

BEFORE THE FORUM
FOR REDRESSAL OF CONSUMER GRIEVANCES
IN SOUTHERN POWER DISTRIBUTION COMPANY OF A.P LIMITED TIRUPATI

On this the 17th day of May' 2019

C.G.No:286/2018-19/Kurnool Circle

Present

Sri. A. Jagadeesh Chandra Rao
Sri. A. Sreenivasulu Reddy
Sri. D. Subba Rao
Sri. Dr. R. Surendra Kumar

Chairperson
Member (Finance)
Member (Technical)
Independent Member

Between

M/s.TGV SRAAC limited,
6-2-1012, 2nd Floor,
TGV Mansion,
Khairatabad,
Kurnool -Dist .

Complainant

AND

1.Chairman & Managing Director/APSPDCL/Tirupati
2. Chief General Manager/O/Tirupati
3.Senior Accounts Officer/O/Kurnool
4. Superintending Engineer/O/Kurnool
5. Chief General Manager/RAC/Tirupati

Respondents

* * *

ORDER

1. Complainant presented this compliant before the Hon'ble Electricity Regulatory Commission and the same was returned with a direction to approach this Forum for redressal of their grievance.
2. The case of the complainant is that respondents filed tariff proposals for the F.Y. 2018-19 before Hon'ble APERC for approval. There after a public notice was issued calling for views/objections/suggestions from all the stake holders. Complainant has filed objections vide O.P. No.61 of 2017. Again suggestions were filed on 12.02.2018 and 05.03.2018.

There after the Hon'ble APERC heard the parties. The complainant and various industrial consumers are requesting the Hon'ble Commission to consider categorizing Chloro Alkali industries under HT-1 (B) energy intensive industrial category on par with Ferro Alloys Industries as 70% of production cost is towards electricity consumption and power is also one of the raw materials. Earlier also a similar request was made in pursuant of that request. The Hon'ble Commission directed both the DISCOMS to constitute a committee of experts

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to identify the criteria/data base on which the energy intensive industries can be classified to extend concessions in Tariff in its Tariff Order for the F.Y. 2016-17.

Accordingly a committee was constituted and committee recommended that industries have to comply two conditions to include any industry as power intensive industry and to categorize under HT -1 (B). They are:

- “a) *The total electricity charges of any plant/industry are beyond 30% of total expenditure of the plant/industry and*
- b) *The load factor shall be more than 70% “*

Complainant company is fulfilling the above conditions laid down by the committee and requested the Hon’ble Commission to include the petitioner company in the category of Energy Intensive Industry under HT - I (B). Complainant also filed the particulars of cost of energy as well as total expenditure for the F.Y. 2014-15, 2015-16 and 2016-17 in a tabular form.

S. No	Particulars	2016-17	2015-16	2014-15
1	Electricity Purchased from APSPDCL	19808.79	23293.07	19357.57
2	Electricity purchased from APGPCL	408.99	417.15	380.77
3	Electricity Purchased from IEX (Open Access)	4372.03	346.84	1277.16
4	Cost of captive Electricity generation	7328.09	4344.81	5389.97
	Total Electricity Charges :	31917.90	28401.87	26405.77
	Total Expenditure of petitioner	87305.42	78309.70	74493.11
	Percentage	36.56	36.27	35.45

The Hon’ble Commission was pleased to pass Tariff Orders on 27.03.2018

“Both the DISCOMS shall examine the request of the above industries to be brought within the category of HT-1 (b) – Energy Intensive Industries with reference to the conditions identified by the committee of experts constituted by the DISCOMS and report to the commission within three months from the date of this order whether the said industries deserve such change of categorization. If the industries are found to satisfy the criteria/data for fulfilment of the identified conditions, the change of categorisation as requested will be open for consideration. If the conditions are not fulfilled, the present categorization may have to continue. All similar requests shall also be dealt with similarity.”

After passing of the above said tariff order by the Hon'ble Commission complainant again submitted the relevant data with relevant enclosures to the Licensee for change of category. But categorization has not changed till date inspite of fulfilling the conditions laid down by the committee.

Therefore complainant prays to direct the respondents to change the category of the petitioner's company from HT - 1 (A) to HT - 1 (B) industry with effect from 01.04.2018 onwards duly revising the bills.

