

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 153 of 2007

Dated: 4th March, 2011

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice P.S. Datta, Judicial
Member

In the matter of

Punjab State Electricity Board,
The Mall, Patiala-147 001
(Punjab)

... Appellant(s)

Versus

Punjab State Electricity Regulatory Commission,
SCO 220-221, Sector 34-A,
Chandigarh-160 022

....Respondent(s)

Counsel for Appellant(s): Mr.M G Ramachandran,
Ms. Swapna Seshadri,
Mr. Anand K Ganeshan,

Counsel for Respondent(s): Mr. Sakesh Kumar,

JUDGMENT

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

1. Punjab State Electricity Board is the Appellant herein. The Punjab State Electricity Regulatory Commission is the Respondent.

2. The Appellant has filed this Appeal challenging the order dated 17.9.2007 passed by the State Commission determining the Annual Revenue Requirement and the tariff for the Financial Year 2007-08 and their truing up for the FY 2005-06 and review for the Financial Year 2006-2007. The facts are as follows:

3. The Appellant, Punjab State Electricity Board is a deemed licensee for the electricity transmission and distribution in the State of Punjab. The Appellant also

undertakes generation of electricity besides these activities.

4. In terms of Sec 62 of the Electricity Act, 2003, the State Commission determines the tariff for various activities of the Appellant. By the order dated 14.6.2005, the State Commission decided on the revenue requirement and tariff for the tariff period 2005-2006. Subsequently, by the order dated 10.5.2006, the State Commission passed another order for the tariff period 2006-2007.

5. On 21.11.2005, the State Commission framed the Punjab State Electricity Regulatory Commission (Terms and Condition for Determination of Tariff) Regulations, 2005. In terms of the above tariff regulations, the Appellant was required to file the Petition for the determination of the revenue requirement and tariff for the Financial Year 2007-2008 by 30.11.2006. The

Appellant sought extension of time to file the said petition. However, the State Commission refused to extend the time and directed the Appellant to furnish the details relating to revenue requirement of the Appellant.

6. Accordingly, the Appellant filed the details for the various activities of the Appellant for the period from 1.4.2007 to 31.3.2008 and also for the true up/revision exercise to be undertaken for the previous year 2005-2006 and 2006-2007. Based on these details, the State Commission assessed the revenue requirement of the Appellant for the tariff period 2007-2008. Then the State Commission invited suggestions from the public for deciding revenue requirement for the tariff year 2007-2008.

7. Accordingly, by the order dated 17.9.2007, the State Commission decided the revenue requirement and tariff for the year 2007-2008 and determined the tariff in

respect of its activities namely the transmission, distribution and retail supply of electricity. Through the said order, the State Commission has also undertaken the truing-up/revision exercise of the finances of the Appellant for the previous years 2005-06 and 2006-2007. Aggrieved by the said order dated 17.9.2007, the Appellant has filed this Appeal.

8. The Learned Counsel for the Appellant has raised the following issues:-

- (a) Metered Energy Sales for the earlier tariff period 2005-2006.
- (b) Computation of coal consumption
- (c) Station Heat Rate for two units of 210 MW each at Guru Gobind Singh Super Thermal Power Station.
- (d) Transmission and distribution losses
- (e) Employees cost

- (f) Non-allowance of incentives for generation above the target Plant Load Factor/Availability.
- (g) Disallowance of prior period expenses relating to Financial Year 2005-2006.

9. In respect of the first issue relating to metered energy sales, it is submitted by the Appellant that they detected theft of electricity during 2005-06 and included metered energy sales on this account for 116 MUs and also revenue from such sale of Rs. 22.17 crores. However, the State Commission considered only the quantum of 62 MUs in the quantum of metered sales in the true up for FY 2005-06 even though the Appellant made full disclosures regarding the actual theft detected and the actual realization. The State Commission, on the other hand, accounted for revenue of Rs. 22.17 crores in the true up. Therefore, the State Commission ought not to have disallowed the balance 54 MUs as metered sales for deciding the energy balance on truing up.

