

Rajasthan Electricity Regulatory Commission, Jaipur

In the matter of:

Direction issued by the State Government u/s 108(1) of Electricity Act, 2003 with regard to consider the tariff for Tourism and Hospitality Sector in Industrial category instead of the present rate of Non Domestic tariff.

Coram:

Dr. B.N. Sharma, Chairman

Sh. S. C. Dinkar, Member

Date of order:

01.04.2022

ORDER

1. Energy Department, Government of Rajasthan has issued directions under section 108 of the Electricity Act, 2003 vide its order dated 24.03.2022 to consider the tariff for Tourism and Hospitality Sector in Industrial category instead of the present rate of Non Domestic tariff.
2. Above order of the Energy Department, Government of Rajasthan is reproduced as under:

"Whereas the Rajasthan Electricity Regulatory Commission has prescribed 'Tariff for Supply of Electricity' for Discoms under section 62 & 64 of Electricity Act, 2003.

Whereas the Rajasthan Electricity Regulatory Commission had approved and finalized the "Tariff for Supply of Electricity-2021" for Discoms in pursuance of the above mentioned Tariff for Supply of Electricity.

Whereas the Said Tariff for Supply of Electricity-2021 contained provisions for Non-Domestic tariff for Tourism and Hospitality Sector.

Whereas the subject matter of Tariff in case of the Tourism and hospitality Sector in a matter of policy involving public interest of the State of the Rajasthan.

Whereas the State Government had reviewed the decision and it was it was decided to consider the Tourism and hospitality Sector as Industry Sector and charges as per the applicable tariff of Industry Sector as per

applicable supply voltage instead of the present rate of Non Domestic tariff determined by the Rajasthan Electricity Regulatory Commission.

This order is being issued with concurrence of Finance Department vide their ID No. 102201579 dated 23.03.2022 under the provisions of section 108 of Electricity Act, 2003."

3. The Commission issues this Suo-Motu order consequent upon the above directions issued by the State Government. In this order, the Commission has considered the directives as above, provisions of the Electricity Act, 2003, provisions of the relevant Regulations specified by the Commission and Commission's view & Analysis thereon as under:
4. Provisions relating to Policy Direction of the State Govt. u/s 108 of the Electricity Act, 2003 and Regulation are as under:

4.1 **Section 108 of the Electricity Act, 2003** reads as under:-

"108. Direction by State Government

(1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final."

4.2 Section 65 of the Electricity Act, 2003 reads as under:-

"65. Provision of subsidy by State Government:-

If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government.

Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by the State Commission shall be applicable from the date of issue of orders by the Commission in this regard."

4.3 Provisions relating the regulation 13 of RERC (Terms and Conditions for Determination of Tariff) Regulations, 2019 reads as under:-

(1) "If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the Commission, the State Government shall pay in advance the amount to compensate the Licensee/ person affected by the grant of subsidy in the manner specified in this Regulation.

(2) If the subsidy amount is more than Rs 5 Crore, the payment of subsidy may be done on monthly basis while annual payment of subsidy shall be done if the amount is less than Rs 5 Crore."

5. Hon'ble Appellate Tribunal for Electricity, New Delhi ('APTEL') in its judgment dated. 19.9.14 in Appeal No. 207 of 2013 referred its earlier judgment dated 21.01.2014, rendered in the matter of Tamil Nadu Electricity Consumers Association vs. Tamil Nadu Electricity Regulatory Commission & another (Appeal No. 91 of 2013 and Appeal No. 109 of 2013), in which it had held that the State Commission in discharge of its function under the Electricity Act, 2003, has to be guided by the directions of the State Government under Section 108 of Electricity Act, 2003, **but the same are not mandatory and binding upon the State Commission and affirmed the same view because the State Commission is an independent statutory authority vested with powers under the Electricity Act, 2003 and the Regulations and discharge the functions according to the statutory provisions, and if any Suo-Motu Order Policy Direction Page 5 of 9 direction and directive of the State Government, issued under Section 108 of Electricity Act, 2003, is of such of a nature which hampers the statutory functions of State Commission,**

the State Commission can ignore it and discharge its statutory function according to the Act and Rules & Regulations and the State Commission is not bound by any such kind of direction or directive of the State Government issued under the Electricity Act, 2003.

6. The Commission notes that as per tariff order issued by the Commission, the Tourism and Hospitality Sector is covered under Non Domestic Category. The Government of Rajasthan has directed to consider the Tourism and hospitality Sector as Industry Sector and charge them as per the applicable tariff of Industry Sector as per applicable supply voltage instead of the present rate of Non Domestic tariff determined by the Rajasthan Electricity Regulatory Commission.
7. It is observed that as per current tariff structure approved by the Commission, the tariff for industry is much lower than the NDS Category of consumers. Further despite all efforts, Discoms are still not able to recover their full cost from tariff and a gap still exist and Discoms also have accumulated gap. As such, the above changes in category clearly tantamount to reduction in tariff for tourism and hospitality sector. The Commission in its order dated 06.02.2020 while determining the tariff at para 4.2.5 noted as under:

"The tariff has been determined for each category without considering any subsidy. The subsidy, if provided by the Govt., would result in reduced amount payable by consumer of such category. Further, the Government, if it provides subsidy, should pay such subsidy in advance as per RERC (Terms & Conditions for Determination of Tariff) Regulations, 2019."

8. In view of the fact that Government direction u/s 108 of the Electricity Act, 2003, tantamount to relief in tariff to Tourism and Hospitality sector and considering the provisions of the Act and judgments of Hon'ble APTEL, Commission is of the view that the directives issued by the State Govt. under Section 108 of the Electricity Act, 2003 are covered under section 65 of the Electricity Act, 2003. It is not justified to pass on the

burden of reduction in tariff due to directives of the State Government to the general consumers.

9. It is observed that Commission determines the tariff under section 62 & 64 of Electricity Act, 2003 read with RERC (Terms and Conditions for Determination of Tariff) Regulations, 2019. However, going by Section 65 of the Electricity Act 2003, the State Government shall, notwithstanding any direction which may be given under Section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct.
10. Accordingly, Commission directs the Discoms to claim subsidy from the State Government equivalent to difference in applicable tariff of NDS & Industry as per applicable supply voltage in accordance with Section 65 of the Act read with the RERC (Terms and Conditions for Determination of Tariff) Regulations, 2019 and give effect to the change in tariff for Tourism and Hospitality Sector in Industrial category instead of the present rate of Non Domestic tariff as per the said State Govt. directives.
11. Discoms shall also additionally submit the detailed impact of these directions and status of recovery of additional financial implication from the State Government due to Government directives as discussed above as part of their respective ARR/Tariff petitions of 2022-23 and onwards.
12. Copy of this order be sent to Government of Rajasthan and Discoms and shall also be placed on website of the Commission.

(S. C. Dinkar)
Member

(Dr. B.N. Sharma)
Chairman