

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION,
BHOPAL

Sub: Petition for clarification on applicability of Tariff on a particular LT category consumer under clause 5(l), Clause 5(r) of other terms and conditions of LT Tariff (and clause 1.25 of HT Tariff) of Tariff order 2010-11 in the matter of M/s Sunil Oil Mills, Barwani.

Order

(Date of Order: 30. 11.2018)

(Date of Hearing: 15.11.2018)

MP Paschim KVVCL, Indore. (West Discom) - Petitioner

V/s

M/s Sunil Oil Mills, Respondent
Village Semliya , AB Road
Tehsil Sendhwa , Distt. Badwani

Shri Anil Negi, SE & Shri Shailendra Jain, Dy. Director appeared on behalf of the Petitioner. Shri R.S. Goyal and R.S. Somani appeared on behalf of the Respondent.

2. The petitioner has filed the petition under clause 5(l), clause 5(r) of “Other terms and conditions of LT tariff (and clause 1.25 of HT tariff) of Retail supply tariff order FY2010-11” and has requested the Commission a clarification on applicability of tariff for FY2010-11 onwards, to the consumers situated in industrial area /Growth centers availing supply under “Urban Discipline” from industrial feeder. Petitioner also requested to issue clarification on applicability of tariff for FY 2006-07 to FY 2009-10 to industrial consumers situated in Rural areas availing supply under “Urban Discipline” from industrial feeder.

3. The motion hearing was held on 22.08.2017 in the matter and the Commission vide the daily order dated 26.08.17 has admitted the petition for further deliberations. During the subsequent hearing dated 26.09.17, the Commission heard the petitioner and respondent and vide daily order dated 28.09.17 the case was reserved for Order.

4. Meanwhile , in continuation to hearing dated 26.09.2017 , the petitioner vide letter dated 07.10.17 had submitted a “Certificate issued by Tehsildar Sendhwa” regarding the fact that the premises of the respondent is situated in the notified industrial area Sendhwa. Thereafter, the Commission sought some more information for further scrutiny of the petitioners’ contention and the same was submitted by the petitioners on 13th November, 2017.

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5. Because of the aforesaid development, the Commission has decided to rehear the case subsequent to above mentioned daily order dated 28.09.2017, in order to provide an opportunity of being heard to the respondent and petitioner. The Commission has held the hearing on 15.11.2018 and heard the petitioner & respondent and perused the submissions made by the respondent during the course of hearing.

6. In the petition, mainly following have been submitted by the petitioner –

- i. Consumer M/s Sunil Oil Mill is a LT consumer at Village Semaliya, Tehsil Sendhwa District Barwani. As per address mentioned in the bills of consumer as well as according to registration certificate issued by District Industrial Corporation, it emerges that premises of the consumer situated in the Industrial area Sendhwa. The said consumer was granted connection way back on 4.6.1990. Twenty four hour supply being made through industrial feeder, hence the billing of consumer was done under the LV-4 Urban tariff even if premises of the consumer situated in the rural area, which was paid by the consumer.
- ii. After enactment of Electricity Act, 2003, the Hon'ble MPERC has vested with power of determination of tariff and condition of supply. Looking to the different condition of supply both in terms of the quality and quantity a different & relaxed tariff implemented for the rural area by the Hon'ble Commission. Section 14 of the Electricity Act, 2003, granted power to State Government to notify the area as rural area for the purpose of exemption from obtaining licensee for the distribution of power.
- iii. State Government in exercise of power granted vide aforesaid section has issued notification dated 25.3.2006.
- iv. After issue of the said notification, Hon'ble MPERC in the all tariff order from the FY 2006-07 onwards adopted the same definition of rural area as given in the aforesaid notification. The said condition of the tariff order is as under:

“GENERAL TERMS AND CONDITIONS OF LOW TENSION TARIFF

Rural Areas mean those areas notified by the GoMP vide notification No.2010/F13/05/13/2006 dated 25th March 2006 as may be amended from time to

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time. Urban areas mean all areas other than those notified by the GoMP as Rural Areas.”

- v. That, since the consumers situated in the industrial areas are availing power under urban discipline, Hon’ble Commission has provides for the billing of urban tariff in respect of such consumers from the tariff order of FY 2010-11 onwards. Condition in this regard is specifically incorporated in the tariff order by MPERC in the all tariff order of FY 2010-11 onwards vide clause 5(r) of the other terms and condition of LT tariff.
- vi. That the Hon’ble Commission has assigned the detailed reasoning (ref page 103 of Tariff Order for Year 2010-11) behind the condition, that industrial area should be billed as per urban tariff. The relevant extract is reproduced as under:
- “5. Urban Tariff for consumers under Industrial growth Centres
- Proposal: Some of places in notified rural areas in the State have been developed as Industrial growth Centres and are receiving supply akin to supply in urban areas from the licensee. Since these Centres are receiving supply through special industrial or urban feeders, the Commission is contemplating to place consumers of such Centres under urban tariff.
- Commission’s views: The Commission considers it appropriate that those consumers who availing supply akin to urban consumers should be levied charges equitable to urban consumers and has accordingly provided for levy of urban tariff on the consumers of notified industrial areas receiving supply under urban discipline.

vii. The Respondent M/s Sunil Oil Mill is situated in the notified industrial area Sendhwa, accordingly as per clause 5(r) of the other terms and conditions of LT tariff order FY 2010-11, petitioner is issuing bills to the respondent according to the applicable urban tariff. The identical provision also exist in Tariff Order for the year 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17.

viii. Government of Madhya Pradesh vide notification dated 17/01/2012 notified the industrial areas and industrial area Sendhwa mentioned at serial no.65 in the notification. Copy of the said notification enclosed as Annexure-2

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ix. That, since respondent M/s Sunil oil Mills is situated in the industrial area and in this regard a registration certificate has been issued by District Industrial Centre, Directorate of Industries Government of Madhya Pradesh to respondent. The said certificate clearly established the fact that respondent M/s Sunil Oil Mills is situated in the notified industrial area Sendhwa. Therefore billing done by the Discom as per urban tariff is in accordance with the terms and condition of the tariff order.

7. The respondent submitted the following:-

- i. As per provision given under section 180 of Electricity Act, 2003 State Government has provided to frame rules. State Government has exercised the power and notified the Urban Area vide Notification No.2010/F-13/05/06 dated 25.3.2006. In this notification State Government has given list of urban area as Annexure-1 of Notification. "All the other area except the area mentioned in para 3 & 4 have been specified as Rural Area" in the Notification. Annex-P-3 page from 29-35 of petitioner. Our connection at Village Semlia in Gram Panchayat Naktirani which is rural area.
- ii. That, as per provision given under section 181 of the Electricity Act, 2003 M.P. Electricity Regulatory Commission has frame the Rules, regulation and tariff for the Electricity consumers of the State. Commission has adopted the State Government Notification dated 25.03.2006. Accordingly, notified the separate tariff for Rural area from the tariff order 2007-08.
- iii. That, since the tariff order from the year 2007-08 till this tariff order 2017-18 in all the category in tariff schedule Rural tariff is given along with urban tariff and in General Terms and conditions for LT consumers applicability of "Rural Areas" has been given which is those areas notified by the GoMP vide notification no.2010/F-13/05/13/2006 dated 25th March, 2006 as may be amended from time to time. Urban Areas mean all areas other than those notified by the GoMP as Rural Areas."
- iv. The licensee has raised objection so many time before the Commission through ARR that the supply given in rural area through urban feeder, may allow to bill with urban tariff. But every time Hon'ble Commission has rejected their arguments and directed

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that in Rural area whether supply is given through urban feeder or rural feeder billing is to be done with rural tariff.

- v. That the Commission has made the provision in tariff order 2010-11 that the Consumers in the notified industrial Growth Centres area receiving urban discipline shall be billed urban tariff”.

“(r) Consumers in the notified Industrial Growth Centres are receiving Supply under urban discipline shall be billed urban tariff.” This clause remains continue till the tariff order 2017-18.”

- vi. Licensees has filed the application dated 24.9.2016 i.e after one year from the date of order passed by Hon’ble Lokpal after time limit given in the regulation and it was to be filed within 30 days from the date of order as per clause 5.3 of Forum regulation which given as under.

“5.3 The Distribution Licensee or the Complainant may also make an application to the Commission within thirty days of receipt of order and seek suitable directions in case, in their opinion the Forum/Electricity Ombudsman has passed any order which is not consistent with the provisions in the Act/Rules/Regulations/Tariff orders/Codes/directions issued from time to time by the Commission. Any directions issued by the Commission in such cases shall then be binding on the Forum/Ombudsman/Licensees.”

- vii. As per order of the Commission dated 10.5.2013 order in first amendment in regulation of the Forum and Lokpal has to comply within 21-45 days. But they have not complied and even they file the application before the Commission after one year. This needs to be rejected.

Licensees approach to the Commission when we have requested to the Commission for compliance of Lokpal order vide our letter dated 4.4.2016, 10.6.2016 & 26.7.2016. Secretary Commission followed on our letter to the licensees vide their letter dated 2.5.2016 and 4.7.2016. Annex.R-3 to R-8.

