Before the Appellate Tribunal for Electricity

(Appellate Jurisdiction)

Appeal Nos. 42 & 43 Of 2008

Dated : 31st July, 2009

Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member

IN THE MATTER OF:

Haryana Power Generation Corporation Ltd.
Shakti Bhawan, Sector 6, Panchkula – 134109
Haryana …. Appellant

Versus

1. Haryana Electricity Regulatory Commission
SCO -180, Sector 5, Panchkula, Haryana

2. Haryana Vidyut Prasaran Nigam Ltd.
Shakti Bhawan, Sector 6, Panchkula – 134109
Haryana … Respondents

Counsel for the Appellant(s) : Mr. Pradeep Dahiya,
Mr. Vikas Guptra, Sr. A.O. JPGCL
Mr. Diwan chand Arya, FA, HPGCL

Counsel for the Respondent(s) : Mr. Harpreet Singh Sandhu
Mr. Rajesn Monga, Law Officer
Mr. Sanjay Verma, Director Tariff, HERC

APPEAL NO. 43 OF 2008

Haryana Power Generation Corporation Ltd.
Shakti Bhawan, Sector 6, Panchkula – 134109
Haryana …. Appellant

Versus

1. Haryana Electricity Regulatory Commission
SCO -180, Sector 5, Panchkula, Haryana

2. Confederation of Indian Industries (CII)
Plot No. 248-F, Sector 18, Udhyog Vihar, Phase-IV,
Gurgaon – 122015 … Respondents

Counsel for the Appellant(s) : Mr. Pradeep Dahiya,
Mr. Vikas Guptra, Sr. A.O. JPGCL
Mr. Diwan chand Arya, FA, HPGCL

Counsel for the Respondent(s) : Mr. Harpreet Singh Sandhu
Mr. Rajesn Monga, Law Officer
Mr. Sanjay Verma, Director Tariff, HERC

JUDGMENT

Per Hon'ble Mr. A.A. Khan, Technical Member

Haryana Power Generation Corporation Limited (HPGCL), the appellant, has filed two separate appeals. The issues in both the appeals are related to each other emanating from the two different original orders passed by the Haryana Electricity Regulatory Commission (HERC or the State Commission). In November 1996 the appellant submitted application for determination of generation tariff for the FY 2007-08 before the State Commission. The State Commission determined the generation tariff of the appellant vide order dated 08.05.2007. Vide another order of the same date, the State Commission determined the trading margin and bulk supply tariff of the appellant. Dissatisfied with the said order, the appellant filed two separate review petition before the State Commission in June 2007 seeking review on various grounds. The State Commission disposed of these petitions by two separate orders passed on the same date on 26.09.2007. Against these two orders, the appellant has filed two separate appeals before this Tribunal. For the sake of convenience, we are taking up both the appeals simultaneously.

2. Brief facts of the cases are as under:

APPEAL 42 of 2008

3. Appeal 42 of 2008 is against the order dated 26.09.2007 passed by the State Commission on a review petition filed by HPGCL in the matter of determination of tariff by the State Commission for the year 2007-08. In November 1996 the appellant submitted application (Case no. HERC/PRO-5 of 2006) for determination of generation tariff for the FY 2007-08 before the State Commission. The State Commission determined the generation tariff of the appellant vide order dated 08.05.2007. Dissatisfied with the said order, the appellant filed review petition before the State Commission in June 2007 and sought review relating to following issues:

a) Determination of Station Heat Rate (SHR);
b) Allowing transit loss for transportation of coal;
c) Allowing moisture loss of coal;
d) Interest Rate applicable on borrowings for working capital requirement;
e) Generation at Western Yamuna Canal (WYC) Hydro and Kakroi Hydro power stations; and
f) Interest on long-term loans.

4. After review, the State Commission in its order dated 26.09.2007 revised the generation target of Western Yamuna Canal and Kakroi Hydro power stations but did not accept the other contentions of the appellant. Aggrieved by the said order of the State Commission, HPGCL filed appeal no. 42 of 2008 before this Tribunal. In the appeal proceedings, the appellant has prayed that appellant be allowed:

a) Station Heat Rate (SHR) of 3450 kcal/kWh for Panipat Thermal Power Station (PTPS) Units 1 to 4, 2700 kcal/kWh for PTPS Unit 5 & 6 and 4200 kcal/kWh for Faridabad Thermal Power Station (FTPS) ;
b) Transit loss of coal on the basis of actual achieved rate for FY 2006-07 i.e. 3.02% for PTPS and Yamuna Nagar TPS (YTPS) and 3.54% for FTPS;
c) Moisture loss of coal @ 3% in addition to transit loss of coal;
d) Interest rate on working capital at SBI PLR i.e. 12.75% instead of 10% allowed by the State Commission; and
e) Interest on long-term loans as Rs. 24.51 crore on the basis of revised rate of interest.