10. The next issue is computation of coal consumption.

11. The Learned Counsel for the Appellant submitted that the State Commission in the process of truing up for the Financial Year 2006-2007 changed the basis of computation of coal consumption and cost thereof from the Net Calorific Value allowed by the State Commission in the tariff order for the Financial Year 2006-2007 to Gross Calorific Value in the review. For tariff period 2007-08 also Gross Calorific Value has been used for computing coal consumption. The State Commission has changed their computation of coal consumption from Net Calorific Value to Gross Calorific Value only on the basis that the same is followed by the Central Commission.

12. Next issue is State Heat Rate

13. According to the Appellant, the State Commission had not allowed the Station Heat rate as claimed by the Appellant at 2666.67 Kcal/kwh considering the status of two units at Guru Govind Singh Super Thermal Power Station (GGSSTP) which are more than 22 years old and the State Commission has mechanically followed the norms laid down by the Central Commission without considering the fact that the power stations are very old. Therefore, the State Commission ought to have allowed relaxation of operating parameters.

14. Next issue relates to the Transmission and Distribution losses. It is contended by the Appellant that the State Commission has determined the transmission and distribution losses of the Appellant at the level of 19.5% as against 22% claimed by the Appellant for the Financial Year 2007-08 and while considering the past record of the Appellant inconsistently reduced the transmission and distribution

losses over the years. The State Commission ought to have allowed the entire transmission and distribution loss at the level of 22% as claimed by the Appellant.

15. The next issue is employees cost.

16. According to the Appellant, the Appellant has claimed Rs.1973 crores as employees cost and the State Commission has merely allowed the employees cost for a sum of Rs.1661.41 crores on the ground that the Appellant is not entitled to any increase in the employees cost unless the productivity is increased. This was done without considering the fact that the increase in the employees cost was due to the factors not within the control of the Appellant. Therefore, the employees cost which is in the nature of a standard cost can not be disallowed.

17. Next issue is non allowance of incentive for generation over the target Plant Load Factor/ Availability. The Appellant has submitted that the State Commission, after applying the operating norms and parameters for the generating stations has however failed to provide any incentive over and above the target value for recovery of the full fixed cost for any generation over and above the target Plant Load Factor/Availability. It is well accepted and universally followed practice to allow for incentive on generation above target availability. Absence of any incentive would result in the generating station not requiring or having any gain in generating any electricity over the target availability where the full fixed cost is recovered. Therefore, the incentive beyond the target Plant Load Factor/Availability, being a component of tariff under the Central Regulation, ought to have been allowed.

18. The next issue is disallowance of prior period expenses relating to Financial Year 2005-2006. According to the Appellant, the State Commission has disallowed prior period charges relating to the employees cost of Rs.8.66 crores to the Appellant in the truing-up for the year 2005-2006 on the ground that the Appellant failed to provide the period to which such employees cost related to without considering the audited accounts produced by the Appellant relating to prior period accounts.

19. In reply to the above submissions, the Learned Counsel for the State Commission would justify the impugned order by pointing out various reasons given in the impugned order on those issues.

20. On these issues, we have heard the Learned Counsel for the parties and carefully considered the same.

21. The first issue is relating to metered energy sales. The grievances of the Appellant is that the State Commission allowed in respect to the quantum of 62 MUs and not the quantum of 116 MUs which were computed on account of detection of theft.

22. In the metered sales, the Appellant included 116 MUs of energy on account of theft. The revenue on this account had been depicted at Rs.22.17 crores but this figure was not compatible with the average energy realization from the sale of energy from the concerned categories. Under those circumstances, the State Commission has worked out the equivalent sale of energy on this account as 62 MU and has accordingly amended figures relating to the metered sales on proportionate basis. This calculation cannot said to be unjustified as the Appellant has not been able to furnish any details to justify its claim.

23. The next issue is of computation of coal consumption. The grievance of the Appellant is that the State Commission in the process of review for the Financial Year 2006-2007 and in determining tariff for FY 2007-08, changed the basis of computation of coal consumption from the Net Calorific Value to Gross Calorific Value (GCV).

