Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL No.131 OF 2011

Dated: 01st March, 2012

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. V J Talwar, Technical Member,

In the Matter Of

Haryana Power Generation Corporation Ltd.
Urja Bhawan, C-7, Sector-6,
Panchkula-134 109 Appellant

Versus

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

Counsel for the Appellant : Mr. Pradeep Dahiya
Mr. Vikas K. Gupta (Rep)

Counsel for the Respondent : Mr. Anand K. Ganesan

JUDGMENT

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

1. Haryana Power Generation Corporation Limited has filed this Appeal as against the impugned order dated 16.4.2010 approving the ARR and fixing the tariff for generation and sale of electricity to distribution licensee as well as the Review Order dated 3.5.2011 passed by the

Haryana Electricity regulatory Commission (State Commission.) The short facts are as follows:

(i) The Appellant being a Generating Company filed Generation Tariff Application on 30.10.2009 before the State Commission for the Financial Years 2010-14.

(ii) The State Commission called for clarifications and information from the Appellant.

(iii) Accordingly, on 11.2.2010, the Appellant submitted the said information and clarifications. In the meantime, the State Commission received some objections from the public.

(iv) On 15.2.2010, the Appellant filed a reply to the said objections. Thereupon, public hearing was held. Ultimately on 16.4.2010, the State Commission passed the impugned Tariff Order with some modifications to the tariff proposal submitted by the Appellant.

(v) Aggrieved by this order dated 16.4.2010, the Appellant filed a Review Petition before the State Commission. After hearing the parties, the State Commission by the order dated 3.5.2011 allowed only the benefit of revision of Station Heat Rate upwards in respect of Panipat TPS and the upward revision of ROE and transformation loss in the case of WYC Kakroi (Hydro).

(vi) However, the State Commission rejected rest of the claims. Hence, the Appellant has filed this Appeal challenging both the order dated 16.4.2010 and 3.5.2011 in respect of disallowed claims.

2. In this Appeal, the following issues have been raised.

(i) Operating Norms

(ii) Transit Loss of Coal

(iii) Operation and Maintenance Expenses

(iv) Return on Equity

(v) Fuel Price Adjustment and Carrying Cost thereof.

(vi) Carrying cost on pay revision arrears

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 Section 61(d) of Act 2003 requires that the State Commissions, while fixing tariff, shall be guided by the principle under which recovery of cost of electricity is ensured in a reasonable manner. Section 61(i) of the Act mandates that the State Commission shall be guided by the National Electricity Policy and Tariff Policy. According to the Appellant, the State Commission has neither followed the principles and methodology neither specified by the Central Commission nor followed the provisions of Tariff Policy and National Electricity Policy.

4. In this context it would be desirable to refer to Section 61 of the Act which reads 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.

5. Bare reading of section 61 would make it clear 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 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.

6. Keeping in view the above Principles, let us discuss each of the Issues.

7. The **Operating Norms** involves 4 elements namely (1) the Plant Load Factor (2) Auxiliary Consumption (3) Specific Oil Consumption and (4) Station Heat Rate.

8. According to the Appellant, Section 61 (d) of the Electricity Act provides that the State Commission shall be guided by the principle under which recovery of the cost of the electricity is ensured in a reasonable manner; the tariff policy for the purpose of achieving its objects has clearly provided that the norms should be sufficient relating to past performance, capable of achievement and progressively reflecting increased efficiencies; and that the State Commission shall take into consideration the latest technological advancements, fuel, vintage of equipments etc but the State Commission instead of recognizing at relaxed levels while determining the revenue requirements has wrongly adopted the desired levels. The Appellant has furnished the chart in respect of the four elements where the State Commission is stated to have been disallowed the proposed claims without considering the Regulations. The said chart is as follows:

S. N.	Issue	Unit No.	Allowed by HERC	Claim	As per HERC Regulations	Grounds
1.	PLF	Unit No.1 to 4 PTPS Panipat	75%	69.17%	80% for these units	• No CERC norms for 110 MW Units • CERC has fixed norms taking 3 years average