- viii. That the Licensee MPPKVCo.Ltd. Indore has filed the Petition for clarification on application of tariff on a particular LT category consumer under Clause 5(l), Clause

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5(r) of other terms and conditions of Low Tension Tariff (and Clause 1.25 of HT Tariff) of Tariff Order 2010-11.

ix. That the licensee has filed the petition for clarification of tariff on a particular LT category consumer.

In this regards the comments of the petitioner are as under-

5(l) In case of any dispute on applicability of tariff on a particular LT category, the decision of the Commission shall be final.

1. That the tariff period of any tariff order has been declared by the Commission in tariff order and any dispute on applicability of tariff can be asked during this period only.
2. The licensee has raised objection so many times before the Commission through ARR that the supply given in rural area through urban feeder, may allow to bill with urban tariff. But every time Hon'ble Commission has rejected their arguments and directed that in Rural whether supply is given through urban feeder or rural feeder billing to be done with rural tariff only which clearly shows that the Hon'ble Commission has clarified the applicability of Industrial tariff in Rural area other than Notified Industrial Growth Centre.

8. During the hearing held on 15.11.2018 also, the petitioner has reiterated the contents of the petition and mentioned that the respondent's aforesaid LT Industrial connection is located in Village Semliya and it falls under notified industrial area of Sendhwa which has also been evidenced through a certificate issued by the Tehsildar, Sendhwa on 06.10.2017. The petitioner mentioned the following also -

- a. The petitioner has referred to Clause 1.33 and 1.34 of the Retail Supply Tariff Order of FY 2010-11 which is read as under:

"1.33 The Commission while issuing the tariff order for FY 2009-10 had sought the details of supply hours to various areas and had accordingly directed the Distribution Licensees of the State to maintain the minimum assured daily supply hours as given below:

- (a) *Commissionary Headquarters - 22 Hours*
- (b) *District Head Quarters - 19 Hours*
- (c) *Tehsil Headquarters - 14 Hours*

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(d) Rural Areas - 12 Hours (Out of which Minimum for 06 (Six) Hours Three Phase supply is to be maintained.)

1.34 The Commission again directs the Licensees' to maintain minimum supply hours in accordance with above. The Commission may consider reduction in the fixed charges proportionately if the minimum supply hours as specified are not maintained by the Discoms."

- b. The petitioner further stated that the State was highly deficient in supply especially in rural areas and the Commission had therefore considered for providing rural tariffs with reduced fixed charges in light of aforesaid status of supply hours.
- c. The respondent enjoyed regular power supply through the urban feeder from 2006-07 i.e. the time when Commission first introduced rural tariff in view of deficit power scenario of State in the rural areas that continued to exist till 2014-15. This was a duration when power supply condition in the State was poor. It is notable that the consumer raised the issue of billing in rural tariff when the power supply situation in the rural area has improved in FY2015-16 and onwards.
- d. The petitioner has submitted that the Commission has opined at page 103 of the Retail Supply Tariff Order 2010-11 in chapter "Public objections & comments on licensee petition" as reproduced below
"The Commission considers it appropriate that those consumers who availing supply akin to urban consumers should be levied charges equitable to urban consumers and has accordingly provided for levy of urban tariff on the consumers of notified industrial areas receiving supply under urban discipline."
- e. The aforesaid issue has been further clarified by the Commission in its Retail Supply Tariff Order for 2018-19 at page 126 which is read as below:
"The Commission has clarified that urban tariff is applicable also for Notified Industrial areas/ Industrial parks receiving supply under urban discipline."
- f. The District Industry Centre (DIC) has also issued Registration Certificate to the consumer by mentioning the fact that it is located in the industrial area of

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Sendhwa and the land has been allocated to the consumer in the industrial area, Sendhwa by DIC.

g. The petitioner has submitted that despite the six (6) hours of three phase supply specified for rural areas as mentioned in Clause 1.33 of the Tariff Order of FY 2010-11 the consumer was getting regular 24 hours supply through its urban feeder. Therefore, the urban tariff has been correctly billed to the consumer.

9. In response, the arguments put forth by the respondent are as below:

(i) The instant petition is not maintainable in light of Regulations 1.29 and 1.32 of MPERC (Details to be furnished and fees payable by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 which are read as under –

1.29-“All orders determining tariff shall indicate the period for which it shall be in force and in the absence of such mention shall be considered valid till the end of the financial year for which the determination is done. Provided that, on an application filed by the licensee or generating company for continuation of the tariff on a provisional basis beyond the period stipulated in the order / end of financial year, the Commission may agree on provisional basis, the continuation of the tariff if it concludes that the grounds to continuation are justified.”

