BEFORE THE HON'BLE GUJARAT ELECTRICITY REGULATORY COMMISSION AT AHMEDABAD

25th September, 2002

CORAM : Shri B.M. Oza, Member
Shri R.K. Sharma, Member

PETITION NO. 62/2002

ORDER

1. This petition has been taken out by M/s Sabic Research & Technology Pvt Ltd. which is running a research establishment and availing the electricity supply from the GEB. The plea advanced by the company in this case is that they have not been charged by the GEB at the correct rate of tariff according to the Schedule and also according to the Agreement entered with them. The learned Counsel Mr Pratik Mehta appeared on behalf of the Petitioner, while learned Counsel Mr Nirav Majmudar and Mr A.J. Buch appeared on behalf of GEB.

2. Briefly stated, the facts of the case are that the applicant company has signed an Agreement with the GEB for HT Power Supply of 2400 MVA to cater requirement of research facility. Vide Para 8(A) of the Agreement the applicability of tariff is HTP-I tariff in the Schedule. The Company was billed for this tariff for the month of January and February, but from March they have been billed tariff for HTP-II(A). The company has argued that according to the tariff prescribed by the Commission in its order dtd 22.12.2000 the company does not fall in any of the categories listed by the Commission and therefore the company should be governed by HTP-I Tariff.

3. Before we deal with the facts of the case we must, however, deal with the issue relating to the jurisdiction of the Commission raised by the learned Counsel, Mr Nirav Majmudar. In an affidavit filed on 16.9.2002 the GEB has stated that this Commission has no jurisdiction to deal with this matter. It has been argued on their behalf that once the tariff is determined its applicability is a subject matter between the GEB and the consumer and that the Commission has no role to play with regard to this aspect. It has also been stated that the release order for the electricity supply came to be issued in favour of the petitioner by the GEB on 13.1.2001 and in the said release order the petitioner company was informed that they would be charged for HTP-II(A) tariff. The GEB contended that once the release order came to be issued by the GEB and it was made clear that the applicant will be charged as per HTP-II(A) tariff, they are now estopped from making grievances. It is the privity of the contract between the applicant and GEB. If at all the applicant is having any grievance in terms of interpretation of contract, it is not within the domain of this Hon'ble Commission to interpret or to modify the terms of the contract executed between the applicant and the GEB. Since it is a contractual matter between the applicant and the GEB and as per the principles of privities of contract it would be beyond the scope of jurisdictional sweep of this Hon'ble Commission and therefore, on the aforesaid grounds, since the Hon'ble Commission does not have jurisdiction to entertain the said petition, the said petition deserves to be dismissed.

4. The petitioner company, M/s Sabic Research & Technology Pvt Ltd. , in the Addenda to the original petition filed on 31.12.2001 averred in affidavit dated 10.7.2002 making the following points :

(a) Section 29(2)(e) of the Electricity Regulatory Commissions Act, 1998 enjoins upon the Commission to safeguard the interest of the consumers.

(b) The Commission in para 10.8 of its Order dtd 10.10.2000 has mentioned that the principles followed by them in determining the tariff include that the tariff should be fair, just and non-discriminatory.

(c) Regulation 78 of the Gujarat Electricity Regulatory Commission (Conduct of Business) Regulations 1999) provides that no utility can charge their customer any tariff for supply of electricity without the general or specific approval of such tariff by the Commission.

(d) Regulation 89 of the aforesaid Regulations provide that any utility found to be charging a tariff different from the one approved by the Commission shall be deemed to have not complied with the directions of the Commission.

(e) Section 45 of the Electricity Regulatory Commissions Act, 1998 also provide punishment for non-compliance of directions given by the Commission.

5. The petitioner contended that it was the case of the petitioner that the tariff presently charged from them by the GEB is not correct tariff in accordance with the orders passed by the Commission. It contended that since it was the Commission and Commission alone which will determine the

correct tariff the petitioner had no alternative, but to approach the Commission which had total jurisdiction in this matter.