						• Performance of previous years show the norm fixed is unachievable • Appeal No.81 of 2007
		Unit No.7 & 8 PTPS Panipat	85%	80%	80% for these units	• HERC Regulations provide for 80% for these units
2.	Auxiliary Consumption	Unit No.1 to 4 PTPS Panipat	11%	11.27%	11% for these units	• No CERC norms for 110 MW Units • CERC has fixed norms taking 3 years average • Performance of previous years show the norm fixed is unachievable • Appeal No.86 & 87 of 2007
		RGTPP Khedar	7.50%	9.00%	9% for these units	• HERC Regulations provide for 9% for these units
3.	Specific Oil Consumption	Unit No.1 to 4 PTPS Panipat	2 ml/kwh	2.89 ml/kwh	2 ml/kwh for these units	• No CERC norms for 110 MW Units • CERC has fixed norms taking 3 years average • Performance of previous years show the norm fixed is unachievable
		Unit No.7 & 8 PTPS Panipat	1 ml/kwl	2 ml/kwh	2 ml/kwh for these units	
		DCRTPP Ymn	1 ml/kwl	2 ml/kwh		
		RGTPP Khedar	1 ml/kwl	2 ml/kwh		
4.	Station Heat Rate	Unit No.1 to 4 PTPS Panipat	3100 K Cal/kwh	3116.76 K cal/kwh	HERC made a trajectory with 3200 for 2008-09, 2930 for 2009-10 & 2750 for 2010-11	• No CERC norms for 110 MW Units • CERC has fixed norms taking 3 years average • Performance of previous years show the norm fixed is unachievable
		DCRTPP Ymn	2368 K cal/kwh	2500 K cal/kwh	2450 K cal/Kwh for these units	• CERC norms for projects, COD prior to 01 April, 2009 is 2500 /K cal/kwh.
		RGTPP Khedar	2422 K cal/kwh	2450 K cal/kwh	2450K cal/kwh for these units	• HERC Regulations provide for 2450 K cal/kwh for these units.

It would be pertinent to mention that the Appellant's statement that the Central Commission has not specified norms for 110 MW units is not correct. The Central Commission has specified the norms for Tanda TPC which has 4 units of 110 MW each. The norms for Tanda TPS are much stiffer than the norms specified by the State Commission for Panipat TPS Unit 1-4. However, as mentioned in Para 4

above, the Norms specified by the Central Commission have no relevance in the present case as the State Commission has framed its Tariff Regulations and notified in 2008. Just for record, the norms for Tanda TPS fixed by the Central Commission in 2009 Regulations are as under:

Plant Load Factor	85%
Station Heat Rate	2825 kCal/kWh
Secondary Oil Consumption	1ml/kWh
Auxiliary Consumption	12%

9. The Learned Counsel appearing for the State Commission submits that the State Commission has allowed substantial reduction and relaxation on these issues relating to the operating norms.

10. The main contention of the Learned Counsel for the Appellant in regard to PLF for Unit 1-4 of Panipat TPS is that the State Commission has ignored the past performance of these units and fixed the target PLF which is not achievable.

11. In the light of the above submission, 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 75% only after considering the past performance of these units. The reasons recorded by the State Commission in the Impugned Order read as under:

> *"An analysis of the performance during FY 2009-10 (up to December/09) as reported by HPGCL reveals that PLF of PTPS Units 1-4 is 74.01% as against 57.89% during FY 2008-09 and last seven years best achieved of 72.45% (FY 2003-04). PTPS Unit-1 attained a marked improvement in PLF in FY 2009-10 i.e. 87.24% (up to December 2009) consequent to the comprehensive R&M & up gradation to 117.5 MW got carried out by BHEL. It is observed*