APPEAL 43 OF 2008

5. Appeal 43 of 2008 is against the order dated 26.09.2007 passed by the State Commission on a review petition filed by HPGCL in the matter of annual revenue report for bulk supply business for FY 2008-08, Trading Margin and Bulk Supply Tariff (case no. 9 of 2006) before the State Commission for the year 2007-08. In November 1996 the appellant submitted application for determination of generation tariff for the FY 2007-08 before the State Commission. The State Commission determined the generation tariff of the appellant vide order dated 08.05.2007. Dissatisfied with the said order, the appellant filed review petition before the State Commission in June 2007 and sought review relating to following issues:

a) Quantum of short-term purchase and its average price;
b) Determination of transmission losses;
c) Interest Rate applicable on borrowings for working capital requirement;

d) Quantum of normative working capital requirement;

e) Purchase rate for purchase of power from Bhakra Beas Management Board (BBMB);

f) Sale price for Bulk Supply of power to be considered up to 4 decimal points instead of up to 2 decimal points allowed by the State Commission;

6. After review, the State Commission in its order dated 26.09.2007 accepting the plea of HPGCL regarding quantum of working capital but did not accept the other contentions of the appellant. Aggrieved by the said order of the State Commission, HPGCL filed appeal no. 43 of 2008 before this Tribunal. In the appeal proceedings, the appellant has prayed that appellant be allowed:

a) Short-term power purchase of 3000 MUs at an average rate of Rs. 5 per kWh;

b) Transmission losses @ 5% during 2007-08;

c) Interest on working capital at SBI PLR i.e. 12.75% instead of 10% allowed by the State Commission;

d) Purchase of power from BBMB and Indraprastha Generation Corporation Limited (IPGCL) be allowed @ Rs. 0.23 per kWh and Rs. 3.87 per kWh respectively;

e) Net bulk supply of power upto 4 decimal points i.e. Rs. 2.4048 per kWh.

7. In both these appeals, the appellant has raised mainly the following questions of law:

i. Whether the State Commission failed to consider actual figures and losses provided by the appellant and rejected the legitimate contentions on the basis of fixing the normative norms, which were practically unachievable?

ii. Whether the State Commission ignored the Central Electricity Regulatory Commission (CERC) guidelines and passed the impugned order on conjectures and surmises?

8. Now, we take up the issues along with the contentions of the parties.

A. Determination of Station Heat Rate (SHR)

9. The appellant has contended that the State Commission erred in fixing the SHR at lower level and even lower than the lowest achieved in past 7 years and totally overlooked the fact that it should be relatable and allowed keeping in view the past performance. The SHR is high as most of the power stations of the appellant have completed their normal useful life i.e. 25 years and are likely to be phased out by 2011-12 and the norms fixed by the State Commission were practically unachievable. The appellant further gave reference to the Tariff Policy that norms should be efficient, relatable to past performance, capable of achievement and progressively reflecting increased efficiencies and that where operations have been much below the norms for many previous years, the State Commission may fix relaxed norms.

10. Additionally for Faridabad Thermal Power Station (FTPS), the appellant has submitted that since the Faridabad Thermal Power Station (FTPS), is going to be phased

out by FY 2011-12, no major repairs and maintenance could be carried out and hence actual SHR should have been allowed.

11. Per contra, the State Commission has submitted that it is guided by the provisions of Section 61 of the Act, while fixing various parameters for determination of generation tariff. The SHR allowed by the State Commission for FTPS at 4200 Kcal/kWh is the highest allowed by any Central/State Regulatory Commission. The State Commission had discussed the performance and norms of SHR in detail in its tariff order of May 2007 and that HPGCL failed to comply with the directives of the State Commission regarding detailed analysis including energy audit. Further, as per CERC Regulations dated 27.09.2007, the stabilisation period and relaxed norms applicable during the stabilization period shall cease to apply from 01.04.2006. the Central Electricity Authority (CEA) in its communiqué dated 10.01.2006 regarding energy audit of PTPS and FTPS observed that *'station must take efforts to bring down the unit heat rate to at least in the range of 10% deviation from the design value gradually and their efforts to operate at design heat rate would be highly appreciated as this will result in saving coal and environmental benign'*.