3. Respondent No.5 filed written submissions stating that when the complainant filed objections for their proposed tariff for retail supply business for F.Y 2018-19 they have filed reply stating that the subject matter is subjudice of APTEL ("with reference to the company's request for inclusion in the category of Energy Intensive Industry ").

After hearing the proposals and objections the Hon'ble Commission passed an order on tariff for retail sale of electricity for F.Y.2018-19. In response to the earlier request of complainant company and other similar placed consumers the Hon'ble Commission directed the DISCOMS to identity criteria/ data based on which energy intensive industries can be so classified to extend any concessions/ benefits by the electricity industry for the ensuing year in Para 140 of Tariff Order for F.Y 2016-17. Accordingly a committee was constituted and committee presented its report stating:

"If any consumer represents for inclusion into HT Cat - 1 (B) duly fulfilling the following two conditions, such industry (not the consumer) will be considered for proposing to include in the next filings.

- i) *The total electricity charges of any plant/industry is beyond 30% of total expenditure of the plant/industry.*
- ii) *The load factor shall be more than 70% "*

The complainant company filed an appeal vide appeal No.141/2017 in APTEL for non inclusion of their industry in the category of energy intensive industries. They have filed counter affidavit stating that the electricity charges paid to APSPDCL by the company is 26% for F.Y.2014-15 and 29.74 % for the F.Y. 2015-16 in the total expenditure incurred by the company. Percentage of electricity charges paid to APSPDCL is less than 30% of total expenditure which

is below the criteria of the committee formed for inclusion of industries in the list of HT category - 1 (B).

The Hon'ble Commission directed DISCOMS to examine the request of industries to be brought within the category of HT - Cat 1 (B) energy intensive industries with reference to the conditions identified by the committee of experts constituted by DISCOMS and report to the commission within 3 months from the date of the order whether the said industry deserves such change of categorization in Para 91 of Tariff Order for F.Y. 2018-19. The report on energy intensive industries was submitted to Hon'ble APERC.

The analysis of the information relating to complainant Company is as follows:

Year	CMD in KVA	RMD in KVA	APSPDCL Sales in Units (Per Annum)	Load Factor (Sales in units/CMD or RMD whichever is higher $\times 24 \times 365 \times 100$)	CC Charges in Rs. Crs. for year	Total year expenditure in Crs.	% of Electricity Charges
2016-17	52500	50724	300410073	65.32	185.32	873.05	21.23
2017-18	43000	50796	182445059	41.00	129.85	1005.50	12.91

As seen from the above table, the petitioner company has not met the conditions laid down by the committee.

4. Respondents No.2 and 4 also filed written submissions. Respondent No.1 did not choose to file any written submissions.
5. The point for determination is whether the complaint company is entitled to be included as power intensive industry in HT- 1 (B) category?

The counsel of the complainant argued that as per the directions of Hon'ble Commission a committee was constituted by both the DISCOMS. The committee reported that the industry which incurs more than 30% of total expenditure of the plant towards electricity charges and when the load factor is more than 70%, then those industries are entitled to be treated as power intensive industries. Licensee also issued a questionnaire calling for the information of the units purchased from APSPDCL and others separately, number of units consumed from captive generation, total expenditure of the plant and total turnover or revenue for the sale of the end product for the F.Y. 2014-15 and 2015-16. The appeal filed by the complainant vide Appeal No.141/ 2017 before APTEL is for non-inclusion of their industry in energy intensive industry

for the F.Y. 2017- 18 this complaint pertains to F.Y. 2018 - 19. So pending appeal is not a bar for deciding this case. They are entitled to file the present complaint. The committee report did not specifically state that power consumed by the complainant industry must be more than 30 % of total power expenditure incurred by the complainant industry towards purchase of electricity from the DISCOM. They have also issued a tabular form in respect of total expenditure incurred by the industry towards cost of energy for the F.Y. 2015-16, 2016-17 and 2017-18 and the percentage shows that the expenditure is 36.27, 36.56 and 39.11 respectively. They have originally presented a complainant before Hon'ble Commission. The receiving officer returned the complaint with a direction to present the complaint before this Forum on the ground that request for change of category lies with the Forum. So the Forum is competent to decide this issue.

