

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**(Constituted under section 82 (1) of the Electricity Act 2003)**  
**(Central Act 36 of 2003)**

**PRESENT:-**

Thiru.K.Venugopal ..... Member

and

Thiru.S.Nagalsamy ..... Member

**R.P.No.3 of 2012**  
**and**  
**I.A.No.1 and 2 of 2012**

New Tirupur Area Development Corporation Ltd.  
"Polyhose Towers"  
(formerly called SPIC Annex Building)  
1<sup>st</sup> Floor, No.86, Mount Road  
Chennai – 600 032.

..... Petitioner  
[Represented by Thiru.T.Poornam,  
Advocate for the Petitioner)

Vs

1. The Chairman  
Tamil Nadu Generation and Distribution  
Corporation Ltd.  
N.P.K.R. Malligai, 144, Anna Salai  
Chennai – 600 002.
2. The Superintending Engineer  
Tirupur Electricity Distribution Circle  
5/9B, M.G.R. Nagar, 7<sup>th</sup> Street  
P.N.Road, Tirupur – 641 603.
3. The Superintending Engineer  
Erode Electricity Distribution Circle  
948, EVN Road  
Erode – 638 009.
4. The Secretary to Government  
Government of Tamil Nadu  
(Energy Department)  
Fort St. Geroge, Chennai.

..... Respondents  
(Thiru P.H.Vinod Pandian  
Advocate for Respondents)

**Dates of hearing** : 28-09-2012, 28-11-2012, and  
08-01-2013

**Date of Order** : 31-01-2013

The above R.P.No.3 of 2012 came up for final hearing on 08-01-2013 before the Commission. The Commission after perusing the above petition and the connected records of the case and after hearing both sides passes the following order:-

**ORDER**

**1. Prayer of the Petitioner in R.P.No.3 of 2012:-**

The prayer of the Petitioner in R.P.No.3 of 2012 is to-

- (a) to review and re-classify the tariff applicable in respect of HT power consumption at the various installation of the Petitioner described in the Schedule as detailed hereto from High Tension Tariff I-A to High Tension Tariff II-A, on par with TWAD Board ;
- (b) to direct the second and third Respondents not to raise invoice based on the Order No.1 of 2012 dated 30-03-2012, pending disposal of the present petition ;
- (c) to direct the second and third Respondents to reimburse the tariff, if any collected pursuant to the Order No.1 of 2012 should the Petitioner ultimately succeed in this proceedings.

**2. Prayer of the Petitioner in I.A.No.1 of 2012:-**

The prayer of the Petitioner in I.A.No.1 of 2012 is to condone the delay of 56 days in preferring the Review Petition.

### **3. Prayer of the Petitioner in I.A.No.2 of 2012:-**

The prayer of the Petitioner in I.A.No.2 of 2012 is to direct the second and third respondents not to raise invoices based on the Tariff Order No. 1 of 2012 dated 30-03-2012, pending disposal of the present petition and not to initiate or take any coercive steps to disconnect the service connections of the petitioner herein pending adjudication of the Review Petition.

### **4. Facts of the Case:-**

The Commission in its Order No.1 of 2012 dated 30-03-2012 had Suo Motu classified the petitioner under HT Tariff 1 A which is applicable to manufacturing and industrial establishments with effect from 01-04-2012. However, the Commission in the very same order had placed the TWAD Board under HT Tariff II-A which is also involved in the Public Water Supply System which is similar to and on par with the primary objectives of the petitioner. The petitioner submitted a representation to the Chairman of TNEB (1<sup>st</sup> Respondent) on 18-04-2012 requesting it to re-classify the petitioner on par with the TWAD Board. The first respondent had on 19-05-2012, without considering the representation on merits had replied stating that such re-classification is to be carried out by the Commission. The Petitioner therefore has filed this petition before the Commission.

### **5. Contentions of the Petitioner as set out in the Petition:-**

(a) Since both TWAD Board and the Petitioner perform identical functions, it would stand to reason that equals are not treated as unequals and the tariff that is applicable to one is also extended to the other. It would therefore be most

unreasonable and discrimination to levy electricity tariff at a higher rate to the Petitioner when another entity performing the same function is conferred the benefit of levy of lesser electricity tariff. Accordingly, the tariff that has been extended to TWAD Board, is to be extended to the petitioner as well.

(b) The petitioner was levied under the High Tension Tariff, II-A, on par with TWAD Board vide Order No.3 of 2010, passed by this Commission dated 31-07-2010 and has Suo Motu been re-classified to High Tension Tariff, I-A, vide Order No.1 of 2012 dated 30-03-2012, without citing any reasons for having made this discrimination.

(c) The present tariff imposed by this Commission under I A would only obviate the purpose of the Corporate Debt Restructuring process.

(d) Since the Petitioner is involved in distribution of water for the public which is in public interest, reclassification of electricity tariff and placing the petitioner company on par with the tariff, High Tension, II-A levied on the TWAD Board would primarily ensure the petitioner company perform effectively and benefit the domestic consumers in and around the Tirupur Corporation.

#### **6. Contentions of the Respondent as set out in the Counter Affidavit:-**

(a) The Commission had passed orders vide Order No.1 of 2012 dated 30-03-2012 on the petition filed by the respondent on 17-11-2011. It is further stated that in its order dated 30-03-2012 this Commission had classified petitioner service

under HT Tariff I A (Industrial) and LT Tariff II A (Public water supply), in line with the Commission's Order No.T.O.1-66 dated 25-10-2005.

(b) The Petitioner in their letter dated 18-04-2012 requested the respondent Board stating drastic fall in the supply of water to the industrial units and increase in the water supply for domestic usage leading to change in the nature of business and hence made a request for re-classification of HT Tariff from HT Tariff I-A to HT Tariff II A, on par with TWAD Board, which were also involved in a similar type of water distribution system.

(c) The respondents Board in its reply letter dated 19-05-2012 to the petitioner, stated that as per section 62 of the Electricity Act, 2003, this Commission was vested with power to categorize and fix the tariff for all the electricity consumers. It is further stated that, this Commission in its Tariff Order dated 30-03-2012, has not considered the adoption of HT Tariff II A for HT services of the petitioner and passed orders stating that, HT Tariff I A and LT Tariff II A have to be adopted for their HT and LT services respectively and any further classification in this regard has to be dealt by this Commission.

(d) The Petitioner had not substantiated any documentary evidence for stating that the order of this Commission was passed under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record and hence this Review Petition is not maintainable and liable to be dismissed.

**7. Hearing held on 28-09-2012:-**

In its hearing held on 28-09-2012, the Commission held as follows:-

*“I.A.No.1 of 2012 in R.P.No.3 of 2012 was filed by the petitioner for condonation of delay of 56 days. The Learned Advocate for the petitioner explained the reasons for the delay. The delay is condoned and the petition is admitted. Copy of the petition is already served by the petitioner on the other side. Let the counter be filed within four weeks. The matter shall be listed for arguments thereafter”.*

**8. Hearing held on 28-11-2012:-**

“I.A.No.2 of 2012 in R.P.No.3 of 2012 was taken up for admission. The Learned Counsel for the petitioner argued that they had written to the respondent TANGEDCO for billing them under HT II -A upon the undertaking submitted by them to the respondent. The said undertaking further states that in case the Commission finally decides on levying under HT I A, they would pay the difference in tariff along with belated payment surcharge. The respondent had already agreed for the same and instructed the concerned Superintending Engineers of Erode and Tirupur to bill the petitioner under HT II-A. The Commission notes the agreement reached between the parties. Accordingly I.A. No.2 of 2012 in R.P.No.3 of 2012 is disposed of. The matter shall be listed for further arguments in due course.

**9. Finding of the Commission:-**

9.1. This petition was filed by M/s.New Tirupur Area Development Corporation Limited, Chennai. The prayer of the Petitioner is-

(a) to review and re-classify the tariff applicable in respect of HT power consumption at the various installation of the Petitioner described in Schedule as

detailed hereto from High Tension Tariff I-A to High Tension Tariff II-A, on par with TWAD Board ;

(b) to direct the second and third Respondents not to raise invoice based on the Order No.1 of 2012 dated 30-03-2012, pending disposal of the present petition ;

(c) to direct the second and third Respondents to reimburse the tariff, if any collected pursuant to the Order No.1 of 2012 should the Petitioner ultimately succeed in this proceedings.

9.2. The Review Petitioner also filed I.A. No. 1 of 2012 in R.P.No.3 of 2012 for condonation of delay of 56 days in preferring this present Review Petition.

9.3. I.A. No.2 of 2012 in R.P.No.3 of 2012 was filed on 5<sup>th</sup> November 2012 praying for directing the second and third Respondents not to raise invoices based on the Tariff Order No.1 of 2012 dated 30-03-2012, pending disposal of the present petition and not to initiate or take any coercive steps to disconnect the service connections of the applicant, pending adjudication of the Review Petition.

9.4. The Petition was admitted by the Commission on 28-09-2012 after condoning the delay as prayed for. The Review Petition was heard in detail on 08-01-2013.

9.5. The TNERC-Conduct of Business Regulations, 2004 under regulation 43 envisages that the Commission may on its own or on the application of any of the persons or parties concerned within 30 days of the making of any decision, direction

or order, review such decision, directions or orders on the ground that such decision, direction or order was made under mistake of fact, ignorance of any material fact or any error apparent on the face of the record.

9.6. The Review Petitioner has also relied upon regulation 48 read with regulation 52 of the said Conduct of Business Regulations. These two regulations are general provisions. The said regulation 43 is the regulation which would directly apply in this case. The Review Petitioner has also relied upon section 62 (1) (b), 62 (d) and 62 (6) of the Electricity Act, 2003.

9.7. Section 62 (1) (d) of the Act relates to the determination of tariff for retail sale of electricity and section 62 (6) deals with refund of excess tariff recovered.

9.8. It is necessary to retrace the history of the case. TNEB have been charging the petitioner under HT Tariff III which is the commercial tariff for M/s.New Tirupur Area Development Corporation Limited (NTADC). Subsequently on a specific petition by NTADC, they were brought under HT Tariff I-A by a special order of the Commission namely Tariff Order 1-66, dated 25-10-2005. When the Tariff Order for the year 2010-2011 was issued vide Order No.3 of 2010 dated 31-07-2010, the licensee, Tamil Nadu Electricity Board included them under HT Tariff II-A and the same tariff was allowed in that order. However, when Tariff Order No.3 of 2012 fixing the retail tariff for the year 2012-2013 was issued on 30<sup>th</sup> March 2012, although the licensee TANGEDCO had proposed to cover NTADC in Tariff II-A, the Commission after careful consideration has included them under HT Tariff I A



wherein they have been charged HT Tariff -1A similar to Industrial Estate Water Works, Heavy Water Plant, Chemical Plant, Emission Effluent Treatment etc.

9.9. The Review Petitioner now seeks to categorise them under HT Tariff –IIA in line with Tamil Nadu Water and Drainage Board and Chennai Metro Water Supply and Sewerage Board (CMWSASB).

9.10. The process of review is a limited exercise based on mistake of fact, ignorance of any material fact or any error apparent on the face of the record. Since the decision taken in the Tariff Order is a conscious decision after going through the facts placed before the Commission by the licensee, this cannot be termed as a mistake of fact or ignorance of any material fact or any error apparent on the face of the record and therefore it cannot be considered under review. Further the Review Petition cannot be an appeal in disguise.

9.11. The counter filed by the TANGEDCO argues that the Review Petitioner has not placed any documentary evidence for stating that the order of the Commission was placed under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record and hence this Review Petition is not maintainable and liable to be dismissed. The respondents have also stated in their counter that the Petitioner has no prima-facie case to further pursue the Review Petition seeking to classify them under the category of HT Tariff II-A and LT Tariff II-A and therefore pleaded for dismissal of the Review Petition.

9.12. As already discussed in para 9.10, the Commission is of the view that the decision to charge HT Tariff 1-A is a conscious decision treating the Review Petitioner on par with Heavy Water Plant, Chemical Plant, Emission Effluent Treatment Plant, Industrial Estate Water Works etc. NTADC is bracketed with the above Effluent Treatment Plant, Industrial Estate Water Works etc. and the Review Petitioner has been rightly classified under HT Tariff I-A. Therefore, the Review Petition does not qualify as such for reviewing the tariff classification. The Review Petition is accordingly dismissed.

**8. Appeal:-**

An appeal against this order lies before the Appellate Tribunal for Electricity under section 111 of the Electricity Act 2003, within a period of 45 days from the date of receipt of the copy of this order by the aggrieved person.

(Sd.....)  
**(S.Nagalsamy)**  
**Member**

(Sd.....)  
**(K.Venugopal)**  
**Member**

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission