

Before the Appellate Tribunal for Electricity  
Appellate Jurisdiction  
New Delhi

Appeal No. 113 of 2005

Dated this 6<sup>th</sup> day of July 2006

Present : **Hon'ble Mr. Justice E Padmanabhan, Judicial Member**  
**Hon'ble Mr. H. L. Bajaj, Technical Member**

Himachal Pradesh State Electricity Board

.....Appellant

Versus

Himachal Pradesh Electricity Regulatory Commission

.....Respondent

Counsel for the Appellant Mr. M.G. Ramachandran, Advocate  
Ms. Saumaya Sharma, Advocate and  
Ms. Taruna S. Bhagel, Advocate

Counsel for the Respondent Mr. Rinku Gautam and  
Mr. P.S. Bhullar , Advocates

**JUDGMENT**

1. The appellant, above named, has prayed this Appellate Tribunal:

(i) To allow the appeal and modify the Order dated 29.06.2005 passed by the Respondent Commission in so far as the Commission has disallowed:

- a) Transmission Distribution Losses
- b) Interest and Finance Charges
- c) Generation cost of Himachal Pradesh State Electricity Board

owned generating stations

- d) Income from other business and non tariff income
- e) Employees Cost
- f) Administrative and General expenses
- g) The extension of period of night time consumption.

and

- (ii) To hold and direct that the appellant shall be entitled to recover as a part of its revenue requirements through tariff, the amounts mentioned in the appeal (Paragraph 43 to 46) and accordingly revise the tariffs.
2. Heard Mr. M.G. Ramachandran, Advocate for appellant and Mr. Rinku Gautam and Mr. P.S. Bhullar, Advocates for Respondent.
  3. The brief facts leading to the present appeal could be summarized as under. The appellant Electricity Board, is a deemed licensee for transmission, distribution and trading in the State of Himachal Pradesh, in terms of first proviso to Section 14 of The Electricity Act, 2003. The appellant also generates power. The respondent was constituted initially under The Electricity Regulatory Commissions Act, 1998. On and after 10.06.2003, the Responded Commission is functioning in terms of Sec. 82 of The Electricity Act, 2003. The said Commission framed The Himachal Pradesh Electricity Regulatory Commission (terms and conditions for determination of tariff) Regulation, 2004.
  4. On 08-12-2004, the appellant moved the respondent under Section 62 and 64 of the Act to fix its Annual Revenue Requirements and for

determination of tariff for the period 01.04.2005 to 31.03.2006. The appellant furnished all the details, called for by the respondent. The Respondent Commission notified the petition and invited objections/suggestions. After following the Prescribed Procedure on 29.06.2005, the respondent fixed the Annual Revenue Requirements of the Appellant Board for the tariff period 2005-06 and determined the tariff. The appellant sought for review of the said Tariff Order passed by the Commission which has since been rejected as represented by the counsel for respondent. The appellant also moved the Hon'ble High Court under Article 226 and the Writ Petitions are pending, but the challenge is in respect of certain directions issued and it is represented that this appeal could well be proceeded and decided.

5. Before the respondent, the appellant proposed its annual revenue requirements at Rs.1,446/- crores for Financial Year 2005-06, while the Respondent Commission has allowed the ARR to the extent of Rs.1,264/- crores. The Respondent Commission approved the revenue gap at Rs.111/- crores as against the revenue gap of Rs.292/- crores claimed by the appellant. The said revenue gap of Rs.111/- crores had been made up by increasing the tariff even according to the appellant.
6. In this appeal, the appellant is challenging the disallowance of the revenue requirement to the tune of Rs.181/- crores and few other claims under various heads. The points that arise for consideration in this appeal are:-
  - (i) Whether the disallowance of transmission and distribution losses as claimed by the appellant, is illegal and liable to be interfered?

- (ii) Whether the disallowance of interest and finance charges, claimed by the appellant, is illegal and whether the same is liable to be interfered?
- (iii) Whether the disallowance of cost of various generating projects based on bench marks, as against the claims of the appellant, is liable to be interfered? If so, to what relief?
- (iv) Whether the Commission could direct the Appellant Board to undertake non electricity business? Whether the earnings from non electricity venture could be utilised to subsidise the cost of electricity distribution?
- (v) Whether the disallowance of employees cost related to two projects is just or warranted? To what relief, if any?
- (vi) Whether the disallowance of administrative and general expenses claimed by the appellant, is illegal and unjustified? Whether it is liable to be interfered?
- (vii) Whether the State Regulatory Commission is well founded in allowing night time consumption charges by extending the hours commencing from 2100 hrs. to 0600 hrs. as against the night time concession allowed by the appellant between 0000 hrs to 0600 hrs.?
- (viii) Whether the refusal to annualize the tariff, as applied for, and restricting the tariff period is warranted? Whether the refusal to annualize the tariff warrants interference?

- (ix) To what relief, if any?
7. Before taking up the points for consideration, it has to be mentioned the State Regulatory Commission's views and directions, if it is possible, that would have been the best for the appellant Board as it is an idealistic situation to be attained by the Board. We find the same to be an utopia and near impossibility at least in the near future. Field experience and implementation which involves human element and that too in a State Electricity Board are far below the theoretical or Laboratory standards. That apart the corrections indicated and enforcement of high standards expected by the Commission is in the best interest of consumers but at the same time, the Commission shall not loose sight of the fact that how historically the Board's were functioning hitherto before. The performance of the Board could be improved gradually since it suffers from many illnesses which are normal in such State undertakings. Further, the Commission should see to that the Board manages its funds by allowing it to limp back to normalcy instead of expecting State authorities to advance funds or third parties to waive interest or show concessions. These aspects are required to be considered or taken note of before deciding these points.
8. At the same time we are to add that the Commission has not faulted in setting high standards for the Board. The only difference being a perspective and positive approach and the practicality which require some more time to the Board to improve its affairs, which we hope is possible in the near future. The Appellant may ultimately prove itself to be a model licensee in the course of next few years. We will take up the points for consideration.

9. Taking up the first point for consideration, the Commission which allowed T & D loss at 20% during the previous year has allowed 19.5% as against the claim of 23.5% advanced by the appellant Board. The T & D loss, it is true, is on the higher side at least in six out of nine circles as seen from the following table :-

**“Table 6.4: Circle-wise T&D losses**

<b>Sl</b>	<b>Circle</b>	<b>FY 2002-03</b>	<b>FY 2003-04</b>	<b>FY 2004-05</b>
1.	Shimla	} 33.37%	23.59%	24.67%
2.	Rampur		17.52%	20.56%
3.	Rohroo		57.61%	52.14%
4.	Solan	14.69%	10.55%	13.08%
5.	Nahan	16.72%	14.50%	15.41%
	<b>Total C.E. (Op) South Zone</b>	<b>20.16%</b>	<b>15.10%</b>	<b>16.85%</b>
6.	Mandi		30.69%	28.83%
7.	Kullu		33.87%	30.74%
8.	Bilaspur (w/o ACC)		28.15%	29.82%
	(With ACC)			11.87%
9.	Hamirpur		30.59%	27.97%
	<b>Total C.E. (Op) Central Zone (w/o ACC)</b>			<b>29.3%</b>
	<b>(with ACC)</b>			<b>22.24%</b>
$\frac{1}{0}$	Kangra	30.67%	29.90%	29.70%
$\frac{1}{1}$	Dalhousie	34.95%	31.24%	29.45%
$\frac{1}{2}$	Una	28.85%	27.92%	24.42%
	<b>Total C.E. (Op) North Zone</b>	<b>31.13%</b>	<b>28.83%</b>	<b>27.77%”</b>

10. The T & D Loss in Rohroo, Mandi, Kullu, Bilaspur, Hamirpur, Kangra, Dalhousie and Una and Shimla are on higher side though they have reduced the loss when compared to last two financial years. As rightly pointed out the reasons for huge loss is vast geographical area in the State and larger transmission lines across mountains as against thin population, a special feature of HP, which is a special circumstance that prevails in the State of Himachal Pradesh. If the T

& D Loss is reduced to the level expected and as fixed by the Commission, it will be an ideal situation. The special geographical position, namely high altitude hills and valleys and sparse population, in our view deserve consideration and shall not be lost sight off. It is not the interest of the consumers alone that should be in the mind of the Regulator while undertaking tariff fixation but also the field conditions and practicalities require to be considered. Being hill areas, the population and industries or for that matter high voltage consumers are far dispersed when compared to Punjab or Tamil Nadu, where the electrification percentage is more, which could be achieved only by coverage of inaccessible and uninhabited areas. Hence, naturally there is bound to be more T & D Loss. If the loss is to be disallowed considerably, then the Board may undertake dressing the figures and statistics, which would be a bad precedent.

11. In a recent pronouncement of the Supreme Court in WBERC vs. CESC LTD. reported in AIR 2002 SC 3588 it is laid down that some latitude to the Board should be shown. However it is noticed that an earlier commitment to reduce the loss is sought to be put against the Board. This shall not be lost sight off. But at the same, it is to be pointed out that if it ultimately turns out to be a pious wish as nothing has been done positively by the State and others in this respect as was planned earlier. We shall not close our eyes to practicalities and ground conditions that prevail in the State of Himachal. One redeeming feature is theft of power in Himachal Pradesh is near zero. While following the Supreme Court Pronouncement for the Financial Year in Question, and considering the analysis of the Commission, we will be justified in allowing 22% T & D Loss as an ad-hoc measure, while directing that the Board shall implement the directions issued by the Commission. This is an ad-

hoc one time measure and the same shall not be a precedent for the years to come.

12. Taking up the Second point at the outset, we hold that the reasons assigned by the Commission cannot be sustained, while we hasten to add that there could be no second opinion that the reduction of interest rate is the best finance management. When the interest has already been agreed while availing the loan and this cannot be avoided unless the financing body agrees to revise/ reduce the rate of interest. It is true interest rate in the market has been reduced or slashed but that is for current period. The Commission ought to have directed the Board to negotiate with the funding Agencies for reduction of interest rate, or approach the alternate funding Agencies or commercial banks for availing loans at a reduced rate of interest to clear the existing loans. For this also the Board requires a year or thereabout to explore and accomplish. The instruction to avail R.E. subsidy or appropriate State or Central funds is the way out. Even this takes time. In the circumstances while directing the Board to negotiate for reduction of interest rate or approach other funding bodies as an alternate source at a reduced rate or banks to avail loan to clear the high interest rate commitment, we set aside that part of Commissions' order disallowing portion of interest and allow interest as claimed by the Board. The point is answered in favour of the Board but we direct the Board to take effective steps to reduce the rate of interest or arrange for alternate funding Agency at reduced interest within one year. Failure to accomplish this will lead to same eventuality during the next tariff period.
13. On the third point, we may straightaway hold that there is no justification or reason to disallow cost of various projects based on



bench mark. If the view of the Commission is to be taken as a scale or justification, then no projects will come up nor there is a possibility of meeting the ever increasing demand of power in the State and escalation of cost is a matter of fact.. The view of the Commission, in our view cannot be held to be fallacious but at the same time, there is no justification to disallow it for the year without advance notice or warning. The Board is directed to carry out the directions of the Commission in this respect, avoid delay and cost over run. For this Financial Year, we allow the claim under this head as a one time measure while giving liberty for the future to the Commission to decide, if its directions are not implemented or there is a deliberate failure to complete the project.

14. On the fourth point, we hold that the directions issued by the commission to undertake non electricity activity is a novel one and direction issued overlooks the scope and purport of Sec. 51 of The Electricity Act, 2003, which reads thus:

*“51. OTHER BUSINESSES OF DISTRIBUTION LICENSEES : – A distribution licensee may, with prior intimation to the Appropriate Commission, engage in any other business for optimum utilization of its assets.*

*Provided that a proportion of the revenues derived from such business shall, as may be specified by the concerned State Commission, be utilized for reducing its charges for wheeling:*

*Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidises in any way such business undertaking nor encumbers its distribution assets in any way to support such business:*

*Provided also that nothing contained in this section shall apply to a local authority engaged, before the commencement of this Act, in the business of distribution of electricity.”*

15. This is only an enabling provision for the licensee to engage in any other business for optimum utilization of its assets. If only the licensee decides to engage itself depending upon the availability of infrastructure, manpower, Research & Design, human resource, expertise, etc. for optimum utilization, then the Commission be intimated of the same and not otherwise. To engage or not to engage in any other business, as Sec. 51 stands is well within the decision, Powers or Policy of the Licensee and the Commission has neither the authority nor jurisdiction to issue a direction or compel, as has been done in the present case. As and when the licensee takes an administrative decision after considering all the relevant and material aspect, it may be well open to it to engage in any other business for optimum utilization if Projects could be realised. Till then there could be no compulsion or direction by the Commission is permissible in law. This point is answered accordingly in favour of appellant.
16. The earnings of such business, if any and if at all could be utilized for reducing the charges for wheeling and it shall not be utilised for any other purpose. This is the scope of Sec. 51, as it stands today. Hence the estimation of Commission that the Board could generate Rs.10 crore under this head cannot be sustained and all the directions in this respect are set aside.
17. At the same time, we would impress upon the Board to examine the suggestions given by the Commission as a guideline for the future and it shall adopt innovative methods to earn by such ventures. We are confident that the Board shall examine the suggestions of the Commission with sincerity and give effect to the suggestions as a regulator has expressed with utmost interest of the Board.

18. Taking up the fifth point on a consideration of the reasons assigned by the Board, we hold the disallowance of employees cost related to two projects is not justified. The reasons which prevailed with us in examining the second point squarely applies in answering fifth point as well. Hence, we set aside the direction and allow the claims made under this head.
19. In respect of point (viii), we agree with the reasons assigned by the Commission in its entirety. We do not find any justification to interfere with the conclusions or directions as they are well considered directions of the Commission and more so as the Financial Year has come to an end. However, while examining the administrative and general expenses for the Financial Years to come, we direct the Commission to take a pragmatic view instead of being an utopian and the special geographical features of the State of Himachal Pradesh be taken into consideration. It is essential to undertake a study and decide the claim under each head. Hence point (viii) is answered against the appellant while holding that no interference is called for in respect of the Financial Year in Question, as the year has already rolled.
20. In respect of point (vii) regarding the extension of period of night time concession, HPSEB was giving night time concession between 00.00 hours to 06.00 hours. The Commission vide its impugned order dated June 29, 2005 extended the above hours from 21.00 hours to 06.00 hours. The appellant has contended that extension of night time concession will adversely impact its revenues and the likely impact has not been factored into ARR calculation by the respondent

Commission. HPSEB had submitted in writing, during wrap up session on May 18, 2005 as under:-

*“ The Board made the presentation before the Hon’ble Commission during the public hearing held at Baddi on 4<sup>th</sup> May 05 and on Shimla 16<sup>th</sup> May, 05, wherein the load curves, showing the availability and demand for typical day both for summer and as well as winter month, along with frequency pattern for these day were shown. During the presentation it was made clear that the Board has adjusted his demand for all the 24 hours and no surplus power was available during the night hours. Further the frequency during the night hours hovers around 49.5 hertz and any further reduction of tariff during the night time would put extra load in the system during this period. To meet the extra demand the Board would have to purchase power at high cost under ABT regime. In view of this the request of the objectors to increase night time concession from present 20 paise/kVAh is uncalled for.*

*Further in view of the non availability of power the period of the night time concession cannot be increased to 22.00 hours to 06.00 hrs of the next day”.*

Before us the appellant further contends that increase in night time supply at concessional rate would result in shifting of large loads to night time and the Board will not be able to meet the demand so created. The appellant stated that it had also filed the load curves of its system for typical days with the State Commission and that the perusal of the load curves would reveal that there is no further scope of shifting the loads during night time, in view of the limited availability of power during this period.

The Commission in its tariff order has recorded as under:-

*“8.25: Night time concession*

*8.25.1.1 The existing tariff has the provision for a ‘night-time’ concession of 20 paise/unit for the categories of domestic*

*(above 20 kW), Small & Medium Industrial Power Supply, Large Industrial Power Supply and Water Pumping. The Board, like in the previous petition, has submitted that the concession for off-peak consumption should be applicable only to industries willing to shift their load to off-peak hours as against a general applicability to all industrial users consuming during off-peak hours. The Board during the public hearings gave presentations intimating the frequency, availability and load profile of during the night time. The Board pleaded that since the frequency at the night time hours was below 50 hz and the demand almost matches the availability, it would therefore, not be possible to shift the load to night time. The Board contended that the night time concession and shifting of load thereto should not be encouraged.*

*8.25.1.2 The Commission has examined the pleading of the Board and is not convinced with their contention primarily because the potential consumers having potential to shift load to night time would have already shifted and there would be marginal increase in shifting of load to night-time, if the shifting is encouraged. Also, the Commission feels that shifting of load on account of Board's consumers would hardly make any impact on the grid frequency. Therefore, the Commission has persisted with the current level of concession i.e. 20 paise per unit and has also increased the duration of night time concession from existing 12.00 pm to 6.00 am to 9.00 pm 6.00 am. The Commission also extends this concession to all the domestic, commercial and APS consumers having connected load above 20 kW."*

21. We have examined the above contentions of both the appellant and the respondent Commission. It is also a known fact that the Northern region faces both energy and peaking shortages. The peak demand period from March to August of the year generally extends from 19.00 hours to 03.00 hours (the following day). During September to November the peak period extends from 19.00 hours to 23.00 hours and during December to mid February peak load hours extend from

- 18.30 hours to 22.00 hours. We do not agree with the conclusion of the respondent Commission that “shifting of load on account of power consumption would hardly make impact on grid frequency”. If every state in the Northern region would individually take such a view and not take any measures for Demand Side Management, it would be damaging for the Northern region grid operation.
22. The appellant has also argued that giving the night time concession is a purely commercial decision and, it is for the Board to have its say on a consideration of various matters including commercial viability or advantage and Board shall be allowed to take such decisions without interference and that the Commission ought not to have imposed its views on HPSEB. We find there is substance in this contention and the same deserves to be sustained.
23. We observe that the peaking demand period in the Northern region grid extends beyond 21.00 hours during most part of the year and the fact that Region faces both demand and energy shortages. The Board, depending upon its central allocation, generation from its various stations and the demand pattern of various consumers is the best authority to decide the period of night time concession. Therefore, we set aside the direction issued by the Commission and further direct that the Board be given discretion to decide the period of night concession on a overall and practical consideration of all relevant materials. However, as the FY 2005-06 has already rolled, this direction shall apply for the next tariff period onwards. We decide this point in favour of the appellant

24. Before concluding, we expect the Board to strive hard, march to reach the standards expected of it by the Commission by showing at least annual progress towards higher standards rightly expected by the Regulator.
25. The appeal is allowed in part as set out above in respect of points (i) to (viii). In the result we hold:-
- (a) on the first point, we direct the Commission to allow 22% T & D Loss as an ad-hoc one time measure for this tariff year.
  - (b) on the second point, we set aside the disallowance of interest and direct the interest to be allowed as claimed.
  - (c) on the third and fifth point, we sustain the claim of cost of generating projects based on bench marks as well as employees cost of two projects but it shall be subject to prudent check by the Commission.
  - (d) on the fourth point, we set aside the directions of the Commission to the Board to undertake non-electricity business, while directing the Board to examine and implement the Commission's suggestions in the near future.
  - (e) The sixth point is answered as above with directions to the appellant to decide this in next tariff period onwards.

(f) The seventh point is answered in favour of the appellant and it is for the appellant to decide and fix night hour concession.

(g) The eighth point is answered against the appellant.

26. In the result the appeal is allowed in part. The parties shall bear their respective cost.

Pronounced in open court on this 6<sup>th</sup> day of July 2006.

**(Mr. H. L. Bajaj)**  
**Technical Member**

**(Mr. Justice E Padmanabhan)**  
**Judicial Member**

The last page