysis and Ruling

10. Through the present Petition AEML-D is seeking clarification regarding implementation of the GoM's GR dated 3 December, 2020 which sought levy of industrial tariff to hotel businesses from 1 April, 2021 onwards. This issue being common to all Distribution Licensees in Maharashtra, the Commission directed AEML-D to implead all of them along with Energy Department of the GoM (being Department dealing with energy related issues).

11. All Distribution Licensees have pointed out that the Commission in the MYT Orders have categorised hotel business under commercial category and accordingly they are levying commercial tariff for electricity consumption by hotel businesses. In case, GoM's GR dated 3 December, 2020 is to be implemented and industrial tariff is to be levied then there would be shortfall in revenue and the Commission should allow such shortfall in ARR along with carrying cost. They have also stated that tariff determination under the EA, 2003 is within the domain of the Regulatory Commission and in case Government wishes to provide concession to certain class/category of consumers then as stipulated under Section 65 of the EA, 2003, the Government has to provide subsidy in advance to Distribution Licensees for compensating loss of revenue due to the re categorisation based on the GoM's GR.

12. The crux of the matter in the Case is the manner in which the GoM's GR is to be made applicable, therefore, the Commission is addressing the same. The Commission notes that the GoM has notified the Resolution dated 3 December, 2020 to rejuvenate the

hospitality industry from the adverse impact caused due to COVID-19. Relevant extract of the Resolution is as below:

“3. The tourism sector is capable of growing annually at the rate of 8.5 percent and this sector can add approximately 55 billion dollars to the gross income of the State as well. Also, the sector can generate 60 lakh new jobs till the year 2030. Hospitality sector is the most important element of the tourism business. The covid-19 pandemic has adversely affected this sector and strong measures are required to revive this tourism sector. In this regard, the Government was considering to levy electricity rate, electricity charges, water bill, property tax, development tax, additional floor space index and non-agricultural tax on the hotel business registered with the Central Government’s Department of Tourism at Industrial rate from 1 April, 2021 in the first phase:

Government Resolution:-

1) Electricity rate, electricity charges, water bill, property tax, development tax, additional floor space index and non-agricultural tax to be levied at industrial rate on the hotel businesses registered with the Central Government's Department of Tourism, starting from 1 April, 2021.

2) Taxes/charges to be levied at industrial rate on the hotel businesses not registered with the Central Government's Department of Tourism after complying with the norms specified to obtain Basic Minimum Standards. An experts' committee to be formed accordingly and norms for the State to be finalized within two months.”

13. The Commission notes that above GR deals with electricity rates and charges applicable to hotel business along with other applicable taxes and levies. Taxes and Duties are levied on electricity consumption as per GoM’s notification. The Commission through various Orders has already clarified that issue related to taxes and duties are within the domain of the Government and the Commission does not have any role except allowing Distribution Licensee to levy taxes and duties in electricity bill as per rate stipulated in the Government’s notification. Therefore, the Commission is not inclined to go into the merits of the issue relating to taxes and duties. Distribution Licensees are free to approach the GoM for any clarification if they have any doubt about rate of taxes and duties to be made applicable to hotel business.
14. On the issue of electricity Tariff, the Commission has issued MYT Orders on 30 March, 2020 applicable to respective Distribution Licensees, in exercise of the powers vested in it under Sections 61, 62 and 86 of the EA, 2003 after following due public consultation process. The Commission in its MYT Orders has classified the hotel business under non-residential or commercial category. Hotel business has been categorised under ‘non-residential or commercial’ category for the last many years.

15. It is Pertinent to note that the Tariff categorisation and Tariff determination is not a mechanical exercise. The Commission has to match revenue that can be earned through sale of electricity to different category of consumers with approved annual revenue requirement of Distribution Licensee. Once Tariff Order is issued based on certain consumer categorisation, then subsequently removing any class of consumers from one category and putting it into consumer category with lower tariff would create revenue shortfall for Distribution Licensee. Further this Revenue shortfall would need to be compensated with the associated carrying cost of the shortfall amount. Eventually it would mean increasing the tariffs of some other categories. Hence, Commission doesn't undertake recategorization of consumers mid-term, post issuance of Tariff Order.
16. Further, Hon'ble the APTEL in its judgment dated 31 January 2011 in Appeal No. 41, 42 & 43 of 2010 has made its absolutely clear on the tariff determination powers of the Regulatory Commission under the EA 2003 vis-a-vis any policy direction of the State Government in tariff determination process. Relevant part of said Judgment is reproduced below:

*“28. It cannot be debated that the determination of tariff is one of the core functions of the State Commission which is to be done in an independent manner. These functions have to be discharged by the State Commission by following the provisions of the Electricity Act, 2003 and the Regulations made thereunder. **It is settled law that the State Commission alone has the powers to determine the tariff.** In this context, a reference may be made to the Statement of Objects and Reasons of Electricity Act, 2003 for the purpose of appreciating the legislative scheme. The same is as follows:*

“1.3 Over a period of time, however, the performance of the State Electricity Boards has deteriorated substantially on account of various factors. For instance, powers to fix tariffs vest with such Electricity Boards, they have generally been unable to take decisions on tariff in a professional and independent manner and tariff determination in practice has been done by the State Governments. Cross subsidies have reached unsustainable levels. To address this issue and to provide for distancing of Government from determination of tariffs, the Electricity Regulatory Commission Act was enacted in 1998. It created the Central Electricity Regulatory Commission and has an enabling provision through which State Governments can create a State Electricity Regulatory Commission....”

“ 3 With the policy of encouraging private sector participation in generation, transmission and distribution and the objective of distancing the Regulatory Commission, the need for harmonising and rationalising the provisions in the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1998, in a new self contained comprehensive legislation arose....”

Thus, the main object and reason of the reform legislation was to distance the role of the Government in fixation of tariff and to allow tariff determination by an independent regulatory authority which will follow a transparent process. This is at the very core of the reform legislation.

.....

33. *In the aforesaid legislative scheme, we have to appreciate the scope and object of the Electricity Act 2003 and the purported directions issued by the State Government thereunder. Section 108 of the Act is a general section without any non-obstante clause and so it cannot be permitted to override a special provision relating to the tariff as contained in section 61 of the Act, 2003. **In the legislative scheme relating to tariff, the role of State Government is only envisaged on the issue of subsidy as provided under section 65 of the Act.***

34. *The law provides that if the State Government wishes to give to any category of consumers a tariff lower from that which is determined by the State Commission, **the State Government can do so subject to the payment of subsidy in advance.** In other words, the law provides that the State Government's obligation to pay subsidy cannot be decided by a policy direction under section 108 of the Act, 2003.*

35. *Of course, the State Commission will have the authority to consider the suggestions of the State Government while determining the tariff but not in terms of directions under section 108 of the Act. **As a matter of fact, the State Government is a major stakeholder in the power sector. Therefore, its suggestions have to be considered and due weightage should be placed on the same. However, to proceed on the basis that the State Commission is bound to follow the same goes against the scheme of the Electricity Act, 2003. This issue has already been decided by this Tribunal and the Hon'ble Supreme Court.*** (emphasis added)

The EA, 2003 envisages that any suggestion by the Government on Tariff related issues needs to be deliberated by the Commission during the tariff determination proceedings. After considering such suggestions and upon following due public consultation process, the Commission issues Tariff Orders as per provisions of EA,2003 and Regulations framed there under. Once Tariff Order has been issued, if the Government wishes to provide any concession to any class of consumer, the Government can do so by providing advance subsidy under Section 65 of the EA, 2003.

17. On the basis of the analysis as above, the Commission in its Order dated 31 December 2019 in Case No.334 of 2019 (Indorama Synthetic Vs MSEDCL) has rejected claim of the Petitioner in that case asking for waiver of cross-subsidy surcharge as stipulated under the Textile Policy of the GoM as no advance subsidy was assured by the GoM. Relevant part of the Order is reproduced below:

“25. The Commission in its Order dated 3 November 2016 itself has determined the CSS tariff under Section 62 of EA which is applicable to Open Access Consumers

situated in the area of MSEDCL. Pursuant to the decision of the GoM about Textile Industry, the matter of providing subsidy under Section 65 (as referred in Clause 12 and 13 of the Textile Policy issues on 15 February, 2018) was clearly the prerogative of the State Government. Thus if there is no GR from GoM for granting subsidy Section 65 in lieu of CSS, it is not possible for MSEDCL to implement this exemption.

