

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**Appeal No. 147 of 2007 and IA No. 153 of
2007**

Dated: October 21, 2008.

Present: - Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Shri H.L. Bajaj, Technical Member

Government of Himachal Pradesh
(in the Irrigation and Public Health Deptt)
Shimla

.....Appellant

Versus

1. The Himachal Pradesh State
Electricity Board
Vidyut Bhawan
Shimla

2. Himachal Pradesh State
Electricity Regulatory Commission
Shimla

.....Respondents

Counsel for the appellant: Mr. Vivek Singh Attri
Mr. J.S. Attri

Counsel for the respondent: Mr. M.G. Ramachandran
Mr. Anand K. Ganesan for
HPSEB
Ms Shikha Ohri for HPERC
Ms Swapna Seshadri for
HPSEB
Ms Ruchika Rathi for HPERC

Judgment

Per Hon'ble Mr. H.L. Bajaj, Technical Member

This appeal challenges the order dated May 26, 2007 of the Himachal Pradesh State Electricity Regulatory Commission (HPSERC in short) on the review petition filed by the appellant to review the Tariff Order for the FY 2006-07 in so far as it is applicable to the appellant. The appellant is the Government of Himachal Pradesh, which *inter alia* undertakes Water Lift Irrigation Pumping and Public Water Supplies.

2. The appellant has sought the following relief:-
 - (a) Impugned order dated May 26, 2007 in Review Petition No. 180 of 1006 passed by Himachal Pradesh Electricity Regulatory Commission, Shimla, be set aside;
 - (b) The Tariff Order for Himachal Pradesh State Electricity Board (FY 2006-07) July 3, 2006 passed by Himachal Pradesh Electricity Regulatory

Commission be modified as contended in the appeal;

- (c) The Himachal Pradesh Electricity Regulatory Commission, Shimla be directed to consider the contentions of the appellant in future while determining the tariff;
- (d) And or any other order which this Appellate Authority for Electricity deem fit and proper in the interest of justice.

3. Appellant has framed the following three issues as the main grounds for its appeal.

- (i) That the projection of sales and revenue by the first respondent Board were not correct and the Commission has not examined the same. It has been submitted that whereas the revenue estimate at the existing tariff for FY 2005-06 amounts to Rs. 133.48 crores on account of sale of 305.30 MU consumed by the petitioner for the Water Pumping Scheme, the Board has projected

revenue of only Rs. 114.05 crores for sale of 335.32 MU for FY 2006-07. By projecting an erroneous lower figure of Rs. 114.05 crores against the expected revenue figure of Rs. 146 crores, the Board manipulated its case for increase in the tariff.

- (ii) It has been submitted by the appellant that the Tariff Order for FY 2006-07 neither reflects the cost of supply nor is there any attempt to reduce cross subsidy which was to be reduced progressively under Section 61(g) of the Act. It has been submitted that energy sale to IPH department under Water Pumping Scheme (WPS) category during FY 2004-05 was 270.519 MU entailing revenue of Rs. 103.51 crores and thereby the realization cost per unit amounted to Rs. 3.82/KVAh against the average cost of supply Rs.3.26 per unit which is much lower than the cost of realization for the FY 2005-06 for the IPH department which is estimated at Rs. 4.37 per unit based on energy sale and revenue estimation by the Board. Thus the tariff pertaining to

IPH department should have been on the lower side instead of being on the higher side.

(iii) Appellant has submitted that the Tariff Order is contrary to the provisions of Section 62 of The Electricity Act, 2003 as the same discriminates when compared to the tariff applicable for the Agriculture and Allied Activity Supply. It is pleaded that the Lift Irrigation Scheme should be charged at 'Agriculture Pumping Water Supply' Tariff rather than 'Water Pumping Supply' because 99% of Lift Irrigation Schemes are exclusively being used for agriculture purposes. Contrary to the provisions of Section 62(3) of The Electricity Act, 2003, National Tariff Policy, the Commission has shown undue preference to the Irrigation Pumping Loads for agriculture purposes set up by private individuals/ societies as their tariff is lesser when compared to the tariff for the appellant.

4. Per contra, Mr. Sen appearing for the Commission clarified that as far as the revenue projections are concerned

the Commission had made its own suo moto projections of sales for all categories including WPS and details have been given in the Tariff Order and that projections given by the first respondent have not been used for tariff determination.

5. So far as the contention of the appellant that the increase in tariff for WPS category does not reflect the cost of supply and that no attempt has been made to reduce the subsidy as per Section 61(g) of the Act is concerned, the Commission in its order has stated that tariff for WPS –LT has been increased based on the tariff philosophy by reducing cross subsidies in a phased manner and that the increase in the tariff for WPS-HT was necessitated as a part of tariff/revenue balancing exercise and that quantum of increase is only 5%.

6. Mr. Sen attempted to justify the differential tariff for the Agriculture and Allied Activities Supply (AAA) tariff by revealing intention of the Commission to encourage greater private/cooperative participation which will result in distancing the Government from irrigation related activities.

GB

Analysis and decision.

7. As far as revenue projections used for determination of tariff are concerned, the Commission has clarified that they have not used the projections given by the Board and that they have used their own projections. Therefore, in this view of the matter no interference is warranted as the tariff has been determined de hors the projections given by the Board.

8. As far as linkage of cost to supply with tariff and reduction in cross subsidy for WPS category is concerned, we are satisfied with the reasoning of the Commission and do not wish to interfere with the order in this view of the matter.