6. Dealing with the averments contained in the Addenda to the main petition above, the respondent argued that the present matter does not have any nexus with the determination of tariff and it is purely a contractual matter. It also stated that the GEB authorities are charging the tariff in accordance with the orders of the Hon'ble Commission and that the tariff is being charged with proper approval and orders of the Commission. It also added that there is no non-compliance or deliberate disregard of the directions issued by the Commission.

7. We have carefully considered the issue regarding jurisdiction of the Commission in the light of the arguments advanced by both the sides. The most important component of the argument is that once the tariff is determined its applicability is the subject matter between the consumer and the utility and that the Commission has no role to play in the subsequent issues arising there from. This raises important question regarding role of the Commission. The Commission's functions have been laid down in Sections 22(1) and 22(2) of the Electricity Regulatory Commissions Act, 1998. These include the determination of tariff for transmission and supply, to regulate power purchase, to promote efficiency and economy, to regulate operation of power system, to regulate the working of licensees and other persons authorized or permitted to engaged in the electricity industry and to promote the working of such persons and licensees in an efficient, economical and equitable manner, among numerous other functions. It will thus, be very clear that the Commission is not just a tariff determining authority. It has been charged with

the functions of regulation not only of the power system of the State, but also of the working of the licensees and other persons engaged in the business of supply of electricity. One of the important components of the regulation is to ensure that the consumers are supplied electric power at the rates determined by the Commission and also the service is efficient and the working is conducted in an economical manner. In fact it is in this context that the provisions for enforcement of Commission's directions have been made in Section 45 of the Electricity Regulatory Commissions Act, 1998 as well as in Regulations 78 and 89 of the Conduct of Business Regulations framed by the Commission. The contracts of supply entered by the utility are not merely private contracts in the conventional sense of the term and the nature of contracts assume different significance since the public utility has a public accountability. It is more so in the case of bodies like GEB which has been charged with statutory responsibility. We are, therefore, unable to agree that once the tariff is determined, the Commission has no jurisdiction in any matter arising therefrom between the consumer and the utility. Such an argument is not only fallacious but also misreading of the statutory provisions and does not correctly interpret the role of the Commission enshrined in the Electricity Regulatory Commissions Act, ,1998. The Commission does have a function to regulate the working of licensees and any issue falling within the ambit of this regulation which arises even after the tariff is determined will rightfully be within the jurisdiction of the Commission.

8. The fact that there has been contract between the GEB and the petitioner company is not in dispute. But keeping aside this fact, let us focus on the issue which has been pleaded before us by the petitioner. It is not the case of the petitioner whether the contract is right or wrong. It is the case of

the petitioner that the tariff rate charged from them by the GEB is not the one which is rightfully chargeable in terms of the orders of the Commission. This amounts to an issue of determining the correct tariff applicable to the consumer and looking at the provisions of Section 22(1) of the Electricity Regulatory Commissions Act, 1998 there is no way in which the Commission can run away from its responsibility in determining this issue.

9. In the light of these facts, we hold that the issues raised by the petitioner company in this petition fall squarely within the jurisdiction of the Commission and, therefore, the Commission is well within its right to entertain this petition.

10. Having settled the jurisdiction issue, let us now look at the facts of this case. It is not in dispute that the petitioner company is engaged in research work. That it has made considerable investment, employs a number of people and is engaged in the work of research in chemical industry. It is the contention of the petitioner company that in accordance with the tariff schedule laid down in the tariff order dated 10.10.2000 and subsequent order passed on review of this order on 21.12.2000 it should be governed by HTP-I tariff. It has further contended that HTP-I tariff is applicable for supply of electricity to HT consumers contracted for 100 KVA and above for regular power supply and requiring power supply for the purposes not specified in the tariff rates HTP-II(A) and HTP-II(B). It is the contention of the company that the class of the consumers to which it belongs, viz., the Research Institutions, has not been mentioned either in the tariff rate HTP-II(A) or HTP-II(B) and hence it should be governed by rate HTP-I.

11. The crucial question therefore is to which class of consumer the tariff rates HTP-I and HTP-II should be made applicable. In order to determine this, we must travel a little bit in the past to see the background of laying down the High Tension Tariff. The High Tension Tariff was originally conceived for manufacturing industry. On account of the reason of large scale drawal of power at high tension coupled with the paying capacity of the industry and their ability to pass on the cost to the numerous consumers, the consideration for determination of tariff for this class was different and hence a different tariff was provided. This was meant only for industries engaged in manufacturing activities. In course of time, however, other organizations also came about using large quantum of electricity at high voltage and it is to cater to them that a separate class of HTP-II tariff was created. The basic principle for this division was always that those engaged in manufacturing activities will be covered under HTP-I and all others will be covered under HTP-II. This HTP-II was divided into two classes and HTP-II(B) was provided only for township, cantonment and other institutions for specific consideration and the HTP-II(A) continued for the rest of the consumers hitherto governed by the rate HTP-II. The HTP-II(A) tariff was thus mainly to cater to all those consumers who were earlier governed by HTP-II tariff. The applicability of HTP-II(A) tariff under the present orders is for hotels, amusement parks, resorts, water parks, military installations, aerodromes, cinemas, auditoriums, banks, studios, offices, film production etc. The word “etc” has been used here to cover all similar consumers and this has to be viewed in the historical context, viz., all those not engaged in manufacturing activity. Indeed, looking at the vastly different consumer base engaged in entirely diverse activities, there is no other thing common among them except that they are not engaged in manufacturing activities. In a classification such as this, it is not possible to

mention every class of consumers specifically and hence the interpretation has to be necessarily in the context in which the tariff is being successively applied over the years.

12. In the course of arguments before us the learned Counsel, Mr Pratik Mehta, on behalf of the petitioner quoted order of the Hon'ble Supreme Court in the case of Coir Board, Ernakulam v/s Indiradevi & Others (2000) 1 SCC 224, which in turn, upholds the definition given by the Hon'ble Supreme Court in their judgement in Bangalore Water Supply & Sewerage Board v/s. A Rajappa (1978) 2 SCC 213. We have considered this case carefully. In the light of the facts which we have discussed above, we feel that the case quoted by the learned Counsel is not strictly applicable in this matter since the order passed by the Hon'ble Supreme Court in case of Bangalore Water Supply & Sewerage Board was in connection with the definition of industry in the context of Section 2(J) of the Industrial Disputes Act, 1947. This definition obviously is quite wide in terms of the relevant enactment. What is being considered in the present case is the applicability of tariff as ordered in a particular tariff order of the Commission and as understood in the context of various terms evolved over the years. In our view, therefore, the decision in this case can not be made applicable in the matter before us.

13. In the light of the above analysis, we are of the view that being an organization entirely engaged in research, the petitioner company, M/s Sabic Research & Technology Pvt Ltd. would be governed by the tariff HTP-II(A) and if this is being charged from them at present, the tariff applied by the respondent has been correctly applied. We must, therefore, hold that the

company's claim that they should be charged under HTP-I tariff deserves to be rejected.

14. One more aspect of the matter requires our attention. The petitioner company has brought to our notice that a number of other consumers engaged in research work are being governed under the different tariff rates. They also mentioned the names of a few consumers and the respondent also could not counter this argument effectively. We are, of the view that from the announcement of the new tariff on 10.10.2000 all the organizations engaged in research and availing supply at high voltage should be governed at the tariff HTP-II(A). To apply them any other rate would amount to discrimination and incorrect application of the tariff rates. We, therefore, direct the Board to now take necessary steps to ensure that all similarly situated organizations are governed by the rate HTP-II(A).

15. We order accordingly and with these orders the petition stands disposed off.

Sd/-
(B.M. OZA)
MEMBER

Sd/-
(R.K. SHARMA)
MEMBER

Place : Ahmedabad
Date : 25th September, 2002