12. The State Commission has submitted that SHR as per CERC norms for a similar size, technology and vintage thermal power plant as that of PTPS (units 1-4) is 2825 Kcal/kWh only and that as per energy audit conducted b y the CEA, the PTPS is capable of achieving SHR of 2742 Kcal/kWh. For the year 2006-07, the State Commission had allowed SHR of 3450 Kcal/kWh, when the actual SHR came to be 3341 Kcal/kWh, which the State Commission reduced to 3200 Kcal/kWh for the FY 2007-08. The State

Commission further submitted that the appellant had proposed refurbishment of PTPS Unit 1 with performance guarantee of 2018 Kcal/kWh for which the State Commission had allowed an expenditure of Rs. 120 crore. Hence, the SHR of 3200 Kcal/kWh is justified and reasonable.

13. With regard to PTPS Unit 5&6, the State Commission submitted that the CERC norm is 2500 Kcal/kWh. The CEA conducted energy audit for these machines and recommended a gross SHR of 2460 Kcal/kWh. With a view to allow time for implementation of measures suggested by CEA, the State Commission allowed SHR of 2600 Kcal/kWh.

14. As regards FTPS, the State Commission has submitted that the station with combined capacity of 165 MW is running at not more than 50% plant load factor. The State Commission had allowed operation and maintenance expenditure, including repairs and maintenance, much higher than that available to PTPS (unit 5 & 6) with capacity of 210 MW each. Therefore, the State Commission has submitted that it should have been possible for HPGCL to achieve relaxed norm of 4000 Kcal/kWh. Operating the power plant at SHR of 4200 Kcal/kWh is huge coal wastage and it is irrelevant to say that the power plant is being phased out in 2011-12.

15. The State Commission has further submitted that as it has allowed all capital and operating costs after due diligence in the matter, it expected improvement in the operating parameters including SHR.

16. The SHR is one of the most important factors for the purpose of determination of cost of generation from any thermal generating station and in turn for determination of the generation tariff. A higher SHR generally indicates lower efficiency while a lower SHR generally indicates better efficiency of the operation of the thermal generating station. The SHR depends upon many factors; critical among them are the design of the machines, age of the power plant, operating practices and technology adopted. We are of the opinion that determination of applicable SHR is an area which requires proper study by an expert body. We observe that the State Commission has based its decision upon the findings of the CEA. At page 12 of the order dated 08.05.2007, the State commission has stated that *'the Commission is conscious of the fact that much needed power generation in the state cannot be sustained if the generation company is not financially viable and operationally sound. Thus, the generation business ought to conform to technical and commercial norms and be attractive enough for new investments, both domestic as well as foreign, in order to bridge the demand-supply gap requiring huge capital outlays'*. The State Commission has to balance the interests of the consumers and the generators. If the targets given to the generating company are not achievable, no purpose would be served by setting such targets because such approach would adversely impact the financial position of the generator, which in turn would impact the investment in the electricity industry in the State. On the other hand, if the targets given are too liberal, the cost of power to end user would be higher, which would make the local industry and business uncompetitive. The Tariff Policy also lays emphasis on laying down standard which are achievable and encourage efficient operations. It is essential that the norms laid are not too liberal as to encourage inefficient operations, but at the same time are at least near to those achievable.

17. Therefore under the circumstances, it is essential for the State Commission to arrange for a station-wise study to determine the SHR of the power plants of the appellant. The study may be conducted in a time bound manner. If the study indicates substantial variation (say more than 2-3%) than the benchmarks adopted by the State Commission, after adjusting for reasonable deterioration due to elapse of time, may be re-determined by the State Commission.

