

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

**Appeal No. 72 of 2007**

**Dated: October 4, 2007**

**Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson  
Hon'ble Mr. A.A. Khan, Technical Member**

Punjab State Electricity Board  
220 K.V. Sub Station, Ablawal Patiala  
Punjab – 147 001

... Appellant

Versus

(1) Tehri Hydro Development Corporation  
Ltd. & Anr.  
(A Joint Venture of Govt. of India &  
Govt. of U.P.)  
Pragatipuram, Bypass Road  
Rishikesh – 249 201 (Uttaranchal)

(2) Central Electricity Regulatory Commission  
Core-3, Scope Complex  
New Delhi – 110 003.

... Respondents

For the Appellant : Mr. Pradeep Misra with  
Mr. T.P.S. Bawa & Mr. Padamjit Singh

For the respondent(s) : Mr. M.G. Ramachandran  
with Mr. Anand K. Ganeshan  
Ms. Swapna Seshadri, Advs. &  
Mr. Ajay K. Mathur, AGM (Coml.)  
Mr. Manoj Kumar Tyagi, Sr. Mgr. (Coml.)  
  
Mr. B. Sree Kumar, AC(L), CERC

## **JUDGMENT**

### **Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson**

1. This appeal is directed against the order of the Central Electricity Regulatory Commission dated December 28, 2006, whereby the Commission has determined the provisional generation tariff in respect of Tehri Hydro Electric Project Stage I (4x250 MW) for the period September 22, 2006 to March 31, 2009.

2. The facts giving rise to this appeal lie in a narrow compass. They may be stated thus:-

- (i) The first respondent, Tehri Development Corporation, is a company incorporated under the Companies Act, 1956. In the corporation 75 per cent of the equity shares are held by the Government of India, while the remaining 25 per cent equity shares are held by the Government of U.P. Though the Tehri Project was conceived in the year 1972, the construction of the project commenced in 1978 by the State of U.P. Subsequently, in the year 1989, the first respondent

came into existence and the project was transferred to it. The construction of the project undoubtedly has taken longer than perceived originally.

- (ii) The project has four units, each having a capacity of 250 MW. Besides, it also comprises of Pumped Storage Plant of 1000 MW and down stream Power Station at Koteshwar of 400 MW.

It is claimed that the COD of units above mentioned were held on July 6, 2006, July 26, 2006, August 15, 2006 and September 4, 2006.

- 3. On July 17, 2006 a petition was filed by the first respondent for determination of the provisional generation tariff in respect of Tehri Hydro Electric Project Stage I. The petition was heard by the Commission on October 26, 2006. After this hearing, the various aspects of the matter were examined by the staff of the Commission. On November 29, 2006, the staff presented a staff paper in which it was proposed that rate of Rs.3.50/KWH be fixed for sale of power up to December 31, 2006 on single part basis. The staff paper also suggested that from Jan 1, 2007, a composite rate of 3.50/KWH may be

divided into two parts, with energy charge rate of 2.50/KWH for the scheduled energy supplied to the beneficiaries and the differential paid in terms of capacity charge at the rate of Rs.18000/MW/day payable on the saleable declared capacity for the peaking support.

4. The parties and the other beneficiaries were called upon to file their responses to the staff paper. The matter was again heard by the Commission on December 28, 2006 and during the hearing the Commission was informed that Unit No.4 and Unit No.3 have been put on commercial operation w.e.f. September 22, 2006 and November 9, 2006, respectively. In so far as the remaining two units were concerned, it was stated that they were likely to be commissioned by January 15, 2007 and March 31, 2007. The Northern Regional Load Dispatch Centre (NRLDC), of which all utilities in the region including the appellant are members, also informed the Commission that the generating station started giving peaking power w.e.f. December 12, 2006. During the hearing, it was generally agreed by all concerned that September 22, 2006 be considered as the date of commercial operation of Machine

No.4. The Commission by its order dated December 28, 2006 approved the tariff proposed by the staff as per the following details :-

<b>Period</b>	<b>Tariff Rate</b>
22.09.2006 to 31.12.2006	Rs.3.50/KWH on single part basis
01.01.2007 to 31.03.2007	(i) Energy charge @ Rs.2.50/KWH on the scheduled energy (ii) Capacity charge: Rs. 18000/MW/day

5. The Commission clarified that tariff is not to be considered as final tariff since it has been approved as an interim measure.
6. In respect of the tariff for the period April 1, 2007 and onwards, the Commission observed that certain additional details would be required and will be called from the first respondent separately.
7. The appellant, Punjab State Electricity Board not being satisfied with the tariff order passed by the Commission has filed this appeal.
8. Appearing for the appellant, Mr. Mishra, learned counsel and Mr. T.P. Bawa submitted that the Commission was not right in accepting date of commercial operation of the plant as

September 22, 2006 as peaking power was not available on that date. It contested the position that peaking power is available from the plant. It was also canvassed that until peaking power is made available by the plant supply of electricity will be of infirm nature and the lowest rate of thermal generation in the area should be the rate at which electricity should be sold by the first respondent. It was also argued that due to delay in commissioning of the generating station, there has been spillage of water from the reservoir giving rise to loss of generation. The learned counsel contended that the appellant must be compensated for the loss by giving incentives to it. On the other hand the learned counsel for the first respondent, Mr. M.G. Ramachandran, submitted that the station started its commercial operation on September 22, 2006 and this was agreed to by all concerned. For this contention, he obtained support from the fact that except the appellant, Punjab State Electricity Board, no other beneficiary has disputed the date of commercial operation or has filed any appeal against the order of the Commission dated December 28, 2006. In so far as the question of delay in

the execution of the project is concerned, it was submitted that the delay was not attributable to the first respondent. According to him, there are several causes for the delay for which the first respondent was not responsible. He pointed out that the question of delay was referred to a committee which found that the delay could not be laid at the door of the first respondent in completion of the project.

