

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

Appeal No. 64 of 2008

Dated : 10th December, 2008

**Coram : Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Mr. A. A. Khan, Technical Member**

1. M/s H. M. Steel Ltd.
Trilokpur Road, Kala Amb,
Distt. Sirmour,
Himachal Pradesh
 2. M/s. J. B. Rolling Mills (P) Ltd.
Trilokpur Road, Kala Amb,
Distt. Sirmour,
Himachal Pradesh
 3. M/s. Sri Rama Steels Ltd.
Baddi Road, Barotiwala,
Distt. Solan,
Himachal Pradesh
- ... Appellant(s)

Versus

1. Himachal Pradesh Electricity Regulatory Commission
Keonthal Commercial Complex,
Khalini,
Shimla – 171 002
Himachal Pradesh
2. Himachal Pradesh State Electricity Board
Vidyut Bhawan,
Shimla – 4

Counsel for the appellant(s) : Mr. P. S. Bhullar
Mr. Shashwat Kumar

Counsel for the Respondent(s) : Ms. Ruchika Rathi for HPERC

Mr. M.G.Ramachandran,
Mr. Anand K. Ganesan and
Ms. Swapna Seshadri
HPSEB

J U D G M E N T

Ms. Justice Manju Goel, Judicial Member

Introduction:

The present appeal is directed against the tariff order dated 16.04.07 for the tariff year 2007-08 to the extent it relates to:

- (a) creation of a PIU category for the power intensive industry, mainly the steel units,
- (b) higher energy charges for the PIU units and
- (c) imposition of two part tariff in the peak load exemption charges

2. The creation of PIU category was not new in the impugned tariff order. So far as higher energy charges are concerned the same is challenged by the appellant on the ground that by the order

dated 30.03.07, soon before passing the impugned order, the Himachal Pradesh Electricity Regulatory Commission (the Commission for short) had equated the charges for the Large Scale industrial category (LS for short) and PIU category. Introduction of two part tariff in the peak load exemption charge is challenged on the ground that no additional investment is incurred except purchase of power during the peak load hours and therefore, no additional demand charge was required to be imposed.

The facts:

3. The back ground facts may be stated briefly as follows: In the tariff order of 2005-06 for the respondent No.2, Himachal Pradesh State Electricity Board (the Board for short), the Commission had, *inter alia*, introduced harmonic injecting charges. This Tribunal in an appeal against the tariff order for 2005-06, being appeal No. 175 of 2005, set aside the harmonic injecting charges which were in the nature of penalty. Meanwhile on 03.07.06, the Commission passed the tariff order for the FY 2006-07. The PIU category was retained by the Commission and for the PIU consumers an enhanced demand charge was also imposed. The Commission reconsidered the tariff design for the year 2006-07 in this order dated 30.03.07 and brought the demand charges for the PIU consumers at par with the demand charges for LS consumers. However, in the subsequent tariff order dated 16.04.07 for the FY 2007-08, the Commission

while retaining uniformity in the demand charges for the PIU and LS category enhanced the energy charge for the PIU category. The appellant filed the review petition, being petition No. 135 of 2007, which was dismissed vide an order dated 04.01.08. The appellant, thereafter presented the appeal, impugning the tariff order dated 16.04.07.

4. The appeal is opposed by the Commission as well as by the Board.

Decision with reasons:

5. The tariff order of the Commission for the financial year 2005-06 was challenged before this Tribunal in appeal No. 175 of 2005. One of the issues involved in that appeal was the propriety of imposition of 'harmonic injection penalty' on the PIU consumers. This Tribunal after considering the pleas of the appellant therein and the respondent Board held that harmonic injection penalty was not authorized by law. The Tribunal noted that the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of tariff) Regulations 2004 were silent on the levy of penalty for harmonic injection. The Tribunal also noted that draft CEA (Grid Connectivity) Regulations 2004, which envisaged the limiting total harmonic component of current drawn from the transmission system to 12% by way of installation of filters to

reduce harmonics generated by equipments, allowed a period of five years after the regulations were framed and notified in the gazette. Thus CEA (Grid Connectivity) Regulations of 2004 had not become effective when the harmonic injection penalty was imposed. Therefore, this Tribunal came to the conclusion that the imposition of penalty for harmonic injections was unauthorized. The Tribunal, however, did not rule that the PIU category could not be formed to include the steel units like that of the present appellant which admittedly is the power intensive unit and using power as raw material. This Tribunal had occasion to uphold the classification of certain industries as PIUs in appeals No. 124, 125, 177 of 2005 and 18 of 2006. The appellant had an occasion to ask for amendment of the tariff order dated 03.07.06 challenging the formation of the PIU category as also imposition of higher demand charges for the PIU category compared to such charges for the large industrial supply category called the LS category. The tariff order of 03rd July, 2006 had imposed higher demand charge in view of the need for assessing negative impact within industry on the grid system *per se*. The appellant filed petition No. 173 of 2006 under section 62(4) of the Electricity Act 2003 for amending the tariff order dated 03.07.06. The question before the Commission was whether the additional demand charges prescribed by tariff order should be treated as penalty for harmonic injections. The Board pleaded before the Commission that the steel industries generated

harmonics and interfered with the grid. The respondent Board had been directed to conduct a study in accordance with IEEE standards 519 and in compliance with the directions the Board had authorized M/s. A. B. Power System Solution, Pune to conduct the study at the premises of the appellant herein as sample case. Subsequently, on recommendation of M/s. A. B. Power System Solution, Pune, the harmonic filters were installed at the premises of a number of consumers who were generating the harmonic distortions within the system. The appellant herein indicated that harmonics were being suppressed by installing capacitors on each furnace. The Commission found that the higher demand charges did penalize the PIU category based purely on an unstable system scenario whereas the respondent Board could not prove any negative impact on the grid system because of harmonic distortions created by the appellant's unit. The Commission found that it was necessary to evaluate de novo whether the imposition of enhanced demand charge based on system stability parameters, as in tariff order of 03.07.06, would be in contradiction with the decision of the Appellate Tribunal. The Commission after considering this subject came to the conclusion that in view of the Appellate Tribunal's order dated 21.08.06 and the Board's inability to establish the PIUs impact on system stability, higher demand charges prescribed and enshrined as the penalty were needed to be relegated to the level equivalent to cement industries and passed direction accordingly

vide order dated 30.03.07. The impugned tariff order was passed on 16.04.07.

6. The appellant is challenging the imposition of higher energy charge on the appellant/PIU category on the ground that the Commission having equated the charges for the PIU category with those of L.S. on 30.03.07 again imposed higher energy charges on the PIU category without any justification. The appellant has also challenged the classification of the PIU category and imposition of two part tariff in the peak load exemption charge.

7. The appellant has not pressed the plea against classification or categorization of the power intensive units as distinct from large industrial power supply category.

8. So far as the higher energy charge is concerned the contention of the appellant has to be examined in the light of order dated 30.03.07. As mentioned above, the order dated 30.03.07 examined the propriety of higher demand charge for the power intensive units as the enhanced demand charge imposed in the tariff order of 2006-07 was based on system stability parameters and therefore, was in direct contradiction with the decision of this Tribunal dated 21.08.06. The enhanced demand charge which was withdrawn vide the order dated 30.03.07 was in the nature of penalty. This

penalty/charge was imposed on the assumption that the PIU consumers were disturbing the grid stability by injecting harmonics.

9. The Commission re-designed the tariff vide the impugned order for the FY 2007-08 and thereby brought the demand charge for LS category and PIU category to the same level. For the PIU category the demand charge for EHT consumers were decreased from Rs.250/- kVAh/month to Rs.185/- kVAh/month and for HT consumers from Rs.330/- kVAh/month to Rs.225/- kVAh/month. The LS category consumers who were paying Rs.170/- kVAh/month for EHT and Rs.200/- kVAh/month for HT connections were also made to pay at the same rate as the PIU category. However, for the PIU consumers, energy charges were raised by 40 paise per kVAh on account of which the EHT consumer would pay Rs.2.40/- kVAh and HT consumers Rs.2.50/ kVAh. The corresponding energy charge for the LS category for HT and EHT consumers were fixed at Rs.2.15 and Rs.2.25 respectively. It is not the case of the appellant that the higher energy charge for the PIU category is imposed by way of penalty for injecting harmonics. The increase in tariff is caused by the increase in the cost of supply. The rationale behind differential tariff has been explained by the Commission in its review order dated 09.01.08. The Commission stated in this review order that requirement of

power for power intensive category of PIU is definitely having impact on the average power cost of the utility affecting other consumer categories and therefore this category should be charged slightly higher as compared to other large industrial category. The data on the basis of which the energy charges have been hiked is not disputed by the appellant. Therefore, we find no reason to disturb the impugned tariff order so far as it relates to demand and energy charges for the PIU category.

10. We can now examine whether the appellant has any ground for impugning the peak load exemption charge imposed by the impugned tariff order. The impugned tariff order has imposed the peak load exemption charge on both the LS and PIU at the same rate. Additional monthly demand charge imposed for peak load exemption is Rs.50/- per kVA for both the categories. Excessive drawal during peak hours results in lowering of system frequency and may result in grid failure. The utility has to arrange for extra power during the peak hours. Such extra purchase has to be made from more expensive sources. The Commission observed in its review order dated 09.01.08 that UI purchase rate at that time was Rs.10.50 per unit. The extra power, to be purchased at a higher price, raises the average power cost. Unless a higher price is obtained from the consumers, who make it necessary to buy expensive power, the other consumers would be adversely affected.

11. The utility has to impose restrictions for use in the peak load hours. Those who ask for peak load exemption are asked to pay peak load exemption charges. If the peak-load exemption charges are recovered only in the form of higher energy charge without any demand charge it may result into large scale blocking of peak load capacity of HPSEB system by industrial consumers. The respondent No.2 has to plan and arrange for the additional capacity. Corresponding load has to be kept reserved for them. This justified the imposition of peak load charges in two parts. Therefore, we do not find any reason to disturb the impugned tariff order so far it relates to imposition of two part tariff in peak load exemption charges.

12. The appeal is dismissed with costs to the Respondent No.2.

Pronounced in open court on this **10th day of December, 2008.**

(A. A. Khan)
Technical Member

(Justice Manju Goel)
Judicial Member