On the other hand GM representing CGM/RAC/Tirupati stated that already an appeal was filed by the complainant before Hon'ble APTEL for non-inclusion of the industry in the Tariff Order. So the matter is subjudice, it is better to wait for the disposal of the appeal. He also further argued that according to the committee's report both the conditions i.e. the total electricity charges paid to the ASPSDPCL shall be more than 30% and the load factor shall also be more than 70%. But in this case as per the analysis of the information provided by the complainant the percentage of electricity charges paid to the licensee is 21.23 % for the F. Y. 2016-17 and 12.91 % for F.Y.2017-18 and load factor was 65.32 % for the F.Y. 2016-17 and 41% for the F.Y. 2017-18 respectively. So complainant has not fulfilled both the conditions recommended by the committee. He also further argued that the committee's report was placed before Hon'ble Commission and it is for the Hon'ble Commission to decide whether the committee's recommendation has to be accepted or not. The Hon'ble Commission has not yet accepted the committee's report and issued directions to include the complainant company in HT- 1 (B) category. So the complainant is not entitled for inclusion of its industry under HT-1 (B) only basing on the committees recommendation which was not yet accepted by the Hon'ble Commission.

At first instance after hearing of submissions of both the parties on 29.01.2019 the matter was posted for orders. Subsequently CGM/RAC filed a written application on 06.02.2019 stating that the grievance similar to this case is pending before Hon'ble APTEL. So it is appropriate to wait till the final orders passed by APTEL before finalising their grievance. Accordingly the same was intimated to the complainant and its counsel and they insisted for further hearing.

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Accordingly the matter was again heard on 27.03.2019. The learned counsel for complainant stated that this matter may be disposed and this subject matter is different from the subject matter before Hon'ble APTEL. Both the parties reiterated their contentions.

The Commission's view at page 88 of Retail Supply Tariffs 2018-19 is as follows:

"Both the DISCOMS shall examine the request of the above industries to be brought within the category of HT-1 (b) –Energy Intensive Industries with reference to the conditions identified by the committee of experts constituted by the DISCOMS and report to the Commission within three months from the date of this order whether the said industries deserve such change of categorization. If the industries are found to satisfy the criteria/data for fulfilment of the identified conditions, the change of categorization as requested will be open for consideration. If the conditions are not fulfilled, the present categorization may have to continue. All similar requests shall also be dealt with similarly."

The above portion of the Tariff Order issued by the Hon'ble Commission categorically stated that if the industries found to satisfy the criteria of fulfilment of conditions recommended by the committee their request for change of category is open for consideration. But did not state that if the industry satisfies the conditions recommended by the committee they will be automatically entitled for change of category. We are of the view that the acceptance of the committee report is in domain of the Hon'ble Commission only.

The other disputed issue in this case is whether total electricity expenditure incurred by the complainant industry or the electricity charges paid to the Licensee alone has to be taken into consideration to determine whether the industry fulfils the condition No.1 of the Committees report cannot be decided by this Forum in the absence of any material on this aspect in the report/recommendation of the Committee. Respondents also stated that the load factor of the complainant industry is also less than 70 % and not fulfilled the second condition of the committees report. .

We are of the view that Complainant ought to have waited for the disposal of Appeal No.141/2017 before the Hon'ble APTEL. The contention of the complainant is that the appeal preferred by them before the Hon'bel APTEL pertains to non-inclusion of their industry for the F.Y. 2017-18 and whereas present grievance pertains to F.Y. 2018-19, hence the Forum is competent to decide this aspect is not tenable. The decision of Hon'ble APTEL will also be having direct impact for the ensuing tariff orders also.

6. In view of the above reasons the complaint is devoid of merits and liable to be dismissed.

Accordingly the complaint is dismissed. .

If aggrieved by this order, the Complainant may represent to the **Vidyut Ombudsman, Andhra Pradesh**, 3rd Floor, Sri Manjunatha Technical Services, Plot No:38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008 within 30 days from the date of receipt of this order

This order is passed on this, the day of 17th May 2019.

Sd/-

Sd/-

Sd/-

Sd/-

Member (Finance)

Member (Technical)

Independent Member

Chairperson

Forwarded By Order



Secretary to the Forum

To

The Complainant

The Respondents

Copy to the General Manager/CSC/Corporate Office/ Tirupati for pursuance in this matter.

Copy to the Nodal Officer (Executive Director/Operation)/CGRF/APSPDCL/TPT.

Copy Submitted to the Vidhyut Ombudsman, Andhra Pradesh , 3rd Floor, Sri Manjunatha Technical Services, Plot No:38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008.

Copy Submitted to the Secretary, APERC, 11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Lakdikapool, Hyderabad- 500 004.