B. Transit Loss on Coal Transportation

18. The appellant has submitted that its actual transit loss on coal transportation is 3.02% in the case of Panipat TPS and 3.54% for Faridabad TPS. Despite its best efforts, the appellant could reduce transit loss from 6.58% in FY 2001-02 to 3.02% in 2006-07. Hence, the transit loss of 2% for Panipat and Yamuna Nagar TPSs and 2.5% for Faridabad TPS allowed by the State Commission are not achievable. The appellant has further submitted that dispatch and transportation of coal is an inter-agency involvement, namely Railway and Coal Companies on which the appellant has no control and could not have any claim against them for such transit loss in terms of the agreements entered into by the appellant and therefore the norms for transit loss of coal set by the State Commission are not achievable. The appellant has prayed that actual transit loss should be allowed for determination of its tariff. The appellant has also submitted that 'there is no national norm for loss of coal in transit' and that CERC in one of its order has stated that 'loss of coal in transit is to be decided by the SERCs'.

19. Per contra, the State Commission has submitted that as per CERC norms, transit loss of coal allowed for non-pit head stations is 0.8% and that considering this the State Commission has set a transit loss reduction trajectory. The State Commission feels that the transit loss allowed by it is much higher than the national norms to allow for some cushion during the transition period. The State Commission further submitted that anything above 0.8% is nothing but theft en route and at other locations, to which the State Commission can not be a party. During 2008-09, the transit loss for PTPS and DCR TPS came down to below 1.95%, but for FTPS increased to 11.66% as against 3.54% during 2006-07. Therefore, the State Commission is justified in allowing transit loss at 2% for PTPS & DCR TPS and 2.5% for FTPS.

20. The issue of coal transportation loss also caught the attention of the State Advisory Committee (SAC), as is seen from page of the order dated 08.05.2007 of the State Commission. The SAC suggested that *HPGCL may appoint a coal agent on Punjab pattern with appropriate incentive and penalty to reduce transit loss of coal to the national non-pithead benchmark of 0.8%*. Further, at page 24 of the order the State commission advised the appellant to take up the matter at highest level for reduction in coal transportation losses.

21. Prima facie, the argument of the appellant that it has not control over the coal transportation losses as other agencies such as Railways, Coal companies are involved appears to be attractive. However on analysis, it needs to be borne in mind that the tariff of the appellant is determined on a cost plus basis. Every item of the cost, other than those which are statutory levies, that is to be recovered from the consumers would require

scrutiny at some stage. If we accept that coal transportation losses be allowed at levels sought for by the appellant, on the premise that such losses are not within the control of the appellant, we are effectively agreeing that such costs are beyond scrutiny by the State Commission or rather beyond scrutiny by any agency. How will the consumer participate in the due diligence process to determine the justness of such losses. The consumer does not have resources to approach the Railways and Coal companies directly for determination of the justness of the losses incurred. It is only the appellant who is in a position to take up the matter with the Railways and the Coal Companies for more efficient transportation of coal. If need be, it has all options to take up the matter at highest level as advised by the State Commission also.

22. In view of the above we do not agree with the contention of the appellant in this regard.

C. Coal Moisture Loss

23. The appellant has submitted that it is incurring moisture loss of coal in addition to transit loss of coal, which is a part of normal generating activities of the appellant. The appellant has prayed that coal moisture loss @ 3% should be allowed to it as the same has been allowed by the Delhi Electricity Regulatory Commission (DERC).

24. The State Commission in the impugned order (page 4) observed that the reference made to IPGCL and DERC with respect to moisture loss is irrelevant as the national norm of 0.8% applicable to NTPC thermal plants is inclusive of moisture loss, which was

reiterated before this Tribunal. The State Commission also submitted that DERC has not specifically allowed coal moisture loss.

25. We observe that while determining the tariff for the appellant, the State Commission has at various places in its order took guidance from the CERC Tariff Regulations. In CERC Tariff Regulations, coal moisture losses are not separately allowed. The coal transportation loss of 0.8% allowed for non-pithead stations is the only deduction allowed to generating companies. There is no separate allowance for coal moisture loss. Hence, the plea of the appellant to allow higher coal transportation losses is not tenable.

26. As regards the contention of the appellant that DERC has allowed coal moisture loss, we feel that alone cannot be the reason to allow the dame dispensation to the appellant. The appellant has to establish its own case before the State Commission. The State commission may on merit consider the proposal at that stage.