9. We have considered the submission of the learned counsel for the parties.
10. The Trial runs of the units were conducted as per the following details:-

<b>Unit</b>	<b>Date</b>	<b>Level of Reservoir</b>	<b>Generation of Electricity</b>	<b>Installed Capacity</b>
<b>First Unit</b>	September, 22, 2006	783 meters	220 MW	250 MW
<b>Second Unit</b>	November 9, 2006	783 meters	220 MW	250 MW
<b>Third Unit</b>	March 30, 2007	745 meters	146 MW	250 MW
<b>Fourth Unit</b>	July 8, 2007	755 meters	169 MW	250 MW

11. The question, whether Unit No.4 and Unit No.3 were put on commercial operation w.e.f. September 22, 2006 and November 9, 2006 respectively, needs to be decided with reference to Regulation 31(ix) of the CERC (Terms and

Conditions of Tariff) Regulation 2004. In order to answer the question it would be necessary to set out the Regulation.

*“(ix) ‘Date of Commercial Operation’ of ‘COD’ in relation to a unit means the date declared by the generator after demonstrating the Maximum Continuous Rating (MCR) or Installed Capacity (IC) through a successful trial run, after notice to the beneficiaries, and in relation to the generating station the date of commercial operation means the date of commercial operation of the last unit of the generating station.”*

According to the aforesaid provision, date of commercial operation or COD means the date declared by the generator after it has demonstrated Maximum Continuous Rating (MCR) or Installed Capacity (IC) through a successful trial run. The date of trial run is required to be notified to the beneficiaries. In so far as the date of commercial operation of the generating station is concerned, it is the date of commercial operation of the last unit of the generating station.

12. The learned counsel for the appellant is under a misapprehension that the date of commercial operation of the unit means declared date by the generator after showing that the unit had reached the Installed Capacity. According to the definition of the date of commercial operation either it has to



be shown that the unit has reached the Installed Capacity or the generator demonstrates the Maximum Continuous Rating through a successful trial run. The first respondent has demonstrated the Maximum Continuous Rating through a trial run and, therefore, no fault can be found with the dates of commercial operation of unit Nos.4 and 3, w.e.f. September 22, 2006 and November 9, 2006 respectively. In fact, the other two units have also commenced commercial operation.

13. The commercial operation as already pointed out does not merely depend upon demonstrating that the unit has reached the installed capacity through a successful trial run. In case, the Installed Capacity test was the only test to determine the date of commercial operation, in that event, there would be no fixed date of commercial operation and it will keep on changing. This will *inter alia* depend upon the level of reservoir. Whenever there would be sufficient water, say above 800 meters, it would be possible for the units to produce 250 MW, which is the Installed Capacity of the machine. As soon as the level of reservoir goes down, say to 783 meters, the unit may produce 220 MW, thus the date of commercial operation

will not be a firm date. It appears that it was in this context that the test of Maximum Continuous Rating through the successful trial run was also considered for determining the date of commercial operation. In the instant case, the generator was able to demonstrate Maximum Continuous Rating through successful trial runs of the four units. Therefore, there should not be any doubt with regard to the dates of the commercial operation of the units. Nine out of eight beneficiaries have not found fault with the date of commercial operation of the units. The argument of the learned counsel for the appellant that the appellant is being supplied infirm power because electricity is being supplied prior to the commercial operation of the units of the generating station is not well found. Infirm power under Regulation 31 (xv) means electricity generated prior to commercial operation of the unit of a generating station. It appears to us that the dates of commercial operation of the units have been declared by the first respondent in accordance with Regulation 31(ix).

14. The further contention of the learned counsel for the appellant that only primary energy rate of a thermal power station of 81.40 paise per unit should be considered as the provisional tariff until the appellant was able to provide full peaking power is not sound. As already pointed out, deliberations of the first meeting of Northern Regional Power Committee was held on June 3, 2006. The relevant part of the minutes need to be extracted. They read as follows :-

*“Taking into consideration the views expressed by the constituents at the Commercial Sub-committee and TCC meetings on the issue, Chairman, TCC, proposed provisional tariff of THPP between the lower and upper limits of Rs.3 and 4 per unit i.e. Rs.3.50/KWH.*

*PSEB, however, insisted that only primary energy rate should be considered as the provisional tariff until THPP was in a position to provide full peaking power.*

*THDC while insisting to agree to the rate of at least Rs.4/KWH as provisional tariff, stated that with a rate of Rs.3.50/KWH, it would be difficult for them to meet even their expenses. However, after brief deliberation, they agreed for Rs.3.50/KWH.”*

It is apparent from the above that the concerned parties had agreed for rate of 3.50/KWH as provisional tariff subject to adjustment based on issuance of tariff notification by the CERC.

15. We do not find any reason to interfere with the Impugned Order passed by the CERC. Accordingly the appeal is dismissed.

**(Anil Dev Singh)**  
**Chairperson**

**(A.A. Khan)**  
**Technical Member**

**Dated: October 4, 2007**