24. In the State Commission's Tariff Regulations notified on 21.11.2005, it was decided to follow the norms as per Central Commission's Regulations. As contended by the Learned Counsel for the Commission, the base of this decision in this regard is Regulation 22 of the Central Commission Regulations. According to the said Regulation, the quantum of fuel is to be calculated on the Gross Calorific Value (GCV) of fuel 'as fired' and not the Net Calorific Value (NCV) and such being the case, the State Commission which has to be guided by the Central

Commission Regulations, has correctly decided the issue. The State Commission has correctly used the GCV of Coal 'as fired' and gross station heat rate norms as per the Central Commission to calculate the consumption of coal. This point is answered accordingly.

25. The next issue is regarding Station Heat Rate. In respect of issue, the Appellant's contention is that the State Commission did not allow relaxation in heat rate to 2666.67 Kcal/kWh as claimed by the Appellant in respect of Guru Govind Singh Super Thermal Power Station (GGSSTP) due to higher heat rate of 2 out of 6 units without valid reasons.

26. It is noticed that the Central Commission laid down norms of gross station heat rate for coal based thermal power generating station as given in table No.4.15 of the impugned order. On the above basis, the State Commission has approved station heat rate at 2500

kcal/kWh for GGSTPS and GHTP in accordance with Central Commission norms. We also find that adequate justification for relaxation of heat rate norms in case of two units of GGSTPS has been given by the Appellant. Even though the Central Commission has not specified any norms for the units installed at GNDTP, the State Commission allowed station heat rate at 3000 kcal/kWh i.e at par with Tanda Thermal Station of NTPC. Considering the above scenario, the State Commission allowed higher norms for GNDTP as allowed earlier by the Central Commission for Tanda for 2007-08. So, this fixation of station heat rate is perfectly valid.

27. The next issue is Transmission and Distribution Losses. According to the Appellant, the State Commission determined the transmission and distribution losses at 19.5% as against 22% as claimed by the Appellant for the year 2007-08.

28. This issue has been considered by the State Commission in its previous orders. Having determined the losses to be 27.52% in the year 2001-02 the State Commission had laid down programme of phased reduction for the next six years down to 19.5% in the year 2007-08. However, the Appellant has been unable to meet this target and losses for the year 2006-07 stood at 23.91% which is now proposed to be reduced to 22% by the Appellant. It is noticed that the Commission has accepted that there can only be a gradual reduction of such losses after substantial investments to improve the transmission and distribution system in addition to comprehensively drawing up base line data, introduction of energy audit at all levels and enforcing accountability where loss exceeds the prescribed limits. However, the Appellant on each occasion in the past assured to initiate series of measures that would bring down the technical and commercial losses but no such steps have been taken and the position remains the same level even as

now. However, in view of the same, State Commission had no choice but to retain the loss level at 19.50% as earlier prescribed. Therefore, this finding also had been validly given by the State Commission.

29. The next issue is Employees Cost.

30. It is contended by the Appellant that though it has claimed Rs.1973 crores as employees cost, the State Commission has allowed for only a sum of Rs.1,661.41 crores.

31. It is noticed that the State Commission has allowed reasonable cost in the tariff order as fixed in the previous order after following the relevant regulation in this regard. As a matter of fact, the State Commission has referred to the Tribunal orders and applied the principles contained in the Tribunal's order for fixing the employees cost. As a matter of fact, the Commission went by the

materials placed by the Appellant before the State Commission and found that no worthwhile measures were adopted by the Board to reduce the employees cost during the year in question. Even the voluntary retirement scheme which has been suggested by the Tribunal was not adopted. In the above background that too on the basis of the principles laid down by this Tribunal in 2007 APTEL, 931 (SIEL Vs. Punjab State Electricity Commission), State Commission has approved Rs.1661.41 crores as employees cost for the year 2007-08. There is nothing wrong in this finding.

32. The next issue is non allowance of incentive for generation over the Target Plant Load Factor/ Availability Factor.

33. According to Appellant, the State Commission has failed to provide any incentive over and above the target

availability/Plant Load Factor fixed for recovery of full fixed cost for any generation over and above the target availability/PLF.

34. In the present case, the State Commission has considered the Plant Load Factor of the generation and has come to the conclusion that the average generation of all generators has been lower than the average of the target Plant Load Factor and hence the incentive was not awarded. The Appellant has also not furnished any material regarding its claim for incentive.