1.32-“All applications for the review of tariff shall be in the form of petition accompanied by the prescribed fee. A petition for review of tariff can be admitted by the Commission under the following conditions:

(a) The review petition is filed within sixty days from the date of the tariff order and

(b) It is proved that an error apparent from the records is there.

(ii) The petition is not maintainable as the clarification has been sought after so many years of the issue of the tariff order. The respondent has also submitted that the urban tariff is applicable on notified industrial growth centre only as mentioned in the tariff schedule. It is submitted that the notification has been issued only in the year 2012 by the Government, notifying Sendhwa as industrial area and Semliya Village is not included

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into Sendhwa Industrial Area and the Tehsildar is not a competent authority to issue a certificate that whether Village Semliya is a part of Sendhwa Industrial Area or not.

- iii. The Order passed by the Commission in SMP No. 44/2011 should also be taken into cognizance by the Commission since through this order the Commission at clarify the applicability of rural and urban areas.

Commission's Ruling -

9. The Commission has observed that the SMP No. 44 of 2011 was registered by the Commission subsequent to the issue of Distribution and Retail Supply Tariff Order for the year 2011-12 wherein the Commission has amended the general terms and conditions of LT tariff in the matter of fixed charge billing. In this petition, the Commission ordered that the condition No. 4 be replaced as - *“Unless specified otherwise, fractional load for the purposes of billing of fixed charges shall be rounded of to nearest integer i.e. fraction of 0.5 or above will be rounded to next integer and the fraction of less than 0.5 shall be ignored. However for loads less than one KW/HP, it shall be treated as one KW/HP.”*

The Commission does not find any relevance of quoting SMP No.44/2011 in the present petition which is regarding clarification of applicability of tariff to a particular LT category consumer.

10. The Commission has noted the submissions of the petitioner and respondent and decided to analyse the petition mainly on -

(i) **Maintainability of the petition.**

(ii) The applicability of urban **tariff for industrial** areas located in rural areas which are being supplied **power akin to** urban area.

11. The Commission has observed that the issue regarding applicability of the rural tariff has been raised by the respondent for the first time with ECGRF after more than 7 years of issue of separate tariff for the rural area by the Commission and the same has been protested by the petitioner at all levels. The question of filing of petition before the Commission by the petitioner regarding clarification of the tariff order is a reciprocation of the issue raised by the respondent after many years of issue of the tariff order.

The Regulation 1.29 is a provision regarding the duration of applicability of the tariff order issued by the Commission for which no dispute has been raised by the petitioner and it is

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observed by the Commission that the Regulation does not have relevance on the present issue. - As regards, Regulation 1.32, the same is for the review of the tariff order, which has not been claimed by the petitioner and the Commission has notified that the present petition has been filed by the petitioner in response to the issues raised by the respondent before the ECGRF and the Ombudsman and sought clarification on the applicability of the tariff..

The petition has been filed by the petitioner under the clause **5.2(l)** of the Retail Supply Tariff Order which is read as below:

“In case of any dispute on applicability of tariff on a particular LT Category, the decision of the Commission shall be final.”

12. Since the issue pertains to the applicability of tariff on the respondent M/s Sunil Oil Mills in this case, the Commission has considered the petition for hearing.

With regard to the applicability of tariff the Commission has following observations:-

- i. The State Government, in exercise of the power conferred by section 14 of the Electricity Act 2003 declared rural area in the State by notification dated 25/3/2006, for the purpose of exemption from licence in such area to the generator for distribution of electricity. The provision is as under:-

“Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under section 53.”

- ii. The sole intent of the above provision is to declare the rural area by notification in which a person can generate and distribute the electricity without a condition of a licence. Under section 62 of the Act, power has been given to the Commission for determination of the tariff. It has also been specified in the Act that while determining the tariff the Commission may differentiate according to the geographical position of the area as well as on the basis of nature of supply.
- iii. The Commission in the tariff orders differentiated the fixed charges for the urban and rural areas for different consumers' categories. For this purpose, the definition of the rural area has been adopted from the abovementioned notification dated 25.3.2006 of the State Government. This has been specified in the clause 1 of the “General Terms and

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conditions” of low tension tariff in the Retail Supply tariff order for FY 2010-11 and in subsequent tariff orders also. However, it has also been mentioned in the clause 5 (r) of “General Terms and conditions” of low tension tariff in the Retail Supply tariff order for FY 2010-11 that the consumers in the notified Industrial Growth centers areas receiving supply under urban discipline shall be billed on urban tariff. This provision is continued in the subsequent retail supply tariff orders also.

- iv. In the tariff order the term “Notified Industrial Growth Centre was used by the Commission in the generic sense for any industrial area notified by the State Government. Otherwise the Commission would have specifically mentioned the details of such notification number and date. The land allotment for Sunil Oil Mill was done in 1990 in industrial area as per the records. The recommendation letter of G.M, District Trade & Industries Centre, Barwani for sanctioning power connection also mentions the address as Industrial area, Sendhwa. Similarly, the letter head of Sunil Oil Mill of 1993 also confirm that the company is located in the industrial area. The intent of this provision is very clear that if the industrial consumers in certain notified areas are getting supply like the urban discipline, they should be billed according to the urban tariff.
- v. The Commission in the Retail Tariff Design in the tariff order for 2007-08 stated the philosophy regarding rebate for consumers in the rural area which is as under:-
“6.9: The fixed charges are meant for recovering cost of infrastructure created by the Distribution Licensee. However, realising that the consumers in rural areas are placed at a disadvantage compared to urban consumers in getting un-interrupted and reliable power supply, the Commission has given a reduction in fixed charges for the consumers in the rural area.”
- vi. However, the respondent’s power connection, situated in the industrial area, has been getting 24x7 power supply. As per the average monthly supply hours for the period from July, 2014 to October, 2017 certified by the EE(STM), Barwani, the Sunil Oil Mill got almost 24 hours supply during the aforesaid period. Respondent also accepted during the

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hearing held on 15.11.2018 about getting 24x7 supply. The Discom was billing urban tariff since 2007-08, and the respondent has been paying such bills without raising any dispute. The respondent disputed on the billing for the first time in August, 2014, after a period of about more than 7 years and asked for refund of Rs. 7.05 lakhs for the period from 2006-07 to 2013-14 and Rs.27,500/- from 1st April, 2014 to August, 2014. As per the provisions of “The Limitation Act, 1963”, a claim for money must be brought within a period of three years. Upon expiry of three years, the right to sue for recovery is lost, Hon’ble Allahabad High Court in Writ (No.13590 of 2016 order dated 6.4.2016) upheld the above limitation for claiming the money. The Forum (ECGRF) had rejected the claim of the respondent for refund pertains to previous 8 years. In its decision the forum stated that the consumer was getting uninterrupted 24 hours power supply for its industrial connection. The consumer took advantage on 24 hours power supply for years together as compared to the rural area where power supply was less. The forum further stated that the consumers raised that demand after 6 years and till that period took advantage of 24 hours power supply while the supply hours in rural area at that time was 10 to 12 hours. The Forum categorically mentioned that this indicates the unjustified demand of the consumer M/s Sunil Oil Mill.

vii. The Commission observed that the power supply has improved considerably in rural area since the year 2014 and thereafter the respondent has raised the issue of rural billing and want to take advantage of 24x7 power as well as lower fixed charges which the Commission has provided for lower supply hours.

viii. In the Commission’s tariff orders for 2010-11 and subsequent years, the Commission has made a provision that the consumers in the notified industrial growth centres area receiving supply under urban discipline shall be billed urban tariff. So the intent of the Commission was to compensate the consumers in rural areas, as they were not getting regular and 24x7 supply, by charging lower fixed charges than the urban area supply. In order to avoid the ambiguity or any dispute the Commission has also clarified in the tariff order for 2018-19 that all industrial area receiving power under urban discipline shall be charged urban tariff.

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ix. The Commission has observed that till 2014-15 the State has witnessed deficit power supply scenario wherein the demand surpassed the supply by the licensee and the rural areas were provided with limited hours of supply and the Commission has consciously reduced the fixed charges keeping the energy charges same in the rural areas and have introduced rural tariff w.e.f. 2006-07 onwards.

13. As per the records produced by the petitioner i.e. the registration certificated issued by the District Industries Centre and Certificate of Tehsildar, it is clear that the petitioner's connection is situated in the industrial area of Sendhwa and he was also getting power supply akin to urban area which was also been admitted by the Respondent during the hearing. Therefore, the tariff applied by the Paschim Kshetra Vidyut Vitaran Co. Ltd. ,Indore on the Respondent is in line with the tariff orders of the Commission and the respondent is not entitled for the rural tariff

With this, the petition stands disposed of.

sd/-
(Anil Kumar Jha)
Member

sd/-
(Mukul Dhariwal)
Member

sd/-
(Dr. Dev Raj Birdi)
Chairman