D. Interest Rate on Working Capital at SBI PLR

27. The appellant has submitted that the State Commission should have allowed interest on working capital as per the norms laid down by the Central Electricity Regulatory commission (CERC), which provides that the rate of interest applicable for working capital purposes would be the short-term prime lending rate (PLR) of State Bank of India (SBI) as on 01.04.2004 or on 1st April of the year in which the generating station/unit is declared commercially operational. The CERC norms provide that the SBI

PLR would be applicable irrespective of whether the generating company has taken any loan or not and also whether loans have been taken at a different rate (may be lower or higher).

28. The State Commission in its order of 08.05.2007 has stated that *'interest rate is allowed @10% per annum in light of the fact that the prime lending rate of nationalised banks are hovering around 12% while HPGCL is able to raise short term resources at 200 basis points below the prime lending rate'*. The State Commission in its order of 26.09.2007 observed that the rate of interest based on the documents submitted by HPGCL is in the range of 8.5% to 10.75% and that interest rate is not an area where HPGCL should be seeking cushion and accordingly rejected the claim of the appellant.

29. Per contra, the appellant has submitted that as the State Commission is allowing working capital on normative basis and not actual basis, the rate of interest to be adopted should also be based on normative basis.

30. The State Commission submitted that since the State Commission is guided by the CERC Tariff Regulations, the appellant has sought interest rate on normative basis as adopted by the CERC. However, it was reiterated before us that the interest rate for working capital has been determined keeping in view the actual short-term interest rates of HPGCL and that allowing higher interest rates would not be judicious and against the interest of the consumer. The State Commission has submitted that a large part of the working capital comprises of the normative requirement of maintaining 2 months of coal stock, whereas the actual position is that not even one month's stock is ever maintained.

Consequently, it is unethical for the appellant to seek normative interest rates when normative coal stock is not maintained.

31. In the case of appeal no. 42 of 2008, the State Commission in its order (page 28) of 08.05.2007, observed that

> *'Interest in working capital is allowed on normative basis.*
>
> ..
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> ..
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> *On the normative working capital worked out on the basis of the above, interest is allowed @10% per annum in light of the fact that the prime lending rate of nationalised banks are hovering around 12% while HPGCL is able to raise short-term resources at 200 basis points below the prime lending rates'.*

32. The State Commission in its order of 08.05.2007 (in respect of appeal no. 43 of 2008) has stated at page 25, while dealing with the working capital and interest thereto that:

> *'The Commission, based on the one month ARR as working capital requirement, allows Rs. 511.5 million as interest on working capital related borrowings during FY 2007-08 at an interest rate of 10% i.e. 200 basis points below PLR of nationalized banks'.*

33. From the above, we find no reason or rationale as to why the State Commission adopted interest rate of 10% on working capital requirements. This was probably as the State Commission in its other order of the same date, quoted above, had taken cognizance of the fact that HPGCL was raising its short-term resources at around 10% rate.

34. In submissions before this Tribunal, the State Commission submitted that 10% was the rate at which HPGCL had been borrowing on short-term basis. As regards interest on working capital, the State Commission has adopted the normative approach adopted by the CERC. In our opinion, once the State Commission adopts 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 favor 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.

E. Interest on Long-term Loans

36. The appellant has submitted that it should be allowed interest on long-term loans @ 11.5% instead of at the rate of 10.5% as adopted by the appellant in its application for

determination of tariff before the State Commission. This, the appellant has submitted, was due to increase in the interest rates subsequent to its filing of application for determination of tariff.

37. The State Commission in its order of 26.09.2007 at page 5 observed *that interest on long-term loans is based on the calculation made after considering rate of interest, repayment and drawl for each individual loan and that it possible that a few loans based on floating rate may have undergone marginal change; however this may not affect the overall repayment liability. Thus, the Commission finds no merit in the review sought on this issue and rejects the same.*

38. The State Commission in its submissions reiterated the above and further submitted that it had allowed Rs. 231.58 crore of interest on log-term loans against the original claim of Rs. 239.9 crore by HPGCL. The amount of Rs. 245.085 crore as interest sought by HPGCL is an altogether new proposal at review stage only that too without any documentary support as to interest rate on which particular loan/bond from the basket of its long-term borrowings have gone up or the lenders have revised it upwards.

39. We feel the appellant is entitled to recovery of full interest cost after due diligence by the State Commission. In the case before us, the FY 2007-08 is already over and the appellant by this time would have actual data available with regard to payment of interest on long-term loans. The appellant may approach the State Commission and the State Commission after due diligence allow the actual interest on long-term loans.

