

STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamngalam-Anchumana Temple Road
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024
www.keralaeo.org Ph.0484 2346488 Mob: +91 9567414885
Email:ombudsman.electricity@gmail

Appeal Petition No: P/ 211/ 2011.

(Present-T.P. Vivekanandan)

APPELLANT : Sri. Ratheesh K. Pai,
Manager (Electrical), SreeSakthi Paper Mills Ltd.,
Sree Kailas-39/2727-A, Paliam Road, KOCHI -16.

RESPONDENTS : 1).The Deputy Chief Engineer,
Electrical Circle, KSE Board,
Perumbavoor, Ernakulam

: 2).The Special Officer (Revenue),
Vidyuthibhavanam, KSE Board,
Pattom, Thiruvananthapuram-4.

ORDER.

Background of the case: -

The appellants are representing an industrial consumer named 'Sree Sakthi Paper Mills Ltd', with consumer No. 7/4528, under the jurisdiction of Electrical Section, Perumbavoor. The appellants are aggrieved by the fact that, KSEB had collected excess demand charges from them through wrong calculations, for the period from January 2010 to July 2010 and then up to March 2011, deviating from the direction contained in the order dated 2.12.2009, on 'Rationalisation of ToD (Time of Day) Tariff for HT-EHT consumers', of the Hon: Commission. The appellants are aggrieved by the bills filed before the CGRF which was dismissed and hence the appellants preferred Appeal praying for the refund of excess charges paid to the KSEB for the period 01/2010 to 03/2011.

Arguments of the Appellant: -

The appellants have raised the following contentions in their appeal petition, namely;

1). The CGRF did not properly consider the Regulatory Commission order TP 66/2009 dated 02-12-2009 and billing procedure calculation. The order and procedure is transparent and clear. In Annexure A i.e. page no.'20 & 21' of the order the excess demand is defined as " Excess demand charges shall be applicable to the recorded maximum demand in excess of contract demand during normal period and peak period, which shall be charged at 50% extra.(i.e. excess demand during normal/peak period x ruling demand charges x 0.5). Excess demand charges during off-peak period shall be applicable only if the recorded maximum demand during off-peak period is in excess of 130% of the contract demand". This clearly shows that KSEB can collect only 0.5 times of the ruling demand charge as excess against excess demand. More than that it is clearly clarified that 50% extra to be collected is as per "excess demand during normal/peak period x ruling demand charges x 0.5". Here a 'slash' symbol separates 'normal and peak' period. As per the prominent and standard dictionaries like Oxford, Cambridge and Webster, the meaning of

the symbol slash (/) is alternative which means only one can be considered. The KSERC Annexure 'F' (billing procedure of TOD tariff for LT, HT & EHT consumers) has clarified the billing method as "Total excess demand charge = excess demand Ed1, Ed2 or Ed3 whichever is higher x 0.5 x D".

2). Another argument raised by the appellant is that in the CGRF order it is mentioned that KSEB had forwarded a billing procedure to the KSERC on 29-1-2010 and has again taken up with KSERC for clarification and is under its review. Now in the KSEB's review petition No RP-19, it was once again clarified as "as per order dated 2-12-2009 excess demand charges shall be applicable to the recorded maximum demand in excess of contract demand during normal period and peak period, which shall be charged 50% extra. Excess demand charges during off-peak period shall be applicable only if recorded maximum demand during off-peak period is in excess of 130% of contract demand. In the billing procedure as per Annexure-F of schedule of Tariff and Terms and Conditions for excess demand in Time Zone T3 Demand Charges Ed3 = [(RMD3 - 1.30) x CD] and the total excess Demand charge is calculated taking the highest excess demand of the three time zones. Hence the procedure approved is consistent with the tariff order dated 2-12-2009 and shall be followed by KSEB"

The Reliefs sought: -

Direction may be given to the respondent for recalculating the excess demand charges of the consumer as per Regulatory Commission order including its Annexure F and refund the excess amount with interest.

Arguments of the Respondent:-

The Respondent has opposed the contentions of the Appellant in the Petition filed and raised the following arguments among other things included in the details submitted and those stated during the Hearings.