26. In view of the aforesaid discussions, the Commission does not find any merit in the claims of IRSL that the Textile Policy directly entitles them for CSS exemption and hence the Commission thinks it fits to rule that the Demand Notice issued by MSEDCL is legal/valid.” (emphasis added)

18. In view of the settled legal position, the Commission rules that Distribution Licensees shall continue to levy commercial tariff to hospitality businesses as approved in their respective Tariff Orders unless the GoM provides advance subsidy under Section 65 of the EA,2003. The GoM can always participate in the next tariff determination Public Consultation Process with its proposal for re-categorisation of hotel businesses for the purpose of electricity Tariff which the Commission will duly consider as per applicable statutory provisions.
19. The Commission also notes that the GoM has come out with above referred GR with the intention of supporting hotel businesses during the period of Covid-19 pandemic. In this regard, the Commission would like to mention that it has already provided following reliefs to industrial and commercial category (hotels are part of commercial category) which must have helped these consumers in the period of Covid-19 pandemic:
 - a. Vide MYT Order dated 30 March, 2020, the Commission has revised the Tariff for control period of FY 2020-21 to FY 2024-25. In the electricity tariff which has becomes applicable from 1 April, 2020, Tariff has been reduced by 10 to 20% for the commercial category for all major Distribution Licensees in the State.
 - b. Further, considering the difficulties faced due to the pandemic, in the same MYT Orders, the Commission approved a moratorium on payment of fixed charges of the electricity bill by consumers under industrial and commercial category for next three billing cycles beginning from the lockdown date of 25 March, 2020. Also 1% rebate to the consumers for paying entire moratorium in one go has been allowed vide Practice Direction dated 9 May, 2020.
 - c. The Commission has also allowed industrial and commercial consumers that do not have AMR/MRI billing, to pay only a token amount based on 10 % of the average energy consumption for the premises under lockdown subject to reconciliation with the actual meter readings.
 - d. Post lockdown, to boost up/ ramp up the business of industrial/ commercial consumers so as to bring them back to normalcy, vide its Practice Directions dated

21 May, 2020 and 31 July, 2020, the Commission has allowed revision in Contract Demand up to 3 occasions for HT industrial and HT commercial consumers subject to curtailment of load factor incentive for 3rd revision and up to 2 occasions to LT industrial and LT commercial consumers in a billing cycle for a period up to 31 March, 2021.

- e. Considering the difficulties faced by the consumers in maintaining power factor due to lockdown which resulted into heavy penalty/ increased bill amount, the Commission vide its Order dated 13 Nov 2020 has provided some reliefs so as to reduce such penalty amount to the HT/LT consumers who are maintaining power factor within desirable range during pre-lock down month.
- f. In addition to above, Distribution Licensees have been allowed to extend any further concessions as part of their business needs from out of their "Return on Equity" amount or any other own "Reserve" that they have built in their accounts over time.

Thus, the Commission has proactively provided relief to the hotel business also. Any further relaxation to any of the consumer category would have adverse impact on other category of consumers as loss of revenue due to such relaxation will be passed on to them with associated carrying cost so as to allow full recovery of ARR to the Distribution Licensees which is not possible prior to the mid- term review and without mandated Public Consultation Process.

20. Hence, the following Order.

ORDER

1. Case No 8 of 2021 is allowed with following clarifications.
2. Taxes and duties to be levied in electricity bill is within the domain of the Government. The Distribution Licensees are free to approach the Government of Maharashtra for any clarification if they have any doubt about the rate of taxes and duties to be made applicable to the hotel business.
3. Distribution Licensees shall continue to levy commercial Tariff to hospitality business as approved in their respective Tariff Orders unless the Government of Maharashtra provides advance subsidy under Section 65 of the Electricity Act, 2003 on account of the reduced tariff amount due to consideration of hotel business from Commercial to Industrial category.

4. The Consumers, Government of Maharashtra or the Distribution licencees are at liberty to approach the Commission during the Mid Term Review for reclassification of tariff of hotel business from Commercial to Industrial category.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Abhijit Deshpande)
Secretary


MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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