

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL No. 108 OF 2012

Dated: 14th December, 2012

Present: Hon'ble Mr. P.S. Datta Judicial member
Hon'ble Mr. V J Talwar, Technical Member,

In the Matter Of

Haryana Power Generation Corporation Ltd.
Shakti Bhawan, Sector-6,
Panchkula-134 109

.....Appellant

Versus

1 Haryana Electricity Regulatory Commission
Bays No.33-36, Sector-4,
Panchkula-134 109

2 Dhakshin Haryana Bijli Vitran Nigam Limited
Vidyut Nagar, Hissar

3 Uttar Haryana Bijli Vitran Nigam Limited
Vidyut Sadan, Sector-6,
Panchkula-134 109

...Respondents

Counsel for the Appellant : Mr. M. G. Ramachandran
Mr Apoorve Carol
Mr Chirag Kher

Counsel for the Respondent : Ms. Shikha Ohri for R-1

JUDGMENT

PER MR. V. J. TALWAR, TECHNICAL MEMBER

1. Haryana Power Generation Corporation Limited has filed this Appeal against the order dated 29.3.2012 of the Haryana Electricity Regulatory Commission (Commission) approving the ARR and fixing the tariff for generation and sale of electricity to distribution licensee. The short facts are as follows:
 - (i) The Appellant, a Generating Company filed Generation Tariff petition on 29.11.2011 before the Commission for the Financial Years 2012-13.
 - (ii) The Commission called for clarifications and information from the Appellant on 22.12.2011.
 - (iii) Accordingly, on 2.1.2012, the Appellant submitted the required information and clarifications. In the meantime, the Commission received some objections from the public.
 - (iv) Public hearing was held on 13.2.2012.
 - (v) On 21.2.2012 the Appellant prayed for revision of PLF for DCRTPS Unit 2 from 85% proposed in the tariff petition to 60% as the unit had been under forced outage since 25.9.2011 and was likely to come on bar not before July 2012.

- (vi) Ultimately on 29.3.2012, the State Commission passed the impugned Tariff Order with some modifications to the tariff proposal submitted by the Appellant.
 - (vii) Aggrieved by this order dated 29.3.2012 the Appellant has filed this Appeal.
2. In this Appeal following issues have been raised by the Appellant.
- (i) Plant Load Factor
 - (ii) Auxiliary Consumption
 - (iii) Station Heat Rate
 - (iv) Operation and Maintenance Expenses
 - (v) Return on Equity
3. It is noted that all the issues raised by the Appellant in the present appeal had also been challenged by the Appellant in Appeal No. 131 of 2011 filed against the tariff order passed by the Commission for FY 2010-11 and in Appeal No. 91 of 2011 challenging the tariff order passed by the Commission for FY 2011-12. It is also noted that the grounds of the challenge to the tariff order for FY 2012-13 in this Appeal are almost identical to those raised in Appeal No. 131 of 2011 and 91 of 2011. By judgment and order dated 01.03.2012 passed by this Tribunal, the Appeal No. 131 of 2011 was dismissed being devoid of merits and Appeal No.91 of 2011 had been partly allowed with direction to the Commission to follow the norms specified in the Commission's own Tariff Regulations notified in the year 2008.

4. At the outset we would like to reiterate our observations made in paragraphs 3 & 4 of our judgment dated 1.3.2012 in Appeal No. 131 of 2011 as reproduced below:

“3 Before proceeding further we would like to mention that the Appellant, in this Appeal has stated that the State Commission has not followed the guidelines laid down by the Central Electricity Regulatory Commission and principles laid down by the Tariff Policy issued by the Government of India in accordance with Section 3 of the 2003 Act. It further states that under Section 61(d) of 2003 Act requires the State Commissions, while fixing tariff, to be guided by the principle under which recovery of cost of electricity is ensured in a reasonable manner. Further, Section 61(i) of the Act mandates the State Commission to be guided by the National Electricity Policy and Tariff Policy. The State Commission has neither followed the principles and methodology specified by the Central Commission nor followed the provisions of Tariff Policy and National Electricity Policy. In this context it would be desirable to refer to Section 61 of the Act which read as under:

61. Tariff regulations.—*The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:—*

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

(e) the principles rewarding efficiency in performance;

(f) multi-year tariff principles;

(g)...;

(h)...;

(i) *the National Electricity Policy and tariff policy:*

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948 (54 of 1948), the Electricity Regulatory Commissions Act, 1998 (14 of 1998) and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.

4 Bare reading of section 61 would elucidate that the State Commissions have been mandated to frame Regulations for fixing tariff under Section 62 of the Act and while doing so i.e. while framing such regulations, State Commissions are required to be guided by the principles laid down in by the Central Commission, National Electricity Policy, Tariff Policy etc. It also provide that while framing the regulations the State Commissions shall ensure that generation, transmission and distribution are conducted on commercial principles; factors which would encourage competition and safe guard consumer's interest. Once the State Commission has framed and notified the requisite Regulations after meeting the requirement of prior publication under Section 181(3), it is bound by such Regulations while fixing Tariff under Section 62 of the Act and the Central Commission's Regulations have no relevance in such cases. However, the State Commission may follow the Central Commission's Regulations on certain aspects which had not been addressed in the State Commission's own Regulations. The Haryana Electricity Regulatory Commission has framed Terms and Conditions for determination of tariff for generation in the year 2008 and the the State Commission is required to fix tariff as per these Regulations. However, as per Regulation 33 the State Commission has power to relax any of the provisions of these Regulations after recording the reasons for such relaxation."

5. With the above observations, let us examine each of the issues raised by the Appellant on merits. The first issue raised by the

Appellant in the present appeal is related to **Plant Load Factor** of various power stations of the Appellant.

Plant Load Factor - Panipat TPS Unit 1 to 4

6. The main contention of the Learned Counsel for the Appellant in regard to PLF for Unit 1-4 of Panipat TPS was that the State Commission has ignored the past performance of these units and fixed the target PLF which is not achievable. The State Commission has fixed target PLF for these units at 70% against the claim of 59.88% of the Appellant.
7. In the light of the above submissions, if we look to the impugned order, it is clear that the State Commission has in fact allowed substantial relaxation in respect of Plant Load Factor. The State Commission as against the norms of 80% for the Units No.1 to 4 of Panipat Thermal Power Station (PTPS), has allowed substantial relaxation and allowed the Plant Load Factor at 70% only after considering the past performance of these units. The reasons recorded by the State Commission in para 2.5.1 of the Impugned Order read as under:

“The achievement of PLFs at individual units of PTPS 1 to 4 up to 11/2011 during FY 2011-12 are 79.57%, 79.70%, 61.80% & 55.55% respectively. It is observed that the PLFs of PTPS units-1&2 have exceeded the target of 75% fixed by HERC, as the same were renovated extensively by M/s ABB & BHEL. However, the PLFs achieved at PTPS units- 3&4 have been unsatisfactory, as these units have outlived their useful life and the renovation of these units has been delayed. HPGCL has admitted that the poor performance of these units can be

attributed to the lack of R&M activity (the R&M for PTPS units-3&4 is envisaged in FY 2013-14 through financial assistance from the World Bank for which business plan will be submitted subsequently). The Commission, in view of the above submissions, observes that HPGCL should examine the techno – economic viability of these units vis – a –vis carrying out essential maintenance works to sustain the operation of the units for some more years.

HPGCL has proposed PLFs of 52.59%, 59.34%, 69.95% & 64.86% for PTPS units 1 to 4 respectively (overall 59.88%) based on the average of actual PLF during the preceding three complete years of operation. This was objected to by the Discoms on the plea that the PLF proposed by HPGCL is not in line with HERC Generation Tariff Regulations, 2008 and in the past the Commission has also expressed its concern the deterioration in PLF of HPGCL's power stations. The Commission observes that the petitioner has quoted the order of Jharkhand ERC in which the norms of operational parameters have been relaxed for Patratu TPS units as the same are 35-40 years old. The comparison is not valid as Patratu TPS units are much older than Panipat TPS units with derated capacity of 4x40 MW, 2x90 MW 2x105 MW & 2x110MW. It is learnt that Central Electricity Authority has suggested to JSEB to retire six out of ten units of this plant after finding them obsolete and mentioning any further investment on them for revival as unviable. Moreover, Panipat TPS units 1&2 have already demonstrated PLFs of 80% & above in the months of June to October during FY 2011-12 and PLFs of nearly 70% can be expected from units 3 &4 as already proposed by HPGCL for FY 2012-13. The average of PLFs of last three years has been low due to certain forced outages of long durations which are not expected or desired to be repeated in future.

In the light of the discussions and partly excepting the objections of the Discoms as well as the provisions of the National Tariff Policy that the parameters ought to take in to account the past performance the Commission has considered PLF of 70% for PTPS Units (1-4) for determining the generation tariff for FY 2012-13.

8. Perusal of above findings of the State Commission would make it clear that the State Commission had in fact considered the past performance of these units and has relaxed Target PLF from 80% to 70%. The findings of the Commission are well reasoned and we do not find any reason to interfere with the same.

Panipat TPS Unit 5-8, RG TPS Unit 1 & 2 and DCR TPS Unit 1&2

- 9 In respect of other thermal units at Panipat TPS, RG TPS and DCR TPS, the learned Counsel for the Appellant submitted that the Commission has fixed target PLF of 85% violating the provisions of its own Tariff Regulations 2008 which provide for target PLF at 80%. With regard to the DCR unit 2 the Appellant has submitted that the rotor of this unit got damaged on 25.9.2011 and was expected to be on bar by July, 2012. Therefore, the Appellant had revised its proposal for target PLF for this unit to 60% and informed the Commission vide its memo no. 193/GMP-224 dated 21.2.2012. The Commission has not taken in to account this factual position and has fixed the target PLF of this unit at 85%.
- 10 The learned Counsel for the Commission made the following submissions in regard to PLF of these stations:

- a. Under Regulation 11 of the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2008, a PLF of 80% has been specified for thermal generating stations. However, the Appellant had itself proposed the normative PLF of 85% for FY 2012-13 which was considered by the Commission for determining generation tariff for FY 2012-13.
- b. The individual PLFs of Panipat TPS unit- 5 to 8 achieved up to November 2011 during FY 2011-12 stood at 82.49%, 88.33%, 93.88% & 93.53% against the approved norms of 80%.
- c. The individual PLFs of DCR TPS unit-1 & 2 achieved up to 11/2011 during FY 2011-12, as reported by HPGCL, was 93.28% & 46.37% against the HERC norms (Regulations) of 85%. It was observed that DCR TPS unit 1 achieved better PLF as compared to the norm of 85%. However, DCR TPS unit 2 failed to achieve the normative. According to the Appellant, DCR TPS unit 2 had been under forced shutdown since 25.09.2011 due to turbine rotor problem.
- d. The Commission attempted to strike a balance between the interest of the consumers and the generator and has observed as follows:

“The Commission has considered the above plea with respect to PLF of DCR TPS unit – 2 and is of the view that the Commission determines generation tariff on normative basis in accordance with the HERC (Terms and Conditions for Determination of Generation Tariff)

Regulations, 2008. Accordingly full fixed cost is recoverable at a normative PLF of 85% i.e. at zero availability (PLF) no capacity charges are payable while fuel cost is recoverable on the basis of actual ex – bus energy delivered / sent out from the generating stations. Hence the energy charges get automatically adjusted based on actual sent out energy. However, recovery of fixed charges below the target availability has to be on a pro – rata basis. As, so far, the Commission has not introduced Intra – State ABT mechanism in Haryana relating PLF in case it is below the normative level for recovery of fixed charges on a monthly basis would become somewhat difficult.

Consequently, for the purpose of estimating generation tariff for FY 2012-13, in the case of DCR TPP Unit 1 & 2 the Commission in line with HERC Regulations has retained the PLF at 85%. It needs to be noted that non – availability of a generating station for a prolonged period imposes significant cost on the electricity consumers of Haryana in terms of loss of productivity or substituting the same with short term expensive power or prohibitively expensive CPP running on liquid fuel. Thus the Commission is not inclined to accept the proposal of HPGCL to pass on the avoidable burden of non availability of a new generating power plant for which a Gold Shield was awarded in January, 2010 for meritorious performance relating to early completion of this power plant. Consequently, the Commission instead of curtailing the fixed cost corresponding to 60% has made the recovery based on actual generation. Hence any reduction in generation vis – a – vis normative PLF would lead to that much reduction in recovery of fixed cost of generation. However in case the PLF exceeds the norms the fixed component of generation cost shall not be payable to the generating company.

- e. In fact, while responding to the objections raised by the DISCOMS during the hearing before the Commission, the Appellant had submitted as follows:

“Consideration of CERC Regulations:-

HPGCL has adhered to the Hon’ble HERC norms and the principles adopted by the Hon’ble Commission in previous tariff orders, in the most of the cases. Only in the cases where the HERC norms are silent or HPGCL finds CERC norms to be achievable even though they are more stringent, HPGCL has referred to the norms adopted by the Central Commission. It would be grossly inappropriate to suggest that HPGCL has followed CERC Regulations when they are more beneficial to HPGCL, as HPGCL has proposed certain technical parameters in line with CERC norms, which are more stringent than the State Commission’s norms, for instance:

- ***PLF for PTPS Unit 5-8, DCRTTP Unit 1-2 & RGTPP Unit 1-2, which is proposed as 85%, as against State Commission’s norm of 80%.***

Therefore, it is incorrect to say that HPGCL has followed the norms for its own benefit as it has gone ahead to propose even more stringent technical norms, wherever they are achievable, considering the interest of the consumers of State of Haryana.”

- f. In view of its own submissions before the Commission, it is not open for the Appellant to now contest the applicability of a higher PLF, allegedly as per CERC norms.

- 11 Let us examine the Plant Load Factor of various stations as approved by the Commission and actually achieved by the Appellant in the last two years along with the PLF proposed by the Appellant,

Commission's Normative and approved for FY 2012-13 . These are summarized in Table below:

Unit	FY 2010-11		FY 2011-12		FY 2012-13		
	Approved	Actual	Approved	Actual up to 11/11	Proposed	HERC Norm	Approved
PTPS 5	80	83.91	85	82.49	85	80	85
PTPS 6	80	88.86	85	82.49	85	80	85
PTPS 7	85	92.63	85	93.88	85	80	85
PTPS 8	85	90.08	85	93.53	85	80	85
DCRTPS -1	80	85.08	85	93.28	85	80	85
DCRTPS -2	80	62.60	85	46.37	85	80	85
RG TPS- 1	80	-	85	55.02	85	80	85
RG TPS-2	80	-	85	47.40	85	80	85

- 12 From the above table it is clear that the Appellant had proposed to achieve 85% PLF as against the normative PLF of 80% as per Tariff Regulations. The Appellant had submitted in Public Hearing that it had consciously proposed a higher PLF of 85% for these stations in line with the CERC norms. The learned Counsel for the Commission has contended that the Appellant had proposed higher target PLF of 85% and the Commission has accepted the same. However, perusal of the Impugned Order would reveal that the drafting stage the Commission had carried the impression that its Tariff Regulations provide for normative PLF of 85% (instead of 80%) and accordingly approved 85% target PLF as per norms. Thus, the intention of the Commission appeared to approve the target PLF of these units as per the Regulations i.e. 80%. This Tribunal in its Judgment dated 1.3.2012 in Appeal No. 131 of 2011 has held that once the State Commission has framed and notified the requisite Regulations after meeting the requirement of prior publication under Section 181(3), it

is bound by such Regulations while fixing Tariff under Section 62 of the Act. Accordingly, the Commission is directed to follow the provisions of its own Tariff Regulations and fix the target PLF at 80% for these units. Fixation of target PLF would not have any impact on tariff fixed for FY 2012-13 but may have some impact while truing up for FY 2012-13 due to incentive/ disincentive depending upon actual performance during the year.

- 13 Another aspect came to our notice during proceedings of this case which is required to be addressed. The Appellant has submitted that unit 2 of DCR TPS has been under forced outage since 22.9.2011 and was likely to come on bar only in July 2012. Accordingly, the target PLF of this unit was revised to 60% and the Commission had been informed in February 2012 itself. The Commission ought to have taken in to account this fact and revised the target PLF of this unit to 60%.
- 14 In order to address this issue we have to recapture some critical dates having bearing on the issue. These are:
- Unit 2 at DCR TPS went under forced outage on 22.9.2011.
 - The Appellant filed petition before the Commission on 29.11.2011 i.e. after a gap of more than 2 months from outage date. In this petition dated 29.11.2011, the Appellant had proposed to achieve target PLF of 85% during FY 2012-13 for this unit.

- The Commission called for some clarifications and additional information on 22.12.2011 and the Appellant submitted the requisite information on 2.1.2012.
- The Appellant got approval of the State Government for repair of rotor from M/s. Siemens-Turbo Care during 3rd Week of January 2012 and the the rotor was sent to the Vadodara Workshop of Siemens for repairs
- Public Hearing was held on 13.2.2012. In the public hearing some stake holders had objected to adoption of higher CERC norms by the Appellant and the Appellant in public hearing had categorically asserted and recorded by the Commission on page 45 of Impugned Order that it had also proposed, inter alia, higher target PLF of 85% in line with CERC norms.

15 From the above it is inferred that though the Appellant was well aware of the status of the Unit no.2 of DCR TPS and likely time to be taken for its repairs at the time of public hearing, yet it chose to suppress this fact from the public and categorically asserted that it had proposed higher PLF of 85% in line with CERC norms against the Commission's norms of 80%. Later on, within 9 days from the public hearing, the Appellant sought to revise the target PLF for this Unit. According to the Appellant's own submission the revision of PLF of this unit would have resulted in increase in the retail tariff by 5 paise across the board. If such an action on part of Appellant is permitted and utilities are permitted to amend the tariff filings after making it public in accordance with the provisions of Section 62(4) of

the Act, then the very purpose of seeking public comments on the tariff filing would be frustrated. The utilities will propose rosy picture about their performance and avoid adverse comments from the public and then sought to amend the petition to get higher tariff. The Commission has rightly rejected the prayer of the Appellant in this regard.

- 16 The 2nd issue for our consideration is related **to auxiliary consumption**. The Appellant has submitted that the Commission has reduced the auxiliary consumption for Panipat TPs units 7-8 and DCRTPS from 9% to 8.5% and for RGTPS it has been reduced from 6.5% to 6%. A summary of the annual auxiliary power consumption proposed by HPGCL, HERC & CERC norms and HERC approval thereto are presented in the Table below:

Station	Appellant's proposal	Commission's Norms	CERC Norms	Commission's Approval
Panipat Unit 7-8	9	9	8.5	8.5
DCRTPS Unit 1-2	9	9	8.5	8.5
RG TPS Unit 1-2	6.5	7.5	6	6

- 17 With regard to Panipat Unit 7-8, DCRTPS, the State Commission has made the following observation while approving the auxiliary consumption of these units as per CERC norms.

For PTPS units- 7 & 8 / DCR TPS units-1 & 2 and WYC & Kakroi hydel, HPGCL has proposed auxiliary energy consumption at 9% and 1% respectively in line with the HERC norms dated 18th Dec 2008 which is permissible. For RG TPS units 1 & 2, the petitioner has proposed auxiliary consumption at 6% on normative basis as per CERC norms dated 19.01.2009 which is permissible.

Auxiliary Consumption (%) for PTPS units- 7 & 8 and DCR TPS units-1 & 2 is allowed at 8.5 % and that for RG TPS units 1 & 2 at 6 % as proposed by HPGCL.

- 18 The learned Counsel for the Commission submitted that the Commission has followed its own norms specified as per Regulation 11(5) of the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2008 which provide for normative Auxiliary Consumption at 8.5% for 200-210/250 MW units without cooling towers. Accordingly, the Commission has fixed an auxiliary consumption of 8.5% for PTPS units- 7 & 8 and DCR TPS, as these plants receive cooling through natural draft and there is no requirement of auxiliary power consumption for the cooling tower. Regulation 11 (5) of Commission's tariff regulations 2008 is quoted below:

(a)	All Coal-based generating stations (except those covered under (c) Below	With cooling tower	Without cooling tower
	(i) 200 – 210 / 250 MW series	9.0%	8.5%
	(ii) 300 MW & above series	9.0%	8.5%
(b)	Natural Gas based & Naphtha / Liquid Fuel based generating stations	Combined Cycle	Open Cycle
		3%	1%
(c)	FTPS (Unit 1-3)	12.5%	-
(d)	PTPS (Unit 1-4)		11%

- 19 From the above it is observed that the State Commission has followed the norms established its own Tariff Regulations notified in

December 2008 in respect of Panipat TPS unit 7-8 and DCR TPS unit 1-2.

- 20 In respect of Rajiv Gandhi Thermal Power Plant Units 1 and 2, the said units of 660 MW capacity and are of new technology. The norms applicable to those units are to be same as that of generating Stations of more than 500 MW with Natural Draft Cooling Tower. The said units were expected to be commissioned during last quarter of the year 2010. For the above technology, there were no particular Regulations framed by the State Commission as the same were not envisaged at the time of framing of Regulations in the year 2008. The Central Commission Regulations 2009 provide 6% Auxiliary consumption for these units. Since State Commission did not make any provision with regard to these high capacity units fitted with new technology, it has adopted Central Commission Regulations of 6% against the claim of 6.5% made by the Appellant.
- 21 Accordingly, the issue is decided against the Appellant.
- 22 Next issue is related to **Station Heat Rate**. The Appellant has submitted that the Commission has allowed the station heat rate at 2343 kCal/KwH for DCRTTP and 2386 kCal/KwH for RGTPP as against the proposed 2500 kCal/KwH and 2700 kCal/KwH respectively. The Appellant has challenged the determination of Station Heat Rate by the Commission on the ground that the Commission has not allowed the Station Heat Rate at a level which is achievable by the Appellant.

- 23** The learned Counsel for the Appellant submitted that the Appellant HPGCL, while praying for relaxed norms of station heat rates, quoted certain orders passed by some other SERCs. However, the Commission had observed that most of the orders / judgments cited by the Appellant were not valid as the generating units referred to were much older and some of them are on the verge of being phased out. The Appellant did not quote the performance of various thermal plants of Rajasthan, Punjab, NTPC etc. which are performing better than the Appellant's units. However, the Commission observed that Appellant proposed highly relaxed norms of SHR for PTPS units- 1 to 8 and DCR TPS units-1 &2 without indicating any trajectory for improvement, whereas the proposal of SHR for RG TPS units-1 & 2 was originally as per CERC norm and later revised to 2700 Kcal/kWh as per actual achieved during first eight months of FY 2011-12. The Appellant proposed Station Heat Rate for PTPS units -1 to 6, considering a deterioration factor of 1.5% per annum on the test results of 2010 energy audit report. The energy audit is carried out to ascertain the heat rate of a unit and the various sources of losses of heat. Thereafter, steps are required to be taken to plug the sources of heat losses so as to improve the station heat rate. The Appellant instead of showing any determination to plug the sources of heat losses made the measured heat rate as a base and have proposed that it will go on deteriorating @ 1.5% per annum.
- 24** A summary of the Station Heat Rate proposed by the Appellant, State Commission's & CERC norms and State Commission's approval thereto are presented in the Table below:

Unit	FY 2010-11		FY 2011-12		FY 2012-13		
	Approved	Actual	Approved	Actual up to 11/11	Proposed	HERC Norm	Approved
PTPS 1-4					3200	2750	3050
PTPS 5	2600	2810	2500	2764	2935.19	2500	2500
PTPS 6	2600	2693	2500	2816	2954.60	2500	2500
PTPS 7	2450	2621	2500	2691	2585.86	2500	2500
PTPS 8	2450	2623	2500	2696	2584.83	2500	2500
DCRTPS -1	2368	2473	2343	2411	2500	2410	2368
DCRTPS -2	2368	2487	2343	2404	2500	2410	2368
RG TPS- 1	2422	-	2386	2813	2386.47	2450	2422
RG TPS-2	2422	-	2386	2748	2386.47	2450	2422

- 25 From the above table it can be seen that the State Commission has relaxed the norms in respect of Panipat TPS unit 1-4. It has followed the station heat rate specified in its Tariff Regulations 2008 in respect of other units at Panipat TPS. However, for DCR TPS and RGTPS the State Commission has followed the norms specified in Central Commission's Tariff Regulations, 2009 with some relaxation. The findings of the Commission in regard to Station Heat Rate are quoted below:

“HERC has not been averse to allowing relaxed norms for the old units provided there is a road map for improving the parameters in a reasonable period of time. HPGCL has proposed SHR of 3336.63 Kcal/Kwh for 110 MW PTPS units- 1 to 4 (24 to 32 years old) and 2935.19/2954.60 Kcal/Kwh for 210 MW PTPS units-5 &6 (10 to 22 years old). In comparison, SHR achieved is 3035.88 at 110 MW Bhatinda TPS (33 to 37 years old), 2472.62 at 210 MW Ropar TPS (19 to 25 years old) and 2493 at 110/195/210 MW Kota TPS (3 to 37 years old). The proposal of the petitioner with regard to SHR of PTPS Unit 1 to 6 was objected to by the Discoms on the grounds that they are not in line with HERC Generation Tariff Regulations, 2008. The Discoms also referred to the observations of the Commission in

its FY 2011-12 order that 'if recommendations contained in energy audit report of PTPS Unit 1 – 6 are implemented by HPGCL, there is considerable scope for reduction in SHR and bringing the same within 10% of the design heat rate. The Commission has considered the objections of Discoms as well as response of HPGCL on the same. As per HERC Regulation dated 19.12.2008, the target Station Heat Rate (Kcal/kWh) has been fixed at 2450/2410 for 300 MW & above sets with stream/electric driven BFPs respectively and a trajectory has been fixed for PTPS units 1-6 as under:-

		FY 2008-09	FY 2009-10	FY 2010-11
1	PTPS (1-4)	3200	2930	2750
2	PTPS (5-6)	2570	2500	2500

CERC Regulation dated 19.1.2009 has fixed the normative Station Heat Rate (Kcal/kWh) for different capacity of units as follows:-

<u>i) Existing sets</u>	<u>Kcal/kWh</u>
Badarpur TPS (3x95+2x210) MW	2825
Talcher (4x60+2x110) MW	2950
200-250 MW sets	2500
500 MW sets (electrically driven BFPs)	2346
500 MW sets (stream driven BFPs)	2386
ii) New sets achieving COD on or after 1.4.09 Design Heat Rate	1.065 x

With reference to section 5.3 (f & h) of National Tariff Policy referred to by HPGCL, the Commission has been relaxing the operating norms in the past wherever considered appropriate and drawing a transition path over the time for achieving the norms, but HPGCL has not taken enough steps to follow the same. HPGCL was requested to indicate the year wise trajectory in case of all the performance parameters wherever they are lagging behind the approved norms so as to achieve the operating norms as soon as possible, but HPGCL has not given the desired trajectory and again prayed to the

Commission to appreciate the efforts taken by the HPGCL in the past and its commitment towards the improvement of operating performance from the existing level, considering the vintage of the Units for which certain deviations from the norms have been sought.

*As per National Tariff Policy, the SERCs may fix relaxed norms suitably and draw a transition path over the time for achieving the norms notified by the Central Commission. Hence the **target for Station Heat Rate (Kcal/kWh) in respect of older PTPS units – 1 to 4 for FY 2012-13 is relaxed to 3100 Kcal/kWh & that for PTPS unit- 5 & 6 is relaxed to 2550 Kcal/kWh. HPGCL is advised to improve the same by at least 50 Kcal/kWh per year so as to achieve the norm fixed by HERC in due course of time. The target for PTPS units-7 & 8 is fixed at 2500 Kcal/kWh as per HERC norm. The targets for DCR TPS unit- 1 & 2 and RG TPS units -1 & 2 in the absence of HERC norms are fixed at 2343 Kcal/kWh and 2386 Kcal/kWh respectively as per CERC norm (1.065x design SHR).***

- 26 It is noted that the State Commission has evaluated the station heat rates for DCR TPS and RG TPS from designed heat rate multiplying it with deterioration factor of 1.065 prescribed in Central Commission's Tariff Regulations, 2009 without giving any reasons for deviation from its own 2008 Regulations. We feel this is not a correct approach. State Commission ought to have followed its own Regulations or should have given detailed reasons for any deviation from these Regulations. Under the circumstances, we direct the State Commission to allow station heat rate with respect to DCR TPS and RG TPC in accordance with the provisions of its own Tariff Regulations, 2008. We order accordingly.

- 27 The next issue raised by the Appellant in this Appeal is related to Operation and Maintenance expenses.
- 28 The grievance of the Appellant is the State Commission has reduced O&M expenses for Panipat Unit 1-4 and unit 5-6.
- 29 The learned Counsel for the Commission submitted that while determining the rate of escalation for O & M charges, the answering Respondent has applied its own regulations namely Regulation 16(iv) of the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2008. Accordingly an escalation rate of 4% per annum has been applied.
- 30 The findings of the State Commission in regard to O&M expenditure in the impugned order are reproduced below:

“The Commission observes that as per HERC Generation Tariff Regulations, 2008 O&M expenses has to be allowed as per actual expenses incurred. Further the approved base value of the O&M expenses is to be escalated @ 4% per annum to arrive at the O&M expense for the current year. The Commission observes that as per the latest audited accounts of HPGCL filed by them is of FY 2010-11. Accordingly the actual O&M expenses incurred by them was Rs. 3602.85 million. Escalating the same @ 4% per annum the projected O&M expenses for FY 2012-13 works out to Rs. 3896.843 million. Additionally 600 X 2 MW RG TPS was commissioned towards the end of the financial year for which the audited accounts are available, the audited accounts may not fully reflect the O&M expenses of RG TPS, and hence the Commission has further allowed Rs. 1659.38 million, on normative basis, as O&M expenses for RG TPS unit 1 & 2 for FY 2012-13. Consequently, total O&M expenses allowed for HPGCL’s power plant works out to Rs. 5556.223 million as against Rs. 6707.3 million claimed by them. The audited accounts of HPGCL filed by them

for FY 2010-11 which has formed the basis for arriving at the allowable O&M expenses for FY 2012-13 is for the company as a whole and hence do not provide station wise break of O&M expenses, thus Commission has apportioned the total O&M expenses (except RG TPS) in the ratio as arrived at from station wise O&M expenses projected by the petitioner for FY 2012-13.”

- 31 It is noticed that the State Commission has allowed the O&M expenses on actual basis subject to prudence check for previous years. However, the Appellant has claimed even higher O&M expenses with escalation factor of 5.72% as per CERC norms. The approach adopted by the State Commission is in line with the judgment of this Tribunal in Appeal No.72 and 141 of 2009 and also in Appeal no. 131 of 2011. Accordingly, we do not find any infirmity with the same.
- 32 The last issue for our consideration is related to the **Return on Equity**. According to the Appellant, the Commission has erred in not approving any return on equity for the Appellant despite the same being approved in the previous tariff orders and despite being specifically provided for in Regulation 16 of the Tariff Regulations, 2008. Non-grant of Return on Equity would adversely impact the Appellant's ability to meet operational expenditure as well as make investments for development of new plants and undertaking R&M activities for the existing plants. Further, the reasoning given by Commission for disallowing the Return on Equity was that the networth of the distribution companies in the State is negative. This is contrary to the Scheme and Objective of the Electricity Act, 2003 in particular Section 61 laying down the guidelines which specifically

provides for the factors that the generation and supply of electricity are conducted on commercial principles, the factors which would encourage competition, efficiency, economical use of resources, good performances and optimum investments and principles rewarding efficiency in the performance etc besides the principles and methodology specified by the Central Commission.

- 33 The findings of the Commission on the issue of Return on Equity read as under:

“The petitioner has claimed Return on Equity (ROE) @ 15.5% pre tax and grossed up to 18.67% on account of 16.995% Minimum Alternative Tax (15% MAT, 10% surcharge & 3% education cess). In case of RGTPS (Unit 1 & 2) the petitioner has submitted that they may be allowed an additional return of 0.5% pre tax for completion of the project within the time limit as per CERC norms.

The Commission, after deliberating at length on the issue of ROE, is of the considered view that in normal circumstances return on equity goes to the shareholders as dividend for the ‘opportunity cost’ of funds (equity) contributed by them or it may be ploughed back as ‘internal accrual’ to fund the Capital Expenditure thereby economizing on the cost of borrowed capital (loan). However, equity is ‘risk capital’ and at times when the company is carrying accumulated losses or is in a financial distress return on equity in the form of dividend is foregone as this would further add to the costs.

In the above perspective the Commission observes that HPGCL is a wholly owned company of Haryana Government and so are the two Discoms who are purchasing power from them. The Hon’ble APTEL in its judgment in Appeal No. 33 & 74 of 2005 had held the legitimacy of some sort of return on equity to ensure certain return to the owners. However, in the case of HPGCL the entire equity is contributed by the State Government and no dividend / return is paid on the same.

Additionally, the Discoms in Haryana are carrying huge accumulated losses and their entire net worth stands eroded. Further their profit before interest, depreciation and taxes is also negative meaning thereby that their revenue is not sufficient even to meet their operating expenditure. More so, as their equity (included in the net worth) is negative so the Commission has never allowed a return on equity to them. In these circumstances, if the Commission allows ROE to HPGCL it would not only inflate cost of power purchase of the Discoms whose ability to pay is severely constrained but also increase the financial outflow from HPGCL in the form of tax liability. Further in effect the ultimate equity holders are the citizens of the State and all of them are electricity consumers as well. Thus it would be a meaningless exercise to allow ROE which in turn would only add to the financial burden of the electricity consumers all of whom can be considered as the equity holders.

In view of the above discussions and the fact that no return is paid to the owners i.e. State Government and the equity portion of the Capital Expenditure on an ongoing basis is again contributed by the State Government through its annual plan budget. Hence it is also not the case of ROE being ploughed back to augment Capital Expenditure thereby reducing the interest costs of long term loans, thus the Commission is not allowing any ROE to HPGCL in FY 2012-13. As there is no expense claimed by the petitioner on account of foreign exchange rate variation (FERV) for any of its generating stations the Commission has not considered the same.”

- 34 We have perused the Impugned Order and observed that the Commission has wrongly denied the Return of Equity to the Appellant in violation of Regulation 16 of Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2008. This Tribunal in the matter of Haryana Power Generation Corporation Limited Vs Haryana Commission bearing Appeal No. 131 of 2011 has held that **once the Commission**

has framed and notified the requisite Regulations after meeting the requirement of prior publication under Section 181(3), it is bound by such Regulations while fixing Tariff under Section 62 of the Act.

- 35 The same principle has been confirmed by this Tribunal in the matter of Haryana Vidyut Parasan Nigam Limited Versus Haryana Electricity Regulatory Commission and Ors bearing Appeal No. 102 of 2011 vide its judgment dated 18.04.2012 observing that Return on Equity have to be provided in accordance with the Tariff Regulations, 2008. Once the regulations have been framed the Commission has to act in accordance therewith. The relevant extract of the aforesaid judgment is being reproduced below:

“In this case the commission’s decision to allow RoE @ 10% lacks transparency. In case the Commission had decided to allow RoE at less/higher rate than 14%, it should have declared before hand and sought comments on the same. In this case the commission’s decision to allow RoE @ 10% is contrary to the Regulations, and we must direct the Commission to allow Return on Equity @ 14% in accordance with Tariff Regulations 2008. Once the Regulations have been framed the Commission has to act in accordance therewith.”

- 36 In view of the above, the findings of the Commission in respect of Return on Equity is set aside and the Commission is directed to allow the RoE to the Appellant in accordance with its own Tariff Regulations.
- 37 In view of the above finding, the Appeal is allowed in part to the extent indicated in the body of judgment. The Commission will now

pass consequential Order in the light of this judgment. However, there is no order as to costs.

(V.J. Talwar)
Technical Member

(Justice P. S. Datta)
Judicial member

Dated: 14th December, 2012

Reportable/~~Not Reportable~~