1). The KSEB has filed a proposal for simplifying the existing ToD tariff billing method of HT & EHT consumers of KSEB as directed by the KSERC. While finalizing the proposal, KSEB has to ensure that, there would not be any financial benefit either to KSEB or to HT & EHT consumers. KSERC vide the order dated 02.12.2009 on petition No.66 of 2009 approved the ToD tariff with certain modifications to the original proposal of the Board. The salient features of the approved tariff are detailed below.

Particulars	Rates Proposed by KSEB (% of Ruling Charges)			Rates approved by KSERC (% of Ruling Charges)		
	<u>Normal Period</u> (6.00 hrs To 18.00hrs	<u>Peak Period</u> (18.00 hrs to 22.00hrs.)	<u>Off Peak</u> (22.00 hrs To 6.00hrs)	<u>Normal Period</u> (6.00 hrs To 18.00 hrs)	<u>Peak Period</u> (18.00 hrs to 22.00 hrs)	<u>Off Peak</u> (22.00 hrs to 6.00 hrs)
Demand charges	100%	140%	85%	100%	140%	80%
Energy Charges	100%	130%	90%	100%	130%	85%

The other conditions were (a) The Rulings demand/energy charges shall be the normal period demand/energy charges as per notified tariff. (b) Billing demand for normal and off peak period during a month shall be the recorded maximum demand or 75% of the contract demand which ever is higher. (c) The Billing demand for peak hours shall be the recorded maximum demand. (d) The Excess demand charges: The Excess demand charges shall be applicable to the recorded maximum demand in excess of contract demand during normal period and peak period, which shall be charged at 50% extra (i.e. excess demand during normal/peak period \times ruling demand charges \times 0.5). (e) The Excess demand charges during off-peak period shall be applicable only if the recorded maximum demand during off peak period is in excess of 130% of the contract demand etc. The respondent has marked a copy of the Order dated 2/12/2009 of the KSERC as document-1.

The KSERC has made certain changes in the ToD tariff proposal made by KSEB and the Board vide the order dated 28.12.2009 had ordered to implement the same. The said Board order is marked as Document-2. Further, KSEB vide the circular dated 13.01.2010 has issued detailed billing procedures for implementing the new ToD tariff billing rules. It is marked as Document -3.

Subsequently, KSEB forwarded the draft schedule of tariff and Terms and conditions of Retail Supply by KSEB, with effect from 01.01.2010, incorporating the changes made by the Hon: KSERC vide its order dated 02.12.2009. The Commission vide the letter dated 11.02.2010 had revised the 'Schedule of Tariff and Terms and conditions of Tariff for retail supply by KSEB' incorporating the changes as per the KSERC order dated 02.12.2009. The Hon: Commission had also forwarded the billing procedure as Annexure-F to the letter dated 11.02. 2010. Copy of the letter received from KSERC is marked as Document -4. The tariff schedule forwarded by the Commission dated 11.02.2010 is not a tariff order, but it is only a tariff schedule to the Commission's order dated 02.12.2009.

It was noticed that the KSERC had made certain changes in the Tariff Schedule forwarded to KSEB, vide the letter dated 11.02.2010, which was not in conformity to their order dated 11.02. 2010, and also to their order dated 02.12.2009. Some changes were ordered by the KSERC and one among them was regarding the "Excess Demand Charges during off-peak time" in case of HT & EHT consumers having ToD Meters.

As per the tariff order dated 02.12.2009, Commission has ordered to charge the demand up to 130% of the CD with the incentivised tariff of 20% of the normal demand charge. But as per the billing procedures forwarded by the KSERC vide the letter dated 11.02.2010, the consumers billed under ToD tariff are allowed a 20% reduction on demand charge for the entire billing with out any ceiling on excess demand over contract demand irrespective of whether the billing demand exceeds 130% of the contract demand or not. So for a consumer with off-peak demand of 150% of the CD, the entire off-peak demand is proposed to charge at incentivised rate of 80% of the demand charge, which is not proper. Hence KSEB vide the letter dated 02.03.2010 has taken up these issues with KSERC for clarifications and the same is marked as Document-5. But KSERC vide the letter dated 05.04.2010 had clarified that, the issue of excess demand charges shall be considered at the time of reviewing the ToD tariff of KSEB.