F. Short-term power purchase and applicable Rate

40. The appellant has contended that the State Commission reduced the volume of short-term purchase from 3000 MUs to 2000 MUs without any plausible reasoning and also reduced the rate of short-term power purchases from Rs. 5.30/kWh proposed by the appellant to Rs. 3.77/kWh. The appellant has submitted that Haryana is a power deficit state. Economic consequences of non-supply of power to the state are very serious. Accordingly, it has to make short-term purchase of power at whatever rate it is available and that while the present rates are upto Rs. 7.50/kWh, the appellant has requested for purchasing at an average rate of Rs. 5.30/kWh.

41. The State Commission has submitted that the above issue has been unnecessarily raised by the appellant as power from all sources are allowed on projected basis and that the cost and quantum of such power purchases are bound to be different. To take care of this, the State Commission has a truing up mechanism in the form of fuel surcharge adjustment (FSA).

42. The State Commission in its order of 08.05.2007 had stated that *'the Commission, in principle, does not discourage purchase of surplus power from time to time at a rate not exceeding the average approved power purchase cost. However, the Commission is of the view that it may not be available on sustainable basis. Thus it would be appropriate to contract power purchase on a long-term basis as per the projected demand-supply gap.'*

43. It is true that compared to long-term power purchases, power purchased on short-term basis is costlier. It is in the interest of the appellant to contract power purchase on a

long-term basis. However, we find no rationale or basis given by the State Commission in restricting the appellant to procure upto 2000 MUs at a rate of Rs. 3.77/kWh. It would have been better for the State Commission to discuss, why it chose to deviate from the proposals of the appellant.

44. We cannot agree with the appellant's viewpoint that Haryana being a power-deficit State, the appellant has to purchase power at whatever rates available. The cost of power purchases has to have a correlation with the end tariff applicable to the retail consumers, as in the longer run any utility cannot remain financially viable if it is not in a position to adequately recover its cost of supply. The response of various stakeholders available to the State Commission plays an important role in determining the capacity of the consumers to consume costlier power. It is a responsibility cast upon the State Commission to ensure the development of the electricity industry in the States. Probably, the State Commission's desire to ensure a reasonable cost of supply to the end consumer in the State, contributed towards restricting the quantum of power purchases and average rate of purchase thereof.

45. In view of the State Commission's submission that it has window open to true up power purchases and cost thereof through the FCA mechanism, we advise the appellant to approach the State Commission for reconsideration of the above matter.

G. Transmission Losses

46. The appellant has submitted that power is being purchased from different regions under short-term and long-term arrangements for which inter-regional losses are to be

borne by the appellant. The appellant has submitted that it be allowed transmission loss @5% based on 2006-07 as under:

Particulars	Transmission Loss (%)
Inter-region	5.08
Inter-state	4.57
Intra-state	2.69
Weighted Average	5.00

47. The appellant submitted that average pooled transmission loss of northern grid for the period 01.04.2007 to 19.08.2007, as per the information available of NRLDC website is 3.41% and therefore the inter-state transmission loss allowed by the State Commission at 4% are reasonable. However, the State Commission was wrong in not allowing inter-regional losses to the extent of 5%. The appellant has submitted that it has no control over the inter-state transmission losses and accordingly these should be allowed on actual basis.

48. As regards the above table, the State commission submitted that the pooled transmission losses as published by NRLDC include both inter-state as well as inter-regional transmission losses. The pooled transmission losses during the period from 21.08.2006 to 19.08.2007 as per NRLDC are in the range of 2.73% to 4.86%, the average for the period being 3.88%. In comparison, the State commission allowed transmission loss to the extent of 4%. The State Commission has submitted that inter-state transmission loss considered by the State commission is as per the actual statistics on inter-state, inter-regional losses as well as drawl made under UI mechanism made available to the State Commission and the trend observed from them. The State

Commission further submitted that it has followed the Order of this Tribunal in appeal nos. 33/2005 and 74/2005 that inter-state losses should be allowed on an actual basis.

49. From the above submissions of the parties, we find no reason to allow the transmission losses as sought by the appellant. The State Commission ahs allowed inter-state transmission losses at 4% and intra-state transmission losses at 2.6% for FY 2007-08. The State Commission has submitted data showing that NRLDC has calculated average transmission losses as 3.88% during the period from 21.08.2006 to 19.08.2007, which includes the inter-regional transmission losses. The State Commission has also confirmed that it is following the directives of this Tribunal made in appeal nos. 33 of 2005 and 74 of 2005 (HVPN Ltd. v. HERC, in both the appeals). In these appeals, dealing with the issue whether HVPNL (appellant in these appeals) was entitled to transmission losses on actual basis, this Tribunal had observed as under (page 28):

> *'As far as inter state transmission losses are concerned we are of the view that the appellant has hardly any control over these losses and, therefore, these losses should be allowed on actual basis. We answer this point in favor of the appellant and hold that the appellant is entitled to consequential relief*'.

50. We accept the submissions of the State Commission that it has allowed inter-regional losses on the basis of actuals in terms of the above judgment of this Tribunal. As the FY 2007-08 has already elapsed, and if inter-regional transmission losses paid for by the appellant are in deviation with the level allowed by the State Commission, the appellant may approach the State Commission with actual inter-regional transmission losses borne by it with documentary evidence for consequential adjustment of transmission losses.

H. Rate for Purchase of power from BBMB and IPGCL

51. The appellant has submitted that the State Commission allowed purchase rate for BBMB as Rs. 0.112/kWh as against Rs. 0.23/kWh sought by the appellant. Similarly the purchase rate for IPGCL power has been allowed as Rs. 3.12/kWh as against Rs. 3.87/kWh sought by the appellant. The State Commission had already allowed fuel surcharge adjustment (FSA) for first six months of FY 2006-07 by approving BBMB power purchase @ Rs. 0.26/kWh.

52. The State Commission has submitted that issues raised by HPGCL on the issue of BBMB are before the Supreme Court and the same shall be considered as per the orders of the Apex Court and that further, for any rate difference, the appellant can take recourse to FSA mechanism.

53. We observe from the 08.05.02007 order of the State Commission that the State Commission had asked for details relating to depreciation amount from the State Government, which was not submitted to it despite reminders. In the absence of data, the State Commission disallowed the depreciation amount. As regards interest, the State Commission allowed interest to the extent reflected in the accounts of HPGCL for generation works. Resultantly, the State Commission determined the tariff at Rs. 0.12/kWh. The State Commission in its order of 26.09.2007 stated that the information sought earlier, as referred in the order of 08.05.2007, has since been received and is under consideration of the State commission and that decision on the same would be given in due course of time.

54. We feel that the appellant should have been more active when its proposals were under consideration of the State Commission. If the information sough by the State Commission was not forthcoming from the State Government, it should have taken up at higher levels with a sense of urgency. The appellant should have realized that non-submission of requisite details by its owner, which is the State Government, could prove detrimental to its interests. The State Commission cannot endlessly wait for details to be made available to its for determination of tariff of the appellant.

55. Under the circumstances where the appellant has already suffered for delay in recovery of its dues, the State Commission may ensure early consideration of the matter, if the issue has already not been decided by the State Commission.

I. Net bulk supply of power upto 4 decimal points

56. The appellant has submitted that based on the calculations of the State Commission, the bulk supply tariff works out to be Rs. 2.4048/kWh, whereas the State Commission allowed tariff of Rs. 2.40/kWh. This we understand was presumable on the basis of rounding off to decimal points by the State Commission. The appellant has submitted that since the volume of power purchase is huge, this difference of Rs. 0.0048/kWh results into an amount of Rs. 12 crore and ahs therefore requested for determination of net sale rate of bulk supply of power upto atleast 4 decimal instead of upto 2 decimal points.

57. The State Commission has submitted that figures are rounded off to two decimal points as huge volumes of calculations are involved while arriving at tariff. As a few numbers get rounded off to higher number and a few gets rounded off to a lower number,

in effect it is a zero sum game and accordingly it may not be appropriate to allow the final tariff upto 4 decimal points.

58. When numbers are rounded off, it is natural that one party would be advantageously placed at the cost of the other party. It is incidental that the appellant has suffered due to rounding off its tariff up to two decimal points instead of four decimal points. We are not inclined to allow any relief to appellant in this regard. However, for future we advise the State Commission to clearly lay down its approach for rounding off numbers to avoid litigation on this count.

59. The appeals are accordingly disposed of in terms of the above judgment..

(A.A. Khan)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 31st July, 2009.

Reportable/Non-reportable.