

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

Appeal No. 119 of 2006

Dated: 1st November, 2007.

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

IN THE MATTER OF:

Punjab State Electricity Board,
The Mall, Patiala, Punjab

Appellant

Versus

1. Punjab State Electricity Regulatory Commission,
SCO 220-221, Sector 34-A, Chandigarh.
2. State of Punjab, Deptt. Of Power,
Punjab Government Secretariat, Chandigarh.
3. Mr. P.D. Sharma, President,
Apex Chamber of Commerce and Industry,
Room No. 212, 2nd Floor, Savitri Complex,
Ludhiana-141003.
4. Mr. Surinder Singh, General Secretary,
Auto Parts Manufacturers Association, Ludhiana.
5. Mr. Madan Lal Aneja, Chairman,
M/s Amritsar Ice Factories Welfare Association,
Sultanwind Road, Amritsar.
6. Mr. Sandeep Jain, Vice President,
Association of North India, Ludhiana.

7. Mr. C. Ralhan, President,
Ludhiana Hand Tools Association, Ludhiana.
8. Mr. Raghbir S Saini, Resident of Narinder Colony,
Ward No. 2, Ropar.
9. Mr. Inderjit Singh Pardhan, President,
Chamber of Industrial & Commercial Undertakings,
M.C. Block, Ludhiana.
10. Mr. Rajiv Kumar & Others,
Members Mohalla Residents Social Welfare Society,
Ludhiana.
11. Mr. Satnam Singh & Others,
Iqbal Ganj Road, Ludhiana.
12. Mr. Jaswant Singh & Others,
Residents of Mohalla Kirti Nagar, Ludhiana.
13. Mr. Gurmit Singh & Others,
Resident of Mohalla Bajrba, Ludhiana.
14. Mr. Anand Dev, Chief Electrical Engineer,
Baroda House, New Delhi.
15. Mr. D.P. Jain, Vice President,
Ludhiana Steel Re-Rollers Association, Ludhiana.
16. Col. Angad Singh, Gen. Secretary,
Consumers Protection & Grievances Redressal Forum,
SAS Nagar, Mohali.
17. Mr. H.N. Singhal, Corporate Manager (P&A),
Nahar Industrial Enterprises, Ludhiana.
18. Mr. Balbir Singh, President,
Mohali Industries Association, MIA Bhawan,
SAS Nagar, Mohali.
19. Mr. Varinder Kapoor, Gen. Secretary,

- United Cycle & Parts Manufactuers Association,
Gill Road, Ludhiana.
20. Mr. Inder Mohan Jit Singh, President,
Hoshiarpur Large & Medium Industries Association,
Chohal, Hoshiarpur.
 21. Mr. Sanjay Aggarwal, DGM, Punjab Circle,
BSNL, Sec. 34-A, Chandigarh.
 22. Mr. Suresh Dar, Chief Engineer,
Military Engineer Services, Jalandhar Cantt.
 23. Mr. R.S. Sachdeva, CO-Chairman,
PHD Chamber of Commerce & Industry,
107, Sec. 18-A, Chandigarh.
 24. Mr. M.C. Munjal, Chairman,
Punjab State Council,, Sec. 1-A, Chandigarh.
 25. Mr. P.K. Bhalla, SIEL Ltd, Rajendra Place, New Delhi.
 26. Mr. Prem Nath Sachdeva, President,
Cycle Trade Union, Ludhiana.
 27. Mr. Barinder Singh, Sr. Vice-President,
Grasim Industries Ltd, Bathinda.
 28. Mr. Manjinderpal Singh, Kothi No. 37, SAS Nagar.
 29. Mr. Harinder Puri, Secretary,
Steel Furnance Association of India, Ludhiana.
 30. Mr. Parveen Gupta, President,
Wholesale Cycle Dealer Assocation, Ludhiana.
 31. Mr. A. Puri, General Manager,
Project Punjab Alkalies & Chemical Ltd, Chandigarh.
 32. Mr. Vinod Vashishat, President,
All India Steel Re-Roller Association, Mandi Gobindgarh.

33. Mr. Mohinder Gupta, President,
Mandi Gobindgarh Induction Furnace Association,
Mandi Gobindgarh.
34. Consumer, SBS Nagar, Ludhiana.
35. Mr. H.S. Sodhi, President,
Punjab Pensioners Welfare Association, Patiala.
36. Mr. Daljit Singh Gill, President,
Punjab Dairy Farmers Association, Ludhiana.
37. Mr. Amandeep Grewal, Amritsar.
38. Mr. Hartak Dhatt, Amritsar.
39. Er. Amrik Singh, Bombay Foundry & Machines,
Amritsar.
40. Mr. Satpal Garg, President,
Cotton Factories Association, Malout.
41. Principal Sukhdev Singh, President Consumer
Welfare Council, Bathinda.
42. Partner Ganpati Estates, Bathinda.
43. Mr. Bhagwan Bansal, President,
Punjab Cotton Factories & Ginners Association,
Mukatsar.
44. Er. H.S. Bedi, President,
PSEB Engineers Association.
45. Mr. Manmohan Singh, Secretary,
Amritsar Ice Factories Welfare Association,
Amritsar.
46. Mr. Raman Watts, President,
Bathinda Chamber of Commerce & Industry, Bathinda.

47. Mr. Joginder Kumar, President,
Ludhiana Electroplaters Association, Ludhiana.
48. Mr. Ravi Dutt Sharma, H.No. 60 Sec, 21A, Chandigarh.
49. Mr. Suresh Dar, DY Dir(E/M)., Jalandhar Cantt.
50. Capt. Dalip Singh, Unban State, Ph/I, Patiala,
51. Mr. Ramesh Talwar, Majith Mandi, Amritsar.
52. Mr. Ramesh Talwar, Majith Mandi, Amritsar.
53. Mr. K.S. Sandhu of Kisan Unions.
54. Mr. A.S. Sodhi, & Others, 66 Grid Colony, Patiala.
55. Mr. H.S. Sodhi, President,
Punjab Pensioners Welfare Association, Patiala. ... Respondents

Counsel for the appellant : Mr. P.S. Bhullar.

Mr. Pardeep Mishra,
Mr. Rajesh Ranjan &
Mr. Shashwat Kumar &
Mr. Shyam Lal, Dy. Dir, PSEB.
Mr. Rajnish Ranjan,

Counsel for the Respondents : Mr. M.G. Ramachandran,
Ms Taruna S Baghel,
Mr. Anand K. Ganesan,
Ms. Swapn Seshadri for PSERC.
Mr. Rajneesh Ranjan,
Mr. Shashwat Kumar
Mr. Darshan Singh, SE, PSEB
Mr. Sanjay Jain & Mr. Mukesh Kumar
for Resp. No. 2
Mr. Vishal Gupta for Res. No. 32 & 33
Mr. Sanjay Sen, Mr. Vishal Anand
Mr. Manoj Kumar &
Ms. Ruchika Rathi,
Mr. M. C. Vani for Resp. No. 25 & 29.
Mr. B.C. Shiv, Power Consultant,

Mr. J.C. Shukla, Registrar, PSERC.
Mr. Sharat Kapoor & Mr. I.J. Bawa for
BSNL.

JUDGMENT

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

This Appeal is filed by the Punjab State Electricity Board (For short 'Board') against Tariff Order dated 10 May 2006 for Financial Year 2006-07 issued by the Punjab State Electricity Regulatory Commission (hereinafter to be called as 'the Commission') under Section 111 of the Electricity Act, 2003 (for brevity to be called as 'the Act').

Facts of the Case.

2. The Board had earlier preferred two appeals being appeal Nos. 54 and 55 of 2005 by which it had challenged the tariff orders of the Commission whereby certain expenses allegedly incurred by it have been disallowed. The Appeal No. 54 of 2005 was directed against the Tariff Order dated 30 Nov. 2004 applicable to financial Year 2004-05, and the Appeal No. 55 of 2005 was against the tariff order dated 14 Jun 2005 for Financial Year 2005-06. These appeals were dismissed vide Full Bench Order of this Tribunal dated 26 May 2006.

3. The Appellant submits that the impugned order dated 10 May 2006 was issued by the Commission whilst some of the issues addressed by it for Financial Year 2006-07 were pending adjudication before this Tribunal in Appeal No. 4, 13, 14, 23, 25, 26, 36, 36, 54 & 55 of 2005 and the judgment on them was rendered later on 26 May 2006. The Appellant points out that it has filed an appeal against the Judgment of this Tribunal dated 26 May 2006 before the Hon'ble Supreme Court of India being Civil Appeal No. 4510 of 2006 and the same has been admitted on 06 Nov. 2006

4. The Appellant has challenged the impugned order of the Commission on the ground that while assessing the Aggregate Revenue Requirement (ARR) and tariff application for Financial Year 2006-07 filed by it, the Commission has disallowed certain legitimate costs incurred.

5. The Appellant in its written submission in respect of the instant appeal *inter-alia* submits that even though the Appeal contains issues inclusive of those which have been decided by order passed on dated 26 May 2005 by the Tribunal, it is seeking redressal of grievances arising out of the issues which are not covered by the said judgment. It submits that the issues already covered by the Tribunal's judgment have been included in the instant appeal with the purpose to safeguard its interest in ensuring that

failure to exercise the remedy of appeal should not leave it from the scope of application of reliefs in case Civil Appeal is allowed in full or in part by the Hon'ble Supreme Court.

6. The Appellant in its submissions has challenged the disallowance of certain alleged legitimate costs and raised the following issues for reliefs in the instant Appeal stated to have not been included in Appeal Nos. 54 and 55 of 2005 decided by this Tribunal:

- (a) **Issue No. 1.** Investment by Appellant.
- (b) **Issue No. 2.** Working Capital Loan.
- (c) **Issue No. 3.** Incentive on Higher Generation.
- (d) **Issue No. 4.** Auxiliary Consumption.
- (e) **Issue No. 5.** Prior Period Credit.
- (f) **Issue No. 6.** Other debits and Extra-Ordinary items of Expenditure.
- (g) **Issue No. 7.** Power Purchase Cost.

No other point was pressed by the Appellant.

7. We shall now examine the veracity of the above mentioned claims made by the Appellant.

8. **Issue No. 1: Investment by Appellant:** - In the review estimates for Aggregate Revenue Requirement (ARR) for the year 2005-06, the Appellant had proposed an investment of Rs. 1281 crores as against Rs. 1200 crores allowed by the Commission. The Commission did not concede to the request made by the Appellant for the reason that till Jan. 2006 the investment aggregated to Rs. 991.48 crores and in the remaining two months in financial year 2005-06 it was not likely to exceed Rs. 1200 crores. The Appellant, however, has prayed that the actual capital expenditure in the pre-audited accounts for the year 2005-06 being approximately Rs. 1450 crores, the same amount should have been considered for approval by the Commission. It is not indicated as to what was the actual figure of capital expenditure accepted in the final audit as against pre-audit figure of Rs. 1450 crores for the FY 2005-06.
9. In any event the Appellant admittedly could not contain its capital expenditure within its own revised projection of Rs. 1281 crores and exceeded it by over 13%, if the final audited figure is taken to be Rs. 1450 crores. On the other hand, the estimation of Commission of Rs. 1200 crores, is merely about 6.7% lower than

the projected figure of Rs. 1281 crores by the Appellant. The Appellant, even as late as in Jan. 2006, while seeking revision in the investment of Rs. 1281 crores for the FY 2005-06, did not know that two months later it is going to aggregate to Rs. 1450 crores.

10. The above leads to an escalation in expenditure of nearly 20% over and above the investment of Rs. 1200 crores approved by the Commission for recovery from the consumers through the tariff. It seems to us that the mechanisms of project planning, resource planning and investment phasing are inadequate and are to be streamlined at the Appellant's end.

11. The tariff could not be subjected to vagaries of incorrect planning and improper phasing of investment as non-adherence to approved targets of the expenditure, besides giving tariff-shocks to the consumers, will inevitably introduce uncertainties and lack of credibility in the tariff determination process. The Appellant has submitted that the accounting practice followed by it is such that the figure of investment tend to get reflected towards the end of the financial year. This only points to inadequacy of planning system

adopted by the Appellant implying that it does not size up to the capability required for regulating and exercising control over the phasing of investment in compliance to Clause 47 (3) (e) of Punjab State Electricity Regulatory Commission (Conduct of business) Regulations, 2005. Under the circumstances, we direct the Commission to consider excess investment, if incurred by the Appellant during the year, in the truing-up exercise for the year 2005-06.

12. **Issue No. 2. Interest on Working Capital Loan:** The Appellant has submitted that, in the review of ARR and Revenues for the year 2005-06, it had requested for interest of Rs. 66.10 crores on the working capital loan of Rs. 930.93 actually incurred, whereas the Commission has approved the interest of Rs. 35.49 crores on normative working capital loan of Rs. 499.78 crores.

13. We observe that in case of integrated utility like the Appellant Regulation 30 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 provides as under:

“30. WORKING CAPITAL AND INTEREST RATE ON WORKING CAPITAL

1.
2.
3. *The working capital for integrated utility shall be the sum of one month requirement for meeting :*
 - i. *Fuel cost.*
 - ii. *Power purchase cost.*
 - iii. *Employees cost.*
 - iv. *Administration & general expenses.*
 - v. *R&M expenses as already being allowed.*
4. *The rate of interest on working capital shall be equal to the short term Prime Lending Rate of State Bank of India of the relevant year. The interest on working capital shall be payable on normative basis notwithstanding that the generating company / licensee has not taken working capital loan from any outside agency or has exceeded the working capital loan amount worked out on the normative figures.”*

14. It is also observed that the Commission in its impugned order has worked out the total working capital requirement on the basis of the sum of one month’s requirement for meeting expenditure on account of Fuel Cost; Power Purchase Cost; Employees Cost; Administration and General Expenses and R& M Expenses in

compliance of the above stated requirement. The Appellant has pleaded that the requirement to meet two-months costs as applicable to non-pit-head generation stations corresponding to the “Target Availability” as stipulated by CERC (Terms and Conditions for Tariff) Regulations, 2004 should have been extended to the Appellant.

15. In other words, the Appellant is seeking modification of the Regulations 2005. This Tribunal has already ruled that it has no jurisdiction to examine the validity of the Regulations. We, accordingly, reject the plea of the Appellant.
16. **Issue No. 3: Incentive on Higher Generation:** The Appellant has submitted that in review of ARR for 2005-06, the Commission has not provided an incentive for increase in gross thermal generation to the extent of Net 788 MUs equivalent to Rs.34.50 crores. The Appellant further states that this incentive was allowed in previous tariff orders.
17. We, too, observe that as per the impugned order the Commission has allowed the incentive and other charges as projected by the

Appellant in its ARR for FY 2006-07 also. This departure seems to be an omission and the Commission is directed to consider it as per the relevant Regulations.

18. **Issue No. 4: Auxiliary Consumption:** The Appellant has submitted that while truing-up for the year 2004-05, the Commission has disallowed power purchase cost to the extent of Rs. 20.30 crores on account of higher auxiliary consumption of 97 MUs in respect of Thermal Power Stations and Rs. 6.90 crores for excess auxiliary consumption of 33 MUs for Hydel Power Stations. The Appellant avers that the auxiliary consumption in case of Guru Nanak Dev Thermal Project (GNDTP) and Guru Gobind Singh Thermal Project (GGSTP) is higher on account of frequent backing-down leading to deterioration in the operating parameters and which particularly in case of GNDTP has enhanced due to the outage of one unit for most of the year for undertaking O&M measures. As per the provisions of Regulations, 2005 of the Punjab State Electricity Regulatory Commission, the Appellant's generating stations, both Thermal as well as Hydel, will adhere to the operating norms as laid down by Central Electricity Regulatory Commission (Terms and Conditions for Tariff) Regulations, 2004.

19. We observe that the auxiliary consumption for the Thermal generating stations, as approved in the tariff order 2004-05, was lower than the revised estimate submitted by the Appellant in ARR for the year 2005-06. While the auxiliary consumption approved in the tariff order for 2004-05 in respect of GNDTP, GGSTP and GHTP (Guru Hargobind Thermal Plant) were 9.54%, 8.33% and 8.91% respectively, the same in the revised estimate in ARR for 2005-06 submitted by the Appellant were respectively increased to 12.4%, 9.34% and 9.61%. The Commission after considering the revised estimate submitted by the Board, did not find any justification in allowing the increase in auxiliary consumption as it had already applied the relaxed standard allowed to Tanda Power Station of NTPC specified in Central Electricity Regulatory Commission (Terms and Conditions for Tariff) Regulations, 2004.
20. The higher auxiliary consumption, frequent backing-down and non-availability of units for extended period of time directly points towards poor state of repairs and maintenance of the stations and demand focused attention to undertake station-wise detailed and systematic study with a view to carry out R&M and life extension

of units/stations and implementing remedial measures subject to the norms of economic viability.

21. There appears to be some merit, however, for seeking relaxation in application of the norms in respect of auxiliary consumption because of the vintage nature of the plants which are 10-15 years older in service than the Tanda stations of NTPC having similar size of units each of 110 MW. However this dispensation could only be considered if there is sound justification within the realm of sustainable extended life and economic viability of the stations. The Tanda Thermal power generating station of NTPC Ltd. has been given some relaxation from application of standard norms provided in the Central Electricity Regulatory Commission (Terms and Conditions for Tariff) Regulations, 2004 by the said Regulation itself, and similar dispensation is provided by the Commission to the plants of the Appellant while applying the Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations 2005. However, we are not inclined to intervene as this Tribunal has no jurisdiction to examine the validity of the Regulations which are

statutory in nature. We accordingly have no option but to reject this request of the Appeal.

22. **Issue No. 5: Prior Period Credit:** The Appellant has submitted that as against the actual prior period credit of Rs. 47.74 crores the Commission has added an amount of Rs. 4.41 crores despite the amount being contingent in nature and approved the prior period credit of Rs. 52.15 crores. The Commission has observed that the claim made by the Appellant is relating to the prior period income/expenses which have been excluded from the different heads of expenditure prior to its approval. The Commission further observed that as per the Schedule 18 of the Annual Statement of Account for the year 2004-05 the net effect of prior period credit / charges is Rs. 47.74 crores which actually works out to be Rs. 52.15 crores after taking into account the comments of the audit. The aforesaid amount also includes Rs. 12.63 crores which is assumed to be relating to the period prior to the capping of the employee cost. We see no reason to disturb the decision taken by the Commission and do not allow any relief on account this plea of the Appeal.

23. **Issue No. 6. Other debits and Extra-Ordinary items of Expenditure:** In the truing-up of 2004-05 the Appellant submits that the Commission has over-looked the other debits and extraordinary expenditure amounting to Rs. 7.55 crores incurred by the Appellant. We reject the plea as the Appellant has failed to furnish any detail before us, to validate the claim of the aggregation of extraordinary expenditure or debits to the extent of Rs. 7.55 crores.
24. **Issue No. 7: Power Purchase Cost.** The Appellant has submitted that the Commission has applied different yardstick while reviewing the power purchase costs for FY 2004-05 and FY 2005-06 wherein the actual rate of power purchase is used in the former and the average rate of past three years purchases is employed for the latter. The Appellant has averred that the rate as per latest estimates based on actual data for 11 months (Apr. 2005 to Feb. 2006) being higher than the average rate approved earlier, has resulted in under estimation of the power purchase cost for FY 2005-06 to the extent of Rs. 120.83 crores and claims for compensation.

25. It is pertinent to point out that the cost of power purchases by the Appellant is regulated by Regulation 18 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for determination of Tariff) Regulations, 2005 and Regulation 46 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulation, 2005. We are not made aware of any guidelines or practice directions issued by the Commission in this regard.

26. The above stated Regulations do not provide for any methodology to determine the rate at which the cost of power purchases made during the tariff year, are to be computed. It may be understandable to estimate the average rate of all power purchases in the ensuing year by averaging the rates of procurements in the past three-years, as at the stage of filing ARR or application for tariff determination, the actual rates in advance are not known. But at the time of Review of ARR, which is normally held towards the end of the financial year, the actual rates for major part of the year are known and the total cost of purchases could be more accurately determined by summing the costs of all procurements worked out at applicable rates of each transaction. In case of truing-up exercise also, all purchases, inclusive of the actual quantum and actual rates of purchases, are known. Thus, both in Review of ARR and in truing-up process, the total cost of all purchases

should be determined in such a manner that it is equal to the sum of the costs of each individual procurement at the actual applicable rates. These rates could be used for extrapolating the costs of purchases in the remaining period of the Financial Year also. If this is not done, the entire purpose of Review of ARR and truing-up exercise will become meaningless.

27. Moreover, abrupt change in methodology of computing the cost of power purchases in the Review of FY 2005-06 without going through the consultation process with the stakeholders is against the principles of natural justice. We accordingly set-aside the power purchase cost determined in the Review for FY 2005-06 and reflected in the impugned order with the direction to the Commission to take the actual costs of power procurement for 11 months and estimate on that basis the cost for the remaining one month and effect correction in the Tariff Order wherever required.

28. Having analyzed the issues raised in the original Appeal, we set-aside the impugned order to the extent mentioned herein above and remand the matter to the Commission for *de-novo* consideration keeping in view of our findings/directions/observations with regard to Issue Nos. 1, 2 and 7 mentioned above and for modification the impugned tariff order accordingly.

29. This disposes of the Appeal No. 119 of 2006 with no orders to costs.

(A.A. Khan)
Technical Member

(Justice Anil Dev Singh)
Chairperson

Dated : 1st November, 2007