



CASE STUDIES

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CASE STUDY

LANDMARK JUDGEMENT

Indian Railways Not a Deemed Distribution Licensee - Unpacking the APTEL Judgement

BACKGROUND

The case revolves around the classification of Indian Railways as a **deemed distribution licensee** and the associated obligations regarding cross subsidy surcharges (CSS) and additional surcharges (AS). Indian Railways, due to its extensive nationwide electricity procurement and usage, falls under the category of a deemed distribution licensee, exempting it from acquiring a license for inter-state transmission of electricity. The railways directly procure electricity from power distribution companies (discoms) across various states, bypassing the need for a single discom. Discoms impose **CSS (Cross Subsidy Surcharge) and AS (Additional Surcharge)** on large commercial users who procure electricity from suppliers other than the discom, aiming to compensate for the utilization of the discom's electricity supply network. The appeal by various state electricity departments **challenges the deemed licensee** status granted to Indian Railways, arguing that it should not be exempt from paying these charges since its procurement spans multiple discoms.

DISCOMS contend that Indian Railways, by consuming all the electricity it procures and not engaging in sales, does not meet the criteria for a deemed licensee.

On 12th February 2024 APTEL in a judgement, said that as the Railways consumes all the electricity that it procures, it is not a licensee and hence is liable to pay additional surcharges and cross subsidy surcharges like any other open access electricity consumer.

IMPLICATIONS ON INDIAN RAILWAYS POST APTEL'S JUDGEMENT

In FY24, the railways allocated approximately **INR 20,000 crore for electricity consumption expenses**, with projections indicating an increase to around **INR 22,000-23,000 crore for FY25**. Of this expenditure, approximately 60% is allocated to train operations, with the remainder allocated to non-traction purposes. However, if the railways is **categorized as an Open Access Consumer**, it would become subject to Cross Subsidy Surcharges (CSS) and Additional Surcharges (AS). This would result in a nearly **10% increase in the railway's electricity expenses**. Consequently, the **annual electricity expenditure** could rise by close to **INR 2,500 crore, potentially leading to increased charges for consumers or indirectly through elevated budgetary allocations.**

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What was the case about ?

The Case at Hand

- **Parties Involved:** The judgement involved appeals filed by Indian Railways challenging their classification as "consumers" under the Electricity Act. Distribution companies (DISCOMs) in Odisha were the opposing party.
- **The Dispute:** Indian Railways argued they were "deemed distribution licensees" under the third proviso to Section 14 of the Act. This status would exempt them from paying additional surcharges like cross-subsidy surcharges, which help balance electricity tariffs for different consumer categories.

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APTEL'S ADJUDICATION

APTEL examined multiple facets of the Electricity Act and scrutinized the roles of Indian Railways as defined in the Railways Act, 1989, with the aim of assessing whether Indian Railways meet the criteria to be considered a deemed distribution licensee. Additionally, APTEL addressed various matters concerning the status and privileges of Indian Railways under the Electricity Act, which are outlined below among other issues and complexities:

1. Definition of Distribution of Electricity:

- Indian Railways' activities under the Railways Act do not meet the criteria for 'distribution of electricity' as outlined in the Electricity Act.

2. APTEL's Interpretation:

- APTEL analyzed the activities specified in Sections 11(g) and 2(31) of the Railways Act and determined them to be primarily for the internal functioning of Indian Railways.

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APTEL'S ADJUDICATION (CONTD.)

3. Internal Operations:

- The operation, maintenance, and repair of power supply and distribution installations are solely for the internal use of the railways and not for any external purpose.

4. Internal Routing of Electricity:

- Electricity within the railway's network is used to power trains, locomotives, and support infrastructure, without involving external distribution.

5. Supply of Electricity by Indian Railways:

- APTEL clarified that the provision of electricity by Indian Railways to entities within its jurisdiction does not constitute 'supply' as per the Electricity Act but is considered the use of electricity by or on behalf of the Railway Administration.

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APTEL'S ADJUDICATION (CONTD.)

6. No Sale to Consumers:

- Indian Railways does not sell electricity to consumers or third parties, thus not fulfilling the criteria for distribution under the Electricity Act.

7. Sine Qua Non for Distribution:

- APTEL emphasized that the sale of electricity is essential for an entity to be considered a distribution licensee, whether deemed or otherwise, under the Electricity Act.

8. Obligations as Distribution Licensee:

- Indian Railways does not fulfill the obligations of a distribution licensee under the Electricity Act, including the obligation of universal supply.

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APTEL'S ADJUDICATION (CONTD.)

9. Open Access and Cross Subsidy Surcharge:

- Indian Railways is entitled to seek open access only as a consumer, not as a licensee, under the Electricity Act.
- When purchasing energy through open access, Indian Railways is subject to cross subsidy surcharges, similar to other open access users.

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IMPLICATIONS

1. Financial Implications:

- APTEL's decision clarifies Indian Railways' status as a consumer, **obligating them to pay additional or cross-subsidy surcharges** when procuring electricity from DISCOMs under Section 42 of the Electricity Act.
- Had APTEL ruled in favor of Indian Railways, distribution companies across the nation would have faced significant revenue losses. This would have ultimately shifted the burden to consumers at large, considering Indian Railways' categorization as a subsidizing consumer.
- For instance, distribution companies in Odisha alone would have collectively lost around INR 1400 Crores per annum if Indian Railways had been deemed a distribution licensee. Such losses incurred by distribution licensees nationwide would inevitably lead to higher retail costs of electricity, impacting individual consumers.

2. Long-Term Implications:

- The judgment resolves a longstanding issue that has persisted for nearly a decade, providing clarity on Indian Railways' role and obligations within the electricity distribution framework.
- By delineating the responsibilities and liabilities of distribution licensees, APTEL's decision contributes to a more structured understanding of the Electricity Act's provisions. **This clarity benefits not only Indian Railways but also other stakeholders in the electricity distribution sector.**

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IMPLICATIONS (CONTD.)

3. Regulatory Framework Enhancement:

- APTEL's comprehensive analysis and interpretation of the provisions related to distribution licensees offer valuable guidance to regulatory bodies and stakeholders. This helps in streamlining future decisions and actions within the electricity distribution sector.
- The judgment sets a precedent for resolving similar disputes and issues that may arise in the future, promoting consistency and predictability in regulatory decisions.

4. Consumer Impact:

- By upholding the requirement for Indian Railways to pay additional charges, the judgment indirectly safeguards the interests of other electricity consumers. It ensures a fair distribution of costs and prevents undue burden on non-subsidizing consumers.

Essentially, the ruling by APTEL tackles both immediate financial issues and enhances the long-term stability and clarity of regulations within the electricity distribution sector. It highlights the significance of harmonizing the interests of different stakeholders to maintain the effective operation of the electricity market.



CASE REFERENCE

APPELLATE TRIBUNAL FOR ELECTRICITY

APPEAL NO. 276 OF 2015, APPEAL NO.320 OF 2018, APPEAL NO.114 OF 2020 & IA NOS. 635 OF 2020& 654 OF 2023, APPEAL NO. 73 OF 2021 & IA NO. 969 OF 2020, APPEAL NO. 213 OF 2021 & IA NO. 915 OF 2021, APPEAL NO. 170 OF 2019 & IA NO. 709 OF 2019 & IA NO. 809 OF 2021, APPEAL NO. 343 OF 2019 & IA NO. 1787 OF 2019 & APPEAL NO.133 OF 2020 & IA NOS. 934 OF 2020, 873 OF 2021& 709 OF 2023

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