35. On this issue, the State Commission has found that the average generation of all the generators has been lower than the average target Plant Load Factor and for that reason, the State Commission held that the Appellant is not entitled to any incentive. This finding is on the valid reason.

36. The next issue is disallowance of prior period expenses.

37. It is contended by the Appellant that the State Commission has disallowed the prior period expenses relating to employees cost of Rs.8.66 crores in the truing up of 2005-06. On going through the impugned order it appears that the State Commission has explained for the disallowance of the prior period expenses of Rs.8.66 crores on the ground that prior period expenses relating to the period for which it remained capped cannot be allowed. This finding also, in our view, is perfectly justified.

38. **Summary of our Findings:**

(i) With reference to the metered energy sales, the revenue on this account have been depicted at Rs.22.17 Crores but this figure was not compatible with the average energy

realization from the sale of energy in these categories. Under those circumstances, the State Commission has worked out the equivalent sale of energy on this account as 62 MU and has accordingly amended figures relating to metered sales on proportionate basis. This calculation is perfectly justified.

(ii) With regard to the fact that the State Commission in the process of truing up has changed the basis of computation of coal consumption from the net Calorific Value to Gross Calorific Value the State Commission has followed the Regulation 22 of the Central Commission. According to the Commission, for determining the terms and conditions of Electricity tariff, the quantum of fuel is to be calculated on the Gross Calorific Value of coal 'as fired' and not the Net Calorific Value.

The State Commission which has adopted the norms of the Central Commission in its Regulations has correctly decided the issue. The State Commission has correctly calculated the coal consumption considering the GCV of coal 'as fired' and Gross Heat Rate of the station as per the Regulations.

(iii) With respect to the issue relating to the Station Heat Rate, the Central Commission has laid down the norms of gross station heat rate for the coal based thermal power generation station. On the above basis, the State Commission approved the rates in accordance with the Central Commission norms. Even though the Central Commission has not specified any norms for the capacity of units installed at GNDTP, the State Commission allowed station heat rate at par

with Tanda Thermal Station of NTPC as decided in the Central Commission's norms. So this fixation of heat rate is valid.

(iv) With regard to the issue relating to Transmission and Distribution Losses, it is noticed that the Station Commission found that the Transmission and Distribution Losses for the year 2001-02 was as high as 27.52%. Accordingly, the State Commission had laid down a programme of the phased reduction for the next six years, which if the Board had adhered to could have brought down the losses to 19.5% in the year 2007-08. However, the Board had not taken enough steps to reduce the losses. Therefore, the State Commission retained the Transmission and Distribution loss level at 19.5%.

(v) The State Commission has allowed employees cost for Rs.1,661.41 crores taking into consideration the principle laid down by this Tribunal. The State Commission went by the materials placed by the Appellant before it and found that no worthwhile measures were adopted by the Board to reduce the employees cost during the year in question. Even the voluntary retirement scheme which was suggested by the Tribunal was not adopted. Therefore, on the basis of the principle laid down by this Tribunal, the State Commission has approved Rs.1661.41 crores as employees cost for the year 2007-08. This finding is perfectly correct.

(vi) With regard to non allowance of incentive for generation over the target Plant

Load Factor/Target Availability, the State Commission has considered the Plant Load Factor of the generation and has come to the conclusion that the average generation of all generators has been lower than the average of the target Plant Load Factor for this reason no incentive was awarded. The Appellant has also not furnished any material regarding its claim for incentive. This finding is, therefore, correct.

(vii) With regard to prior period expenses, the State Commission has disallowed the prior period expenses relating to cost of Rs.8.66 crores in the truing up of the 2005-06. Valid reasons have been given by the State Commission by stating that the prior period expenses relating to the period for which it remained capped can not be allowed.

39. In view of our above findings, we conclude that there is no merit in the Appeal. Accordingly, the Appeal is dismissed. However, there is no order as to cost.

(Justice P S Dutta) **(Rakesh Nath)** **(Justice M. Karpaga Vinayagam)**
Judicial Member **Technical Member** **Chairperson**

Dated: 4th March, 2011

REPORTABLE/NON-REPORTABLE