It is to be noted that KSEB had proposed the revision in ToD tariff with the prime objective of reducing the peak demand by shifting the same to off-peak period. Accordingly, as per the billing

procedure proposed, KSEB had proposed to impose penalty for excess demand for the three time zones separately as follows;

- 1). Excess demand charges shall be charged for normal time and peak time when the billing demand exceeds contract demand and
- 2). Excess demand charges during off-peak period shall be charged when the billing demand exceeds $1.30 \times CD$.

However, as per the billing procedure approved by the KSERC as Annexure-F, of their letter dated 11.02.2010, the excess demand charges will be levied only for the highest of the excess demand in any of the three time zones, namely, normal, peak or off-peak hours. i.e. as per the approved billing procedure, even though there is excess demand during peak hours/normal time, the consumers are not liable to pay for any excess demand charges for the excess demand during normal/peak period provided there is excess demand during off-peak hours. This will overshadow the basic purpose of ToD structure motivating the consumers to reduce the demand during peak and day time.

Further, in the tariff order dated 02.12.2010 (para-42), the Commission has not specified that the excess demand charges is to be levied only for the highest of the excess demand of either of the three time zone- 'normal', ' peak' , or off-peak. So KSEB vide the petition dated 21.07.2010 had filed a petition before Hon: KSERC for reviewing the revised ToD tariff billing procedure approved by KSERC w.e.f.02.12.2009. A copy of the petition is marked as Document-6. The para-7 of the petition is being dealt with the issue of billing of excess demand charges. KSERC had admitted the petition and also conducted a public hearing on the matter on 04.10.2010. The Hon: Commission vide the order dated 08.12.2010 has decided to enhance the ToD tariff for peak hour consumption w.e.f. 01.01.2011. A copy of the order is marked as Document-7. The abstract of the order is detailed below.

Particulars	Rates existing as approved by KSERC (% of Ruling Charges)			Rates revised by KSERC w.e.f 01.01.2011 (% of ruling charges)		
	Normal period (6.00 hrs To 22.00 Hrs)	Peak period (18.00 hrs to 22.00hrs)	(22.00 hrs to 18.00hrs)	Normal Period (6.00 hrs to 18.00 hrs)	Peak period (18.00 hrs to 22.00hrs)	(22.00 hrs to 18.00 hrs)
Demand Charges	100%	140%	80%	100%	150%	80%
Energy Charges	100%	130%	85%	100%	140%	85%

In the said order dated 08.12.2010, Hon: Commission has further ordered that, since the time period for the analysis of the impact of ToD tariff done by KSEB was for only 4 months, the conclusions of KSEB cannot be accepted as such. Hence KSEB was directed to submit a detailed report to the Commission on the impact of ToD system after its implementation for a period of 12 months. The recoupment of losses incurred by KSEB on account of the new ToD system shall be considered at the time of Truing up of ARR & ERC of KSEB. It was also ordered that the billing procedure as per the Annexure-F to the schedule of tariff and terms and conditions is consistent with the tariff order dated 02.12.2009 and directed to follow the same.

However, KSERC has not clarified the following issues raised while deciding the review petition:

(a). Demand charges during off-peak hours when the billing demand exceeds 130% of contract demand. (b). The matter of charging excess demand for each time zone. Hence, vide the letter dated 01.02.2011, KSEB has again requested before the Hon: Commission to consider the above issues of excess demand charges, considering its long lasting financial consequences. A copy of the letter dated 01.02.2011 is marked as Document-8. But the Hon: KSERC vide the letter dated 01.03.2011 has clarified that the issues involved can be reviewed during the next tariff revision exercise only. A copy of the clarification letter dated 01.03.2011 is marked as Document-9. The Hon: Commission has further directed to submit a report of one year, after the implementation of the TOD tariff order dated 02.12.2009, i.e. for the period from 01.01.2010 to 31.12.2010, and KSEB is in the process of finalizing the report.