9. In the context of the instant appeal the tariff order incorporates two categories of consumers as Water Pumping Supply (WPS) and Agriculture and Allied Activities Supply. It is useful to extract the portion of the tariff order relating to the above two categories as below:

Water Pumping Supply (WPS)

9.76 The existing schedule is applicable to Government connections for water and irrigation pumping. The schedule also covers all consumption for bonafide Pump House lighting.

9.77 The Board has proposed increase in energy charges and demand charges for HT consumers.

9.78 The Commission has increased the energy charges for LT and HT consumers in this category and introduced EHT consumers as a separate group under WPS on the request of the consumers. The existing tariff, tariff proposed by the Board and tariff approved by the Commission is given in the table below:

Table74: Existing, proposed and approved tariff for WPS category

	Existing			Proposed			Approved by the Commission		
	Energy charged	Service Charges	Demand charges	Energy charges	Service charges	Demand charged	Energy charges	Service charges	Demand charges
	Rs./KVAh	Rs/con Month	Rs. KVAh month	Rs/ KVAh	Rs.con Month	Rs./con month	Rs./ KVAh	Rs./con month	Rs. KVAh month
LT	2.60	100	175	2.60	100	175	2.80	100	175
HT	1.95	100	125	2.40	100	175	2.20	100	125
EHT	-	-	-	-	-	-	2.00	100	100

Tariff Order Financial Year FY 07.

9.79 *The commission has increased the tariff for WPS (LT) to reduce the subsidy this category was getting as per its tariff philosophy of the Commission to reduce the cross subsidy.*

9.80 *Due to the increased tariff, consumers in this category will get an additional burden of Rs. 6.81 crores.*

TARIFF ORDER FINANCIAL YEAR 2007

Agriculture and Allied Activities Supply (AAA)

9.82 *The Commission has renamed the existing Agriculture Pumping Supply (APS) to Agriculture and Allied Activities supply as the Commission wanted to include other agriculture related activities in this category. This schedule shall be applicable to irrigation pumping loads with connected load not exceeding 20 kW. Private irrigation loads in individual/society's names above 20 kW are also covered under this tariff.*

9.83 *The Commission proposes to include green houses, poly houses, processing facilities for agriculture, pisciculture, horticulture, floriculture and sericulture etc. where all*

such activities are undertaken by agricultural land holder only under this category. This schedule will also be applicable to temporary agriculture loads such as wheat threshers, paddy threshers.

9.84 The Board has proposed single part tariff for AAA category and not proposed any tariff increase. The existing tariff, tariff proposed by the Board and tariff approved by the Commission for AAA is given in the table below:

Table 76- Existing proposed and approved tariff for AAA category (up to 20 kW)

<u>Existing</u>		<u>Proposed</u>		<u>Approved by the Commission</u>	
<i>Energy Charges</i>	<i>Consumer Service charge</i>	<i>Energy Charges</i>	<i>Consumer Service Charges</i>	<i>Energy Charges</i>	<i>Consumer Service charge</i>
<u>Rs./ kWh</u>	<u>Rs/ Consumer/ Month</u>	<u>Rs/ kWh</u>	<u>Rs/ Consumer Month</u>	<u>Rs./ Kwh</u>	<u>Rs/ Consumer Month</u>
1.55	20	1.55	20	1.65	20

Table 77- Existing,proposed and approved tariff for AAA category (Above 20kW)

<u>Existing</u>			<u>Proposed</u>		<u>Approved by the Commission</u>		
<i>Energy Charges</i>	<i>Consumer Service Charge</i>	<i>Demand charges</i>	<i>Energy charges</i>	<i>Consu- Mer Service charges</i>	<i>Energy Charge</i>	<i>Consu- Mer Service charges</i>	<i>Demand charges</i>
<u>Rs./ kVAh</u>	<u>Rs/con/ Month</u>	<u>Rs/ kVAh month</u>	<u>Rs/ kWh</u>	<u>Rs/con month</u>	<u>Rs. KVAh</u>	<u>Rs/con Month</u>	<u>Rs.kVA Month</u>
1.00	20	50	1.55	20	1.00	20	50

9.85 *As per the National Electricity Policy, the tariff for any category has to be kept at least at 50% of average cost of supply. As the average cost of supply is Rs. 3.28 per unit, the tariff for agriculture consumers has increased and fixed at Rs. 1.65 per unit.*

10. Gravamen of the appeal is that the appellant has been discriminated for determination of its tariff when compared to the Agriculture and Allied Activity Supply (AAA). A dichotomy of the two categories would reveal that both categories include Irrigation Pumping Loads. At this point it is relevant to advert to Section 62(3) of the Act as under:-

“ The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer’s load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.”

11. The Commission, in the Impugned Order has violated the provisions of Section 62(3) by setting different tariffs for the same class of consumers on the basis of ownership for the private and Government department. This is not in line with the spirit of the Act and, therefore, needs to be corrected.

12. In view of the foregoing discussions we consider it appropriate that the Commission does not discriminate between two consumers except on the basis laid down in Section 62(3) of The Electricity Act, 2003 and direct that the Commission re-determine the tariff for the category applicable to the appellant without disturbing the tariff for other categories. Resulting adjustments in revenue requirement for the year FY 2006-07 may be made while undertaking the next truing up exercise.

13. Appeal is allowed but without costs. This also disposes the IA No. 153 of 2007.

(H.L. Bajaj)
Technical Member

(Mrs. Justice Manju Goel)
Judicial Member