# Appellate Tribunal for Electricity
## (Appellate Jurisdiction)

## APPEAL No. 174 of 2013

**Dated: 22nd April, 2015**

**Present: Hon'ble Mr. Rakesh Nath, Technical Member**
**Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

**In the matter of:**

**Punjab State Power Corporation Limited** **…Appellant(s)**
**The Mall, Patiala – 147 001**
**Punjab**

**Versus**

**Punjab State Electricity Regulatory Commission** **...Respondent(s)**
**SCO No. 220-221, Sector – 34-A**
**Chandigarh – 160 001**

**Counsel for the Appellant (s) :** **Mr. Anand K. Ganesan**
**Ms. Swapna Seshadri**
**Ms. Mandakini Ghosh**

**Counsel for the Respondent(s):** **Mr. Sakesh Kumar**
**Ms. Arushi Anthwal**

## JUDGMENT

**RAKESH NATH, TECHNICAL MEMBER**

This Appeal has been filed against the order dated 28.03.2013 passed by the Punjab State Electricity Regulatory Commission ("State Commission").

The State Commission by the impugned order has partly allowed the Review petition filed by the Appellant against the order dated 07.01.2013 passed by the State Commission to implement the judgment of the Tribunal dated 18.10.2012 in Appeal nos. 7, 46 and 122 of 2011.

2. The Appellant is Punjab State Power Corporation Ltd. which is responsible for generation and distribution of electricity in the State of Punjab.

3. According to the Appellant, the State Commission has not correctly implemented the judgment of this Tribunal dated 18.10.2012 in letter and spirit and on the other hand proceeded to give reasons and justification as to why the implementation should not be done. According to the Appellant, the specific issues which have not been implemented by the State Commission are as under:

   i) Target availability for the purpose of incentive/disincentive.

   ii) Auxiliary consumption for GNDTP Generating station.

   iii) Carrying cost not fully determined.

   iv) Carrying cost of interest on SPV due to delay in recovery of interest.

4. Let us consider the above issues one by one.

5. **The first issue is regarding non-implementation of Tribunal's decision regarding target availability for the purpose of incentive/disincentive.**

*6.* According to the Learned Counsel for the Appellant, instead of following the past practice of determining the target availability and generation based on the average performance over the past three years the State Commission was required to change over to normative availability of 85% by the State Commission.

*7.* Learned Counsel for the State Commission has raised the issue of maintainability pertaining to the target availability as this issue was not raised in the Review petition against the main order dated 07.1.2013. In the Review petition the Appellant had raised only three issues viz. auxiliary consumption for GNDTP station, carrying cost for the interest on loan/non tariff income reduction in relation to SPV and carrying cost regulatory assets. It is, therefore, not open to the Appellant to raise the issue of incentive on target availability which was not raised in the Review. In this regard he referred to judgment of this Tribunal in Appeal no. 88 of 2013. NTPC Ltd. Vs. CERC.

8. We find that the Appellant had not raised the issue of target availability in the Review petition filed against the main order dated 07.01.2013 but

this issue has been raised in the present Appeal. The main order dated 07.01.2013 has not been challenged in this Appeal. This Tribunal's judgment dated 02.12.2013 in Appeal no. 88 of 2013, NTPC Ltd. Vs. Central Electricity Regulatory Commission had held that for the issue not raised in the Review petition the party has to file an Appeal against the main order. Thus, in the absence of any Appeal against the main order dated 07.01.2013, the Appeal on this issue is not maintainable. The judgment of this Tribunal in Appeal no. 167 of 2013, Powergrid Corporation of India Ltd Vs CERC relied upon by the Appellant will not be applicable in the present case.

9. **The second issue is regarding auxiliary consumption for GNDTP.**

10. According to the Learned Counsel for the Appellant, upon remand, the State Commission has questioned the validity of the Central Commission's Regulations itself providing for auxiliary consumption for Tanda. The State Commission has proceeded on the basis that the Central Commission has not given any justification for determining auxiliary consumption for Tanda at 12%. There is no justification for not equating the case of the Appellant for GNDTP station with that of Trade Station of NTPC, both being with capacity of 110 MW and of similar vintage.

11. According to Learned Counsel for the State Commission, the State Commission has re-examined the issue in terms of the directions passed by this Tribunal and complied with the order.

12. Let us first examine the findings of this Tribunal in judgment dated 18.10.2012 in Appeal no. 7 of 2011 and batch. The relevant extracts of the judgment are reproduced as under:

*"It appears to us that the Commission is not oblivious of the provisions of the Central Electricity Regulatory Commission Regulations. It is established that the Central Electricity Regulatory Commission Tariff Regulations, 2009 has provided auxiliary consumption at 12%. If the circumstances applicable to Tanda Stations are applicable to and are not different from GNDTP units then there will be not too much of rationale in deviation from the Central Electricity Regulatory Commission norms. It appears that in the Tariff order dated 8.9.2009 the Commission in respect of GNDTP units 1 and 2 intended to adopt and apply the norms of the Central Electricity Regulatory Commission Tariff Regulations 2009 although it took the figure at 10.22% after discounting for higher auxiliary consumption at Tanda on account of three staged pumping and bearing cooling water system (0.83%) and losses in generator transformer, unit auxiliary transformers, station transformers and excitation power (0.95%). According to the appellant, the position at GNDTP is also the same as Tanda. If that is so, then the issue would require re-examination. Accordingly, we are of the opinion that the State Commission should examine the issue taking into account the Regulations, 2009 of the Central Commission and the submissions of the appellant. We, therefore, direct the State Commission to pass appropriate order in the light of the above discussion."*

13. Thus, the Tribunal directed the State Commission to examine the issue taking into account the 2009 Tariff Regulations of the Central

Commission and submissions of the Appellant and pass appropriate order if the position at GNDTP is same as Tanda.

14. Let us now examine the findings of the State Commission in the impugned order:

*"(i) PSERC Tariff Regulations provide that 'CERC norms wherever specified will be followed'. CERC in its notification dated 26.3.2004 has framed Tariff Regulations for the five year period wherein operation norms for thermal plants were also specified. CERC had, however, not specified any norms for 110 MW units and the Commission had in the case of GNDTP adopted the norms specified for the Tanda station of NTPC which like GNDTP has 4 units of 110MW each.*

*(ii) The Commission while processing the ARR of the Board for the year 2008-09, fixed the auxiliary consumption of Unit I&II after R&M works at 10.22% and Unit III&IV as prior to R&M works at 11%. However, later on while truing up for the year 2008-09, in its order for the year 2010-11, the Commission took a conscious decision for fixing the auxiliary consumption for all the 4 units of GNDTP at 11%.*

*(iii) The petitioner has linked the auxiliary consumption with the Plant Load Factor. However, no detailed justification has been submitted in the petition. Rather, with higher Plant Load Factor, the auxiliary consumption is liable to improve. Hence the plea put forth by the petitioner is not tenable.*

*(iv) The Commission had adopted the norms of NTPC (Tanda) station for auxiliary consumption for GNDTP, being of similar size and age. CERC has not given any justification in its order dated 24.1.2007 while fixing the higher norm (12%) of auxiliary consumption after R&M works of Tanda thermal power plant.*

*(v) As per information collected from PSPCL, the auxiliary consumption of Unit I&II, after R&M has been below 11%.*

*As already pointed out in the Commission's order dated 7.1.2013, the auxiliary consumption after R&M works, costing Rs.216 crore, should have improved to 9.1% according to the contract entered by the petitioner with the executing agency. Hence no further relief is admissible to the appellant on this account."*

15. The Commission in the order dated 07.01.2013 gave detailed reasons for allowing auxiliary consumption of 11% for Unit I and II where R&M has been carried out and auxiliary consumption was expected to be lower than 11% and for Unit III and IV where R&M has not been carried out. It is also stated that Renovation and Modernization works costing Rs. 216 crores was carried out on Unit I and II and as per the contract with the firm carrying out R&M, the auxiliary consumption should have come down to 9.1%. Hence no further relief is admissible.

16. Thus, the State Commission has re-examined the issue as per the directions of this Tribunal. It was found by the State Commission that as per the contract given for R&M at GNDTP I and II, at a cost of 216 crores the auxiliary consumption should have been reduced to 9.1%. In fact the actual auxiliary consumption is also below 11%. There is no reason for allowing a higher auxiliary consumption of 12% for units where R&M has been carried out at a cost of Rs. 216 crores and the contract awarded for R&M also indicated that auxiliary consumption is to be reduced to 9.1%.

17. In view of above we do not find any infirmity in the order of the State Commission.

**18. The third issue is regarding carrying cost.**

19. Learned Counsel for the Appellant has submitted that the State Commission has only allowed the carrying cost for the deferred revenue only for a period of two years and not till such time the revenue gap is actually recovered in tariff of the Appellant. The decision of the State Commission in the impugned order is contrary to the decision of this Tribunal that carrying cost is to be allowed till such time the deferred revenue is recovered by the utility.

20. According to Learned Counsel for the State Commission carrying cost has been allowed as per the directions of the Tribunal.

21. The Tribunal in its judgment dated 18.10.2012 decided as under

*"Carrying cost is normally required to be allowed for late recovery of the revenue requirements and the purpose of carrying costs is to compensate the utility for the revenue requirements that fell short of recovery but to be recovered in future. Therefore, revenue requirements cannot be restricted to a period of two years unless of course the appellant itself is responsible for late submission of true-up petition."*

……………….

*"11.5 On the basis of the above findings of the Tribunal we decide as under:*

*i) When the utility gives its projected expenditure under a head in the ARR, the Commission either accepts it or decides a lower expenditure. However, if in the true up of the ARR subsequently the Commission finds that the expenditure which was denied/reduced earlier under that head needs to be approved then carrying cost may be allowed for such additional expenditure under that particular head which was denied earlier.*

*ii) The utility is entitled to carrying cost on his claim of legitimate expenditure if the expenditure is:*

*a) accepted but recovery is deferred e.g. interest on regulatory assets*
*b) claim not approved within a reasonable time, and*
*c) disallowed by the State Commission but subsequently allowed by the Superior Authority.*

*11.6 If the revenue gap is as a result of routine true up carried out in the time frame specified in the Regulations and not on account of genuine expenditure denied on a claim by the appellant earlier or on account of deferred recoveries then no carrying cost may be admissible as the claim was made for the first time at the time of true up. The State Commission shall decide the claim of the appellant on the above principles. Decided accordingly."*

*We, therefore, direct the Commission to re-examine the issues upon consideration of the detailed particulars as are and as further may be provided by the appellant before the Commission according to the law."*

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22. The Commission in the impugned order has stated that the Commission had been revising the tariff in such a way that the entire gap for the years covered in any tariff order gets recovered in the year of the tariff order itself except in exceptional cases when the Commission determines a Regulatory Asset. The Commission thus

allows carrying cost for revenue gap for six months in the year it is built up, twelve months of the ensuing year and for a period of six months in the third year in which it gets recouped through recovery by way of increased tariff. In this way the maximum period for which carrying cost is allowable works out to two years. The Commission has also been allowing carrying cost for a period beyond two years where recovery is deferred for period beyond two years on account of establishment of Regulatory Assets. In the order dated 07.01.2013 the Commission has explained that based on Tribunal's judgment, carrying cost shortfall on recovery which was not allowed earlier is to be allowed in subsequent years e.g. carrying cost for revenue gap determined for FY 2006-07 (true-up) which is allowed in the tariff year 2008-09 need not to be allowed again in the subsequent tariff order. The revenue gap determined based on review exercise for FY 2007-08 will be allowed carrying cost in the tariff order for FY 2008-09. Since the revenue gap determined in the review exercise gets adjusted as a result of true up, the carrying cost will be allowable on the additional revenue gap in the subsequent tariff order for FY 2009-10 because there had been shortfall in recovery of additional revenue gap as also carrying cost thereon. According to the Commission, the Appellant is considering carrying cost on revenue gap on a year as recurring expenditure in all subsequent tariff orders and is of the view that Commission should allow carrying cost on revenue gap and interest on carrying cost so that tariff can be determined by the Commission after loading recurring carrying cost in passing a hefty amount to the consumers of the State.

23. The State Commission and the Appellant have given detailed calculations in support of their submissions. It is not possible for us to go into detailed calculation given by them. However, we agree with the explanation given by the State Commission giving the principle used for calculating the carrying cost which has been reproduced in the paragraph 22 above. However, in order to further clarify the principle we reproduce the finding of the Tribunal in a recent judgment dated 08.04.2015 in Appeal no. 160 of 2012 and batch in the matter of RInfra Ltd. Vs. Maharashtra Electricity Regulatory Commission and Others. The relevant findings are reproduced below:

***"39. The fourth issue is regarding carrying cost on past recoveries raised in Appeals no. 215 and 211 of 2013.***

*40. The issue relates to the manner of computation of interest on past recoveries. According to the Appellant, the starting point for grant of carrying cost should be the mid year of the cost of incurrence and the end point to be the mid year in which the same is approved to be recovered. The revenue gap for FY 2010-11 approved to be recovered in FY 2013-14 should carry* *the cost from the mid of FY 2010-11 till mid of FY 2013-14. However, the State Commission in impugned order dated 13.06.2013 in respect of RInfra-T has computed the carrying cost from the end of FY 2010-11 till end of FY 2012-13. The cost is incurred evenly throughout the year and the recovery would also be spread out evenly throughout the year. The impugned order does not grant carrying cost for the year in which the past recoveries had occurred and for the year in which the same is approved to be recovered. In impugned order dated 13.06.2013 in respect of RInfra's generation business, the State Commission has computed carrying cost till mid year of the year in which the recovery is permitted, the starting point is nonetheless the end of the year in which such gap had arisen.*

*41. According to Learned Counsel for the State Commission, determination of under/over recovery can only happen at the end of the year at the time of truing up.*

*42. We find that for carrying cost the State Commission has considered the revenue gap to be applicable from the end of the year of the occurrence of revenue gap upto the middle of the year in which the same is proposed to be recovered. This is not correct. The interest should be calculated for the period from the middle of the financial year in which the revenue gap had occurred upto the middle of the financial year in which the recovery has been proposed. Thus, for the revenue gap of FY 2010-11, the Commission has to consider interest from middle of FY 2010-11 to middle of FY 2013-14 in which the recovery is proposed. This is because the expenditure is incurred throughout the year and its recovery is also spread out throughout the year. Admittedly, the revenue gap will be determined at the end of the financial year in which the expenditure is incurred. However, the under or over recovery is the resultant of the cost and revenue spread out throughout the year. Similarly, the revenue gap of the past year will be recovered throughout the year in which its recovery is allowed. Therefore, the interest on revenue gap as a result of true up for a financial year should be calculated from the mid of that year till the middle of the year in which such revenue gap is allowed to be recovered.*

*43. To explain this point let us assume that there is a revenue gap of 12 crores in the true-up of FY 2010-11. If the cost and the revenue and the permitted expenditure had been properly balanced this gap of 12 crores would have been recovered throughout the 12 months of FY 2010-11. Now this revenue gap is allowed to be recovered in tariff during FY 2013-14. The recovery of gap of Rs. 12 crores from the distribution licensee consumers will be spread over the 12 months period of FY 2013-14. Therefore, the carrying cost would be calculated from the middle of FY 2010-11 to middle of FY 2013-14 i.e. 3 years.*

*44. Accordingly, this issue is decided in favour of the Appellant.*

24. For example, if the true up of 2006-07 is carried out in the ARR of 2008-09, the revenue gap of 2006-07 after true up with carrying cost of 2 years has to be added in the ARR of FY 2008-09. If there is a net revenue gap in FY 2008-09 after accounting for the revenue gap on account of true up of FY 2006-07 and carrying cost thereon for two years then that would be the cumulative revenue gap for FY 2008-09. This cumulative revenue gap with carrying cost will be accounted for in the year in which it is proposed to be recovered. If the State Commission has allowed carrying cost on the cumulative revenue gap at the end of a financial year in the subsequent tariff orders as per the explanation given by the Commission then that would be in order. If the above principles have not been followed then the State Commission will reconsider the issue and decide according to above principles.

Accordingly, we remand the matter to the State Commission for reconsideration.

25 **The fourth issue regarding interest on delayed recovery of interest on SPV loans**.

26. In the previous Appeal before this Tribunal the Appellant had challenged the disallowance of the interest payable by the Appellant on loans taken for the Special Purpose Vehicles (SPVs) such as Talwandi Sabo Power Limited, Nabha Power Limited etc. The loans taken for the SPVs were given to the SPVs by the Appellant and the same was taken to the non-tariff income of the Appellant. The claim of the Appellant then was that since the income was taken in the ARR, the expense on interest should also be taken in the ARR. The Tribunal in its judgment dated 18.10.2012 in Appeal no. 7 of 2011 and batch observed that the complete picture of the loans raised on above of the SPVs and the interest paid/payable thereon and recovery effected from these SPVs and credited into accounts of the Board was not available to the Commission and therefore the Commission was left with no alternative but to conclude that there was insufficient documentary evidence to substantiate the claim of the Board/successor entity. The Tribunal directed Commission to re-examine the issue and pass

appropriate order only to the satisfaction of the Commission. The Appellant would provide the Commission with all the details as the Commission would be wanting for consideration of the matter in details.

27. In the remand order the State Commission has provided the relief to the Appellant but has not allowed carrying cost due to delay of recovery of interest on SPV loans.

28. The Learned Counsel for the Appellant argued that the Appellant always wanted allowances of the interest payable by the Appellant on the loans taken for SPVs. However the State Commission took the methodology of reducing the non-tariff income to the extent of the interest received by the Appellant from the SPVs. The difference in methodology has resulted in the nature of claim being different from the decision, even though both the methodologies ought to have the same effect, except for marginal variation in the interest rate. When the State Commission has taken a different methodology for treatment of interest expenses and non-tariff income for the SPVs loan, the Appellant ought not to have been faulted for the claims not being made as per the methodology adopted by the State Commission. It was not correct for the State Commission to come to the finding that the Appellant did not provide necessary details and data to the State Commission in a timely

manner and in the circumstances the delay was to the account of the Appellant.

29. In the remand order, the State Commission after having scrutinized the necessary documents allowed a reduction of Rs. 3.48 crores from the net tariff income of the utilities for FY 2007-08 and Rs. 32.87 crores from non-tariff income for FY 2008-09 and decided that the effect of this order will be given in the tariff order of FY 2013-14. The Commission felt that carrying cost cannot be allowed for the entire period and has restricted it to a period of 9 months i.e. three months for FY 2012-13 and 6 months for FY 2013-14 since recovery of this amount will be available to the utility from the increased tariff determined for FY 2013-14, because of non production of evidentiary documents was on account of due to delay on the part of the Appellant. The State Commission has given detailed order explaining the delay in providing the documents by the Appellant. The Tribunal in its order dated 18.10.2012 has also observed that the Appellant had not produced the relevant documents for FY 2007-08 and 2008-09. Therefore, we feel that there is no infirmity in not allowing the carrying cost for the period of delay caused by the Appellant in supplying requisite information to the State Commission. We find no merit in the

arguments of the Appellant that the carrying cost should be allowed due to change in procedure adopted by the State Commission. We feel that complete documents were not available for deciding the issue by either of the two procedures. Accordingly this issue is decided against the Appellant.

**30. Summary of our findings:**

**(i) Target availability for the purpose of incentive/disincentive:**

**The issue is not maintainable in view of the judgment of this Tribunal in Appeal no. 88 of 2013 dated 02.12.2013.**

**(ii) Auxiliary consumption for GNDTP generating station:**

**We do not find any infirmity in the impugned order.**

**(iii) Carrying cost:**

**We remand the matter to the State Commission for reconsideration keeping in view our directions as given above.**

**(iv) Interest on delayed recovery of interest on SPV loans:**

**We find no merit in the arguments of the Appellant that the carrying cost should be allowed due to change in procedure adopted by the State Commission. We feel that complete**

**documents were not made available before the Commission for deciding the issue by either of the two procedures. The carrying cost for the delay on the part of the Appellant cannot be passed on to the consumers. Accordingly, this issue is decided against the Appellant.**

31. In view of above the Appeal is partly allowed., No order as to cost.

32. Pronounced in the open court on this ***22nd of April, 2015.***

**(Justice Surendra Kumar)**
**Judicial Member**

**(Rakesh Nath)**
**Technical Member**

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**REPORTABLE/~~NON-REPORTABLE~~**
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