that in a few months i.e. April, June and November 2009 the PLF reported was as high as 95%. Thus there is no reason why this unit will not operate at a PLF of 80% and higher on a sustained basis. PTPS Unit – 2 operated at a PLF of 67.39% in FY 2007-08, 73.61% in FY 2008-09 and 72.04% in FY 2009-10 (up to December 2009). Despite incurring substantial capital cost on refurbishment partly by M/s ABB and partly by M/s BHEL the desired improvement in PLF did not happen. The Commission expects that HPGCL must have analyzed the deficiencies in performance of Unit – 2 with respect to PLF and other parameters and should get fixed the problem so that loss of generation is minimized. The PLF of PTPS Unit 3 & 4 are much below the HERC norm of 80%. In FY 2008-09 these generating units operated at a PLF of 68.46% and 60.56% respectively as reported by HPGCL. The same in FY 2009-10 (up to December 2009) was 65.59% and 70.27% respectively. The month wise PLF figures submitted by HPGCL for FY 2009-10 reveals that the PLF of Unit – 3 in December 2009 was as low as 18.3%, in November 2009 it was at a low of 45.41% and 59.64% in September 2009. But for these aberrations Unit – 3 would have attained a PLF of about 75%. Similarly PTPS Unit – 4 operated at a PLF of 70.27% in FY 2009-10 (up to December 2009). This Unit too witnessed major dip in PLF in the months of October (39.57%) and September 2009 (56.57%), else it would have attained a PLF of about 77%.

Thus considering the fact that the refurbishment of PTPS Unit – 1 and 2 have been completed, PTPS Units 3 & 4 are operating satisfactorily but for the aberrations pointed out above, the Commission approves an average PLF of 75% for PTPS (Unit 1-4) as against 80% as per the HERC norms. The relaxed norm shall be limited to FY 2010-11*. HPGCL is directed to ensure annual overhauling of the Units as per the schedule submitted to the Commission so that the machines are in perfect working order and operate without any forced outages."*

12. 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 75%. Being not satisfied with that, the Appellant claims for further relaxation on four units. In fact, the Appellant has not provided any material to provide for

such a further relaxation. The Appellant has to improve its performance and ensure that the units performed upto the norms.

13. With regard to the Units No.7 and 8 of the Panipat Thermal Power Station (PTPS), these units are less than 10 years old. Therefore, the State Commission has determined the applicable Plant Load Factor at 85% only after considering the past performance of these units which has been much beyond 90%. Therefore, contention of the Appellant on this issue does not merit considerations.

14. With regard to **Auxiliary Consumption**, the State Commission has provided relaxation in the auxiliary power consumption in most of the cases namely units No.5 to 8 of the Panipat Thermal Power Station. In fact, the State Commission has provided a higher auxiliary power consumption of 9% as against the norms of 8.5%.

15. With regard to 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 consumtion 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 and relaxed it to 8.5% instead of 6%.

16. The Appellant cannot have any grievance on the above issue as the State Commission has in fact allowed relaxed norms i.e. the applicable norms for such generating units in the country as prescribed by the Central Commission. The Appellant cannot claim the same norms as is applicable to the other generating units which are not based on the above technology for which separate norms were prescribed in the Regulations framed by the State Commission in the year 2008.

17. With regard to the claim of the Appellant for higher auxiliary consumption for other units, the State Commission has discussed the said claim and found as follows:

> **"…..***In respect of other generating stations also the auxiliary consumption allowed by the Commission is higher than the CERC norms. It was pointed in the aforesaid order that auxiliary power consumption in excess of 8.5% for 200 MW and above units and in excess of 11% for units less than 200 MW with NDCTs is not justified and ought to be brought down in line with the HERC norms. The Hon'ble APTEL has also upheld the norms fixed by the Commission in its judgment dated 26th April, 2010 in Appeal No.72 and 141 filed by HPGCL against Commission's generation tariff order for FY 2009-10. The relevant portion of judgment is reproduced below:*
>
> > **"...**…..*As a matter of fact, the State Commission had repeatedly directed the Appellant to implement the recommendations of Energy Audit Reports to reduce the auxiliary power consumption to national norms applicable. These directions have not been complied with by the Appellant. Therefore, we are of the view that there is no merit in the claim of the Appellant for higher auxiliary power consumption….."*
>
> *HPGCL should make all out efforts to bring down auxiliary consumption as is being pointed out time and again by the Commission and duly approved by the Hon'bel APTEL".*

18. Therefore, we do not find any merit on the contention of the Appellant on this Issue.

19. With regard to **Specific Oil Consumption**, the State Commission has allowed the same after taking into consideration all the previous levels achieved by the Appellant and after considering the fact that substantial relaxations have been allowed in other norms and parameters. The State Commission on this issue has given the following findings:

> **"*2.9 Specific Fuel Oil Consumption (SFC)***
>
> *A perusal of performance of HPGCL as a whole reveals that SFC has shown considerable improvement from 5.97 ml/kWh in FY 2000-01 to 1.71 (ml/kWh) in FY 2009-10 up to December, 2009. However, in the case of PTPS Unit 1-4 SFC is still around 2.35 ml/kWh (up to 12/09) which is still higher than HERC norm of 2 ml/kWh. SFC in the case of PTPS Unit 5 is still at 3.05 ml/kWh benchmark set by the Commission. The Commission while reckoning with SFC for the purpose of tariff determination has considered the HERC/ revised CERC norms.*
>
> *Table 2.6 provides a summary of the best achieved specific fuel oil consumption in the last 9 years in the case of PTPS unit 1 to 5, while in all other cases viz. PTPS (unit 6,7 & 8) and DCR TPP (Unit 1 & 2) the reference point is their respective year of Commissioning, HPGCL's proposals for specific fuel oil consumption and Commission's approvals thereto for various generating Units are presented in Table 2.6 below:*
>
> ***Table 2.6 Specific Oil Consumption (Ml/kWh)***

Stations	***Best Achieved (upto FY 2008-09)***	***HPGCL's proposal for (FY 2010-11)***	***HERC Norms(FY 2010-11)***	***HERC's Approval (FY 2010-11)***
PTPS (Units 1 to 4)	***2.92***	***2.89***	***2***	***2***
PTPS (Unit 5)	***1.0***	***2***	***2***	***2***
PTPS (Unit 6)	***0.54***	***2***	***2***	***2***
PTPS (Unit 7)	***0.42***	***2***	***2***	***1***

PTPS (Unit 8)	***0.35***	***2***	***2***	***1***
DCR TPP (Unit 1 & 2)	***1.93 (upto 12/2009)***	***2***	***2***	***1***
RG TPP (Unit 1 & 2)	***NA***	***2***		***1***

20. In view of the above, contention of the Appellant on this issue is misconceived.

21. With regard to **Station Heat Rate**, it is contended by the Appellant that the State Commission has not provided sufficient relaxation. This contention is not tenable. When we notice the table No.2.7 which is given below, it shows that the State Commission has provided substantial relaxation as against the norms applicable to the generating stations:

Table 2.7 Station Heat Rate (Kcal/kWh)

Stations	*Best Achieved (upto FY 2008-09)*	*HPGCL's proposal for (FY 2010-11)*	*HERC Norms*	*HERC's Approval (FY 2010-11)*
PTPS (Units 1 to 4)	*3341*	*3116.76*	*2750*	*3100*
PTPS (Unit 5)	*2705*	*2600*	*2500*	*2600*
PTPS (Unit 6)	*2452*	*2600*	*2500*	*2600*
PTPS (Unit 7)	*2701*	*2500*	*2500*	*2450*
PTPS (Unit 8)	*2446*	*2500*	*2500*	*2450*
DCR TPP (Unit 1 & 2)	*2409 (upto 12/2009)*	*2500*	*2410*	*2368*
RG TPP (Unit 1 & 2)	*NA*	*2450*	*2450*	*2422*

22. The above table would reveal that the Station Heat Rate allowed by the State Commission is very close to the norms provided for in most of the cases. In the case of units 1 to 4 for the Panipat Thermal Power Station and also Units 5 and 6, the State Commission has allowed a relaxation from the norms as provided for in the Regulations. In fact, the relaxation

allowed is more than the trajectory which was earlier fixed by the State Commission. The State Commission has given detailed reasons for the Station Heat Rate as approved in the impugned order. Therefore, it is not open to the Appellant to claim Higher Station Heat Rate.

23. With regard to **Transit Loss of Coal,** it is contended by the Appellant that the State Commission has allowed only 1% of transit loss of coal as against the claim of the Appellant on actual basis. The Appellant has claimed the coal transit loss of 1.5% before the State Commission. The normative loss level to be allowed is only 0.8% both in terms of the State Commission as well as the Regulations of the Central Commission. As against the normative loss of 0.8% the State Commission has relaxed the norms and allowed 1% as coal transit loss to the benefit of the Appellant. Therefore, the Appellant cannot claim for a greater benefit than allowed by the State Commission.

24. As a matter of fact, the very same issue had been raised by the Appellant in the previous Appeals in Appeal No.42 and 43 of 2008 dated 31.7.2009 and Appeal No.72 and 141 of 2009 dated 26.4.2010 and the same has been decided. The relevant observations made by this Tribunal in Appeal No.42 and 43 of 2008 dated 31.7.2009 is as under:

> **"***21. Prima facie, the argument of the appellant that it has not control over the coal transportation losses as other agencies such as Railways, Coal companies are involved appears to be attractive. However on analysis, it needs to be borne in mind that the tariff of the appellant is determined on a cost plus basis. Every item of the cost, other than those which are statutory levies, that is to be recovered from the consumers would require 11 of 24Appeal No. 42 & 43 of 2008 scrutiny at some stage. If we accept that coal transportation losses be allowed at levels sought for by the appellant, on the premise that such losses are not within the*

control of the appellant, we are effectively agreeing that such costs are beyond scrutiny by the State Commission or rather beyond scrutiny by any agency. How will the consumer participate in the due diligence process to determine the justness of such losses. The consumer does not have resources to approach the Railways and Coal companies directly for determination of the justness of the losses incurred. It is only the appellant who is in a position to take up the matter with the Railways and the Coal Companies for more efficient transportation of coal. If need be, it has all options to take up the matter at highest level as advised by the State Commission also.

22. In view of the above, we do not agree with the contention of the Appellant in this Regard.

25. Similarly in Appeal No.72 and 141 of 2009 dated 26.4.2010 similar findings have been given following the earlier decision in Appeal No.42 and 43 of 2008 dated 31.7.2009. The relevant observations are as follows:

"14. On going through the State Commission's order impugned we feel that the State Commission has given appropriate reasons for fixing the transit loss at the rates mentioned above. Admittedly the State Commission had repeatedly directed the Appellant to take up the issue of coal loss at the highest level so as to bring down the loss level in coal transit. The State Commission had also directed the Appellant to follow loss level trajectory for reduction in coal transit loss to bring it down to a level of 1% but admittedly no steps have been taken by the Appellant for bringing down the loss level. It is noticed from the order impugned that the loss level allowed by the State Commission in this matter is much higher than the transit loss level determined by the Central Commission in its tariff regulation 2009. This issue SSR has already been dealt with by the Tribunal in Appeals No. 42 of 2009 and Appeals No. 43 of 2009 filed by the Appellant in its judgment dated 31.07.2009. According to the Tribunal, the tariff of the Appellant is determined on cost plus basis and every item of cost other than those which

are statutory levies, has to be recovered from the consumer. In this matter, the Appellant has not shown anything to indicate that some steps were taken to reduce the coal loss in transit. The State Commission has repeatedly directed the Appellant to take up the matter of transit loss of coal at higher levels and take all possible steps including consultations with other power houses in the region who have successfully brought down their coal transit loss to reduce it to the acceptable level. The above direction has not also been complied with by the Appellant. In view of what is stated above, there is no merit in the present claim also.

26. Therefore, the claim of the Appellant for a higher Coal Transit Loss cannot be entertained.

27. With reference to the claim of the Appellant relating to **Operation and Maintenance Expenses**, the Appellant has claimed that the said expenses to be allowed on actual basis subject to prudence check as held by this Tribunal in Appeal No.72 and 141 of 2009. It is noticed that the State Commission allowