Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 72 & No. 141 of 2009

Dated 26th April 2010

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member

Appeal No. 72 of 2009

In the matter of:

Haryana Power Generation Corporation Limited
Shakti Bhawan, Sector-6
Panchkula-1134 112 (Haryana)

… Appellant(s)

Versus

1. **Haryana Electricity Regulatory Commission**
   Bay No. 33-36, Sector-4
   Panchkula-134 112 (Haryana) … Respondent-1

2. **Haryana Vidyut Prasaran Nigam Ltd.**
   Shakti Bhawan, Sector-6
   Panchkula-134 109 (Haryana) … Respondent-2

3. **Uttar Haryana Bijli Vitran Nigam Ltd.**
   Vidyut Sadan, C-16, Sector-6
   Panchkula-134 109 (Haryana) … Respondent-3

4. **Dakshin Haryana Bijli Vitran Nigam Ltd..**
   Vidyut Sadan, Vidyut Nagar
   Hisar-125 005 (Haryana) … Respondent-4

Counsel for the Appellant(s) **Mr. Pradeep Dahiya**
Mr. D.C. Arya, FA/HQ, HPGCL
Counsel for the Respondent(s) **Mr. Anand K. Ganesan &**
Mr. Rajesh Monga, Law Officerfor R-1
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Ms. Sangeeta for R 3 & 4.
Mr. Dipak Bhattacharya
Mr. Ashish Sharma for R-4
Mr. Sanjay Varma, Dir (Tariff), HERC

Appeal No. 141 of 2009

In the matter of:

Haryana Power Generation Corporation Limited
Shakti Bhawan, Sector-6
Panchkula-1134 112 (Haryana) … Appellant(s)

Versus

1. **Haryana Electricity Regulatory Commission**
   Bay No. 33-36, Sector-4
   Panchkula-134 112 (Haryana) … Respondent-1

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   Panchkula-134 109 (Haryana) … Responhdent-2

3. **Dakshin Haryana Bijli Vitran Nigam Ltd..**
   Vidyut Sadan, Vidyut Nagar
   Hisar-125 005 (Haryana) … Respondent-3

4. **Shri Sampat Singh**
   H.No. 112, Sector-15
   Hisar-125 005 … Respondent-4

5. Shri R.S. Chaudhary
H.No. 13, Sector-2
Panchkula-134 109 (Haryana)

6. Shri Balbir Singh Malik … Respondent-6
Shri S.S. Chaudhry … Respondent-7
Through the Secretary,
Haryana Electricity Regulatory Commission
Bay No. 33-36, Sector-4
Panchkula-134 112 (Haryana)

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Mr. Dipak Bhattacharya
Mr. Ashish Sharma for R-4
Mr. Sanjay Varma, Dir (Tariff), HERC

JUDGMENT

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

1. These two Appeals namely Appeal No. 72 of 2009 and Appeal No. 141 of 2009 are being disposed of through this

common judgment as most of the issues raised in these appeals are common.

2. Haryana Power Generation Corporation Limited is the Appellant. The State Commission has determined the tariff of the Appellant for the generation of electricity and supply to the Distribution Companies in the State of Haryana for the tariff years 2008-09 and 2009-10. The State Commission determined the tariff for the tariff year 2008-09 through its order dated 21.04.2008. Aggrieved over some of the issues of the order, the Appellant filed a Review Petition as against the order dated 21.04.2008 which was ultimately dismissed by the State Commission by the order dated 19.09.2008. As against these two orders the Appellant has filed the Appeal in Appeal No. 72 of 2009. The State Commission had determined the tariff for the tariff year 2009-10 through its order dated 18.05.2009. As against this order the Appellant

has filed Appeal No. 141 of 2009. In these present Appeals the Appellant has raised the following common issues:

(i) Plant Load Factor (PLF) determined by the State Commission for the PTPS, Panipat Units No. 1 to 4 and FTPS Faridabad Units 1 to 3 of the Appellant.

(ii) Auxiliary Power Consumption allowed by the State Commission for the PTPS Panipat Units 1 to 6 and FTPS Faridabad Power Stations of the Appellant.

(iii) The Specific Oil Consumption allowed by the State Commission for the PTPS Panipat Units 1 to 4 and FTPS Faridabad Power Stations of the Appellant.

(iv) Station Heat Rate (SHR) allowed by the State Commission for the generating units of the Appellant.

(v) Transit loss of coal allowed by the State Commission.

(vi) Rate of interest on working capital allowed by the State Commission.

(vii) Operation and Maintenance (O&M) allowed by the State Commission.

(viii) Depreciation

(ix) Return on Equity.

(x) Fuel Surcharge Adjustment (FSA) periodicity and its holding cost.

3. In regard to the Plant Load Factor, it is submitted by the Learned Counsel for the Appellant that the State Commission, under the National Electricity Policy and National Tariff Policy, has to ensure financial viability of the sector and attract investments which can definitely be achieved. It further provides that the norms should be efficient, relatable to past performance, capable of achieving and has to take into consideration the latest technological advancement. It is submitted by the Learned Counsel for the Appellant that in this case the State Commission has committed an error in specifying the PLF higher than that claimed by the Appellant. The Appellant claimed PLF on

annual basis for Units 1 to 4 of PTPS Panipat and FTPS Faridabad but the State Commission allowed PLF which was unachievable and not practicable. In brief, the main ground of challenging the PLF as recommended by the State Commission is that generating units of the Appellant are of old vintage and as such their performance cannot be compared with the PLF achieved by the new generating stations.

4. On going through the impugned order, it is noticed that the State Commission has determined the PLF of 77% for the year 2008-09 and 80% for the year 2009-10 for the Units 1 to 4 of PTPS Panipat. The State Commission in its order has taken into consideration the expected renovation, modernization and refurbishment of the generating units being undertaken by the Appellant. It has also considered the past performance of the generating units till the month of January 2008 and the expected PLF that the generating units ought to achieve through reasonable efficient

operation. The State Commission had given valid reasonings while determining the PLF taking into consideration the fact that the inefficiencies of the Appellant in not achieving the expected PLF ought not to be passed on to the consumers. The State Commission also noticed the inordinate delay on the part of the Appellant to refurbish Unit-1 of the PTPS Panipat despite the specific direction of the State Commission to adhere to the shut down of Unit No. 1. As a matter of fact, the entire capital expenditure as proposed by the Appellant for the renovation and modernization of the generating stations has been approved by the State Commission and allowed to be recovered through tariff from the consumers in the State of Haryana.

5. Further, the State Commission allowed a substantially relaxed norm over the years and has increased the PLF to be achieved by the Appellant over the years on a steady basis, corresponding to the expenditure proposed to be incurred by the Appellant for renovation and modernization of PTPS

Panipat Units 1 to 4. It is also seen from the order impugned that the State Commission had been repeatedly directing the Appellant to adhere to the planned shut down schedule as intimated by the Appellant through the corresponding capital expenditure. However, the Appellant has not complied with the directions issued by the State Commission. In those circumstances, the conclusions arrived at by the State Commission that the failure of the Appellant to take adequate steps to improve the performance of the generating station ought to be allowed to be passed on to the consumer in the State of Haryana.

6. Even in respect of the FTPS Faridabad, the State Commission has taken into consideration the vintage of the plant and determined the PLF at 50%, after considering the actual level of performance achieved during the previous year 2007-08 at 49.25%. As a matter of fact, as per the Tariff Regulations framed by the State Commission, the PLF was to be determined at 55% for the FTPS Faridabad but the

same has been relaxed by the State Commission to 50%. Therefore, the finding given in respect of determining the PLF, in our view, does not call for interference.

7. The next issue is regarding Auxiliary Power Consumption. According to the Learned Counsel for the Appellant, the State Commission ought to have allowed the Auxiliary Power Consumption on the basis of actuals and the targets fixed by the State Commission is unachievable and the Appellant cannot spend money on FTPS Faridabad on account of the decision taken to close down the generating station in the year 2011. It is noticed from the impugned order that this aspect has been dealt with by the State Commission in detail. According to the State Commission, it had earlier on the review of the performance of the Appellant, directed the Appellant to analyse the trend of increasing Auxiliary Power Consumption and to submit a report to the State Commission giving the reasons for such increase. However, the Auxiliary Power Consumption has

been constantly increasing despite the fact that the PLF for the PTPS Panipat Units 1 to 4 have more or less remained static as compared to the previous years. The increase in PLF would logically reduce the level of Auxiliary Power Consumption. The State Commission has on various occasions advised the Appellant to monitor the Auxiliary Power Consumption so as to reduce the same and bring it in line with the national norms.

8. The Appellant instead of adhering to the directions issued by the State Commission to monitor the Auxiliary Power Consumption to analyse the trend and to submit a report to the State Commission, has claimed higher Auxiliary Power Consumption which can be only due to the inefficiency on the part of the Appellant.

9. As a matter of fact, the State Commission had repeatedly directed the Appellant to implement the recommendations of the Energy Audit Reports to reduce the

Auxiliary Power Consumption to national norms applicable. These directions have not been complied with by the Appellant. Therefore, we are of the view that there is no merit in the claim of the Appellant for higher Auxiliary Power Consumption and as such rejection of this claim in respect of PTPS, Panipat is perfectly legal. However, in view of the fact that FTPS, Faridabad is to be retired in 2011, it cannot be expected that Appellant invests efforts and capital to improve its performance. In view of this in respect of Faridabad, we accept he contention of the Appellant and allow the Appeal in this view of the matter.

10. The next issue is regarding Specific Oil Consumption. According to the Learned Counsel for the Appellant, the State Commission determined the specific oil consumption which is not achievable. The only ground of challenge by the Appellant is that FTPS Faridabad is to be de-commissioned by the year 2011 and that it would not be possible to spend considerable amount of money for improving its norms and

parameters. According to the State Commission, the Appellant has claimed substantial higher oil consumption than the actual level achieved by the Appellant during the immediate preceding years. The State Commission has allowed normative trajectory for the specific oil consumption to be achieved by the Appellant. The norms allowed by the State Commission is quite high and relaxed than the actuals achieved by the Appellant for its units for the year 2007-08 for the month till January 2008. Under those circumstances, the Appellant cannot challenge the specific oil consumption for specific stations which have not been achieved by the Appellant. The State Commission has also dealt with this issue by observing that the State Commission has on several occasions directed the Appellant to take all possible corrective measures to reduce the specific oil consumption which has not been admittedly complied with by the Appellant. The State Commission has determined the specific oil consumption on the basis of previous performance of the Appellant and the expected

performance to be achieved by the Appellant considering the refurbishment undertaken by the Appellant.

11. We are inclined to agree with the plea of the Appellant that as the plant is slated to be decommissioned in 2011, it would not be possible to spend considerable amount of money for improving norms and parameters. State Commission has specified improved norms on the expectation that the performance will improve due to refurbishment undertaken by the Appellant. But when no such action, in view of the impending retirement, has been taken, how the improved performance can be expected. In view of this we allow the Appeal in respect of specific oil consumption for FTPS.

12. The next issue relates to the Station Heat Rate (SHR). According to the Learned Counsel for the Appellant, the SHR determined by the State Commission is not appropriate since the same are unachievable and that the State

Commission should not relate the SHR with the past performance. It cannot be disputed that the issue of SHR is the important parameter of the performance of the generating station. The parameter of SHR is one of the primary indicators of the efficiency or inefficiency of a generating station. The higher SHR indicates inefficient operation of the generating station. The SHR was determined by the State Commission in a progressive manner based upon the Energy Audit tests conducted by the Central Electricity Authority (CEA). The State Commission, having taken into consideration that the improvements can be made over a period of time, had allowed the relaxed norms for the SHR from the time of the Energy Audit in the year 2005. The SHR has been gradually reduced over the years. In fact, the State Commission had allowed the full capital expenditure proposed by the Appellant for renovation and modernization to improve their performance. Despite the same, the Appellant has not been able to achieve the achievable levels as per Energy Audit

report of the CEA. A similar issue was raised before this Tribunal by the Appellant in Appeals No. 42 and 43 of 2009 and the SHR has been decided in detail in its judgment dated 31.07.2009. According to the Tribunal the State Commission has to base its decision with regard to the SHR on the basis of the findings of the CEA. In pursuance of the findings given by this Tribunal, the State Commission has asked the Appellant to appoint either the CEA or NTPC to conduct station-wise study to determine the SHR of the generating stations of the Appellant. In accordance with the study conducted and the report to be made available to the State Commission, the State Commission will examine the issue of SHR in accordance with the directions of the Tribunal.

13. Now, let us go to the next issue namely transit loss for coal. According to the Learned Counsel for the Appellant the State Commission determined the transit loss of coal @ 2% for PTPS Panipat and 2.5% for FTPS Faridabad. The

main ground for challenging this aspect is that the transit loss of coal is not within the control of the Appellant and that the State Commission ought to have allowed the same on the basis of actual loss.

14. On going through the State Commission's order impugned we feel that the State Commission has given appropriate reasons for fixing the transit loss at the rates mentioned above. Admittedly the State Commission had repeatedly directed the Appellant to take up the issue of coal loss at the highest level so as to bring down the loss level in coal transit. The State Commission had also directed the Appellant to follow loss level trajectory for reduction in coal transit loss to bring it down to a level of 1% but admittedly no steps have been taken by the Appellant for bringing down the loss level. It is noticed from the order impugned that the loss level allowed by the State Commission in this matter is much higher than the transit loss level determined by the Central Commission in its tariff regulation 2009. This issue

has already been dealt with by the Tribunal in Appeals No. 42 of 2009 and Appeals No. 43 of 2009 filed by the Appellant in its judgment dated 31.07.2009. According to the Tribunal, the tariff of the Appellant is determined on cost plus basis and every item of cost other than those which are statutory levies, has to be recovered from the consumer. In this matter, the Appellant has not shown anything to indicate that some steps were taken to reduce the coal loss in transit. The State Commission has repeatedly directed the Appellant to take up the matter of transit loss of coal at higher levels and take all possible steps including consultations with other power houses in the region who have successfully brought down their coal transit loss to reduce it to the acceptable level. The above direction has not also been complied with by the Appellant. In view of what is stated above, there is no merit in the present claim also.

15. The next issue is with reference to the rate of interest on working capital. According to the Learned Counsel for

the Appellant the State Commission has committed a grave error in allowing interest on working capital only @ 10.50% per annum for the year 2008-09 and 11% for the year 2009-10 and not as per the Central Commission's Regulations. It is further submitted by the Learned Counsel for the Appellant that the SBI Prime Lending rate is 12.75% but the State Commission has merely allowed only rate of interest @ 10.50% which is against the Central Commission's Regulations. This issue has been dealt with by this Tribunal in the appeals in Appeal No. 42 of 2009 and Appeal No. 43 of 2009 in its judgment dated 31.07.2009. Following is the observation made by the Tribunal:

> ***"34. In submissions before this Tribunal the State Commission submitted that 10% was the rate at which HPGCL has been borrowing on short term basis. As regard interest on working capital, the Sate Commission has adopted the normative approach adopted by the CERC. In our opinion, once the State Commission adopts the normative approach, it is neither in the***

interest of the long term development of the electricity industry in the State nor is a fair play to the appellant to deny the benefits of the normative approach to the appellant. The very purpose of normative approach is that the parties are informed of the benchmarks beforehand and that if they are in a position to better the benchmarks, they are entitled to the benefits unless there is some unhealthy practice adopted by them. In the case before us, if the appellant is able to raise resources below the benchmark rates, it indicates efficiency on the part of the appellant for which it should be allowed benefit in terms of the norms. Otherwise, the purpose of normative approach would get defeated and the appellant may not remain adequately motivated to work with the desired efficiency. It is true that the consumers should not be burdened with unnecessary costs, but the same is equally applicable to the appellant when it is denied recovery of costs incurred by it if the same is not in line with the norms.

35. In view of the above, we decide the issue in favour of the appellant. The appellant may approach the State Commission for re-determination of its tariff after allowing for interest rate on working capital requirements as per the applicable norms."

16. In the light of the above observation, the above decision is covered by the decision of this Tribunal. Accordingly the Appellant may approach the State Commission for re-determination of the tariff after allowing for the rate of interest on working capital requirement. Accordingly, we allow this claim.

17. The next issue is Operation and Maintenance (O&M) expenditure allowed by the State Commission. According to the Learned Counsel for the Appellant, the State Commission ought to have allowed the actual expenditure incurred towards operation and maintenance in the previous 3 years with a normal escalation of 4%. The State

Commission, in the previous years, allowed O&M expenditure as claimed by the Appellant with respect to the old units. Even in the present order tariff order passed by the State Commission, the expenditure as claimed by the Appellant, has been approved by the State Commission. There has been no reduction whatsoever by the State Commission in approving the O&M expenditure claimed by the Appellant. The allowance of O&M expenses on actual basis is subject to prudence check by the State Commission.

18. In regard to the claim of the Appellant for the additional expenditure on account of Sixth Pay Commission's recommendations, the State Commission has held that the claim made by the Appellant is premature as the revision and the employees cost has not been effected by the Appellant. As a matter of fact, in the Review Order dated 19.09.2009 the State Commission has specifically observed that the additional expenditure on account of Sixth Pay Commission's recommendations will be taken care of in

the subsequent tariff order on actual basis. So, in view of what is stated above, we hold that there is no merit in this claim.

19. The next issue is with reference to the depreciation. Though this issue has been raised in the Appeal No.141 of 2009, the Learned Counsel for the Appellant has stated that it is not pressing the issue of depreciation. Therefore, the finding with reference to the depreciation given by the State Commission is confirmed.

20. The next issue relates to the Return on Equity. This issue has been raised in Appeal No. 141 of 2009. According to the Learned Counsel for the Appellant, the Rate of Return on Equity ought to have been allowed by the State Commission at 14% as per regulations framed by the State Commission but the State Commission has wrongly reduced the Rate of Return on Equity from 14% to 10%. It is true that the State Commission has reduced the rate of return on

equity from 14% to 10%. The reason given by the State Commission is that the State Commission has already allowed relaxation in various norms and parameters while determining the revenue requirements and tariff. Appellant has been given relaxation in the norms and parameters applicable to the PTPS Units 1 to 6 and the Faridabad Station which is passed on to the consumers in the tariff.

21. We note that relaxation in norms has been allowed by the State Commission due to several valid reasons as enumerated in the impugned order. Fourteen percent Return on Equity is as per norms. If this is arbitrarily reduced to 10%, then the effect of allowing relaxed norms would get defeated. Once the State Commission had concluded that the norms need to be relaxed due to several factors such as vintage of the plants and the renovation and modernization etc., there was no reason to lower the Return on Equity and negate the relaxation allowed. In our view 14% Return on Equity is justified. We order accordingly.

22. The next issue is with reference to the Fuel Surcharge Adjustment (FSA) periodicity and its holding cost. The Learned Counsel for the Appellant has raised an issue of allowing the interest/holding cost for the time lag between the recovery of fuel surcharge adjustment from the distribution companies as against the fuel costs paid by the Appellant. Admittedly, this issue was not raised before the State Commission. Therefore, the State Commission had no occasion to deal with this issue in relation to the issue of interest on fuel cost adjustment. Further, to decide the issue of interest on fuel surcharge adjustments, various issues including the variation in the fuel prices, the time period for making payments and receiving payments from the distribution companies etc. needs to be considered. The fuel prices may increase or decrease and consequently the same may be either in favour of the Appellant or detrimental to the Appellant. Under those circumstances, in the absence of any claim or issue raised by the Appellant with reference to

the interest before the State Commission, the Appellant is not entitled to raise the issue before this Tribunal. However, it is open to the Appellant to raise the issue by filing a fresh application before the State Commission with detailed justification for determination of the holding cost/interest. If such an application has been made, the State Commission will deal with this issue on the basis of materials placed before it by the Appellant and decide in accordance with law.

23. In view of the above discussions, the Appeals are allowed in part. The State Commission is directed to redetermine the tariff for generation of electricity in view of our decisions at paras 9, 11,12,16, 21 and 22. Accordingly, we dispose of both these Appeals. No costs.

(H.L. Bajaj)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 26th April, 2010.

Reportable/Non-Reportable.