Considering the directions and assurance that the issues on excess demand charges can be reviewed in the next tariff revision exercise, Board vide the order dated 11.04.2011 has ordered to adopt the billing procedure for ToD tariff for HT & EHT consumers. A copy of the order dated 11.04.2011 is marked as Document-10. Accordingly, at present the consumers are charged based on the revised billing procedures as endorsed by the Commission order dated 08.12.2010.

As directed by the Commission, KSEB is in the process of studying the impact of ToD based tariff rationalization for one year w.e.f 01.01.2010 and the same shall be submitted to the KSERC shortly. The issue of 'Excess Demand charges and its impact on the system as well as on revenue shall be furnished along with the review petition. The excess demand raised from the consumers as per the billing procedure adopted by the Board during the period from 01.01.2010 to 31.12.2010 can be taken up by the consumers during the deliberations before the Commission.

Analysis and Findings: -

The Hearing of the case was conducted on 25-7-2011 and 15-3-2012, in my chamber at Kochi, (Edappally) and both parties were present. Sri.Ratheesh K. Pai and Sri. Shaji Sebastin, attended representing for the appellant and Sri.V.V Sathyarajan, Chief Engineer (C&T), Smt. B Soudamini EE, Electrical Circle, Perumbavoor represented for the respondent, in the Hearing on 25-7-2011. Smt.B Sreedevi, DyCE (TRAC), Smt Girija, EE, Electrical Division, Aluva and Sri Edward P. Boniface, Assistant Engineer, TRAC, KSEB, represented the Respondent's side and Sri Shaji Sebastine and Sri Gireesh Kumar represented the appellant's side in the hearing on 15-3-2012 and they have argued the case on the lines stated above.

On perusing the Appeal Petition, the counter statement of the Respondent, the documents submitted, the averments raised in the hearing and considering the facts and circumstances of the case, I come to the following findings and conclusions, leading to the decisions thereof.

The issue of dispute is regarding the billing of the excess load availed by the consumer than his authorized Contract Demand. As per rules, it will surely attract penalization for the quantum of Load that exceeded the sanctioned load. Before the introduction of rationalized ToD (Time of Day) tariff rules in 2.12.2009, there was no division of three separate time zones for a day of 24 Hrs, like normal time period of 06.00 Hrs to 18.00 Hrs, peak period of 18.00 Hrs to 22.00Hrs and off peak period of 22.00 Hrs to 06.00 Hrs. Previously, the load that exceeded for 24 Hrs of the day will determine the Excess load and the same got penalized during a month. But after the introduction of new ToD tariff rules (rationalization) in 12/2009, the metering of load for the 3 time zones and the necessity for separate billing for each zone including the excess demand charges for availing more load than the sanctioned load in each Time zone arose.

The averment of the respondent that the consumer needs penalization for violation of CD for each Time zone does not deserve merit as it would mean that the consumer has to pay 3 times penalty if he has exceeded his Load demand in all the 3 zones. This result in 3 times penalization for 24 Hrs of a day, where as it was done for one time only previously, i.e. till 01.01.2010. The method of billing as approved by the Hon: Commission has the effect of penalization of one of the 3 time zone only, even if the consumer has exceeded his Contract Demand in all the 3 Time zones. This has adverse effect on the Licensee, when consumers used excess load during peak time without paying any penal charges, by using the highest excess load at off peak period which has a tariff at reduced rate, thus escaping from the penal billing for the peak time usage, as well as obtained reduction in the penal charges payable by him. The Hon: Commission issued reduced tariff rates during off peak period as incentives and was eager to see the consumers divert their Load Demand from peak time to off peak period. The Commission's intention was to shift the Load demand to off peak period so as to mitigate the burden of the Licensee as well as the Grid of KSEB to meet the high peak Load demand. Since the Order of the Hon: Commission was not able to address this Peak Load Demand problem in a way as it hoped, this anomaly was brought to the attention of the Hon: Commission by the KSEB. The Hon: Commission has promised to look into the issue later while reviewing the truing up the Accounts (ARR & ERC of KSEB), and until that time to follow the Orders issued by it without any deviation. Hence there is no point or relevance in the argument of the KSEB that it may allow the KSEB to follow its Circular dated 13.01.2010, which allows to raise penal bills for all the 3 time zones.

Decision: -

From the analysis done above and the findings and conclusions arrived at, I take the following decision.

The Hon: Commission has issued the Order dated 02.12.2009, in the matter of proposals for rationalization of existing tariff, which included among other things, the new rules of ToD (Time of Day) Tariff for HT & EHT consumers, as requested by the Licensee. The Hon: Commission has incorporated some modifications on the proposals suggested by KSEB, particularly on the penal charges for the Excess Load availed than the sanctioned Load, where it was specified that the '*Excess demand charges shall be applicable to the recorded maximum demand in excess of the Contract Demand during normal period and peak period which shall be charged at 50% extra (i.e. Excess demand during normal/ peak period x ruling demand charges x 0.5)*'. *Excess Demand charges during off peak period shall be applicable only if the recorded maximum demand during*

off peak period is in excess of 130% of the Contract Demand'. It is clear from the above order that the Board is entitled to raise the excess demand charges for one of the three time zones only. The KSEB vide its order dated 28.12.2009, accepted this order of the Commission as such. But the KSEB vide its circular dated 13.01.2010 (Annexure-1 to the Circular) has deviated from this by directing its Officers to penalize the consumer for all the Time zones, if the consumer has exceeded the Contract Demand (CD) during those 3 Time zones.

The Hon: Commission again, vide its letter dated 11.02.2010 while forwarding the Schedule of Tariff and Terms and Conditions for retail Supply by KSEB w.e.f 01.01.2010, clarified with an Annexure-F detailing the billing method, and stating that the highest of the 3 time zone's excess demand charge, need only be chargeable on the consumer. The Board subsequently approached the Hon: Commission on 02.3.2010 with a review petition on the matter detailing the anomalies observed and the reduction in revenue sustained by them. The KSERC in its order on RP-19 dated 08.12.2010 observed that the issue will be considered at the time of truing up ARR and ERC of KSEB. Further, to a query raised by the KSEB, the Hon: Commission clarified on 01.03.2011 that it does not find it necessary to review the matter again. The Board vide its order dated 11.04.2011 endorsed the Hon: Commission's orders as such and accordingly revised the billing procedure to be made effective from 01.01.2011.

From the above it is certain that the Excess Demand charge Bills (for exceeding the registered CD) issued to the appellant's Firm for the period from January 2010 onwards needs revision. The appellant has argued that the excess demand charges collected from him for the period January 2010 to March 2011, was issued based on the KSEB circular dated 13. 01.2010. Since the billing procedure adopted by the respondent in raising the bill for excess demand charge during the period January 2010 to March 2011 was found inconsistent with the billing method approved by the Hon: Commission, it is decided that the Respondent shall revise the said bills for the above period as per the order issued by the Hon: Commission vide Annexure-F to the letter dated 11.02.2010 while forwarding to KSEB, the Schedule of Tariff and Terms and Conditions for retail Supply by KSEB w.e.f 01.01.2010. The excess amount so determined, by the revision of the Bills as ordered above, shall be adjusted in his future bills, with in 60 days of this order. The interest as per rules shall also be issued to the consumer for the excess amount collected as above, for the period of remittance to the day of adjustment.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the appellant stands allowed. No order on costs. Dated the 5th of July, 2012.

Electricity Ombudsman.

P.211/2011/ 1293/ Dated 05.07.2012.

Forwarded to: -

- (1). Sri. Ratheesh.K.Pai, Manager (Electrical),
Sree Sakthi Paper Mills Ltd, Sree Kallas -39/2724-A, Pallom Road, Kochi-33.
- (2). The Deputy Chief Engineer, Electrical Circle, KSEB, Perumbavoor.

(3). The Special Officer (Revenue), Vidyuthibhavanm, KSEB, Pattom,
Thiruvananthapuram-4.

Copy to: -

- (1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
- (2). The Secretary KSEB, Vidyuthibhavanam, Pattom, Thiruvananthapuram-4.
- (3). The Chairperson, Consumer Grievance Redressal Forum,
KSEBoard, Power House Buildings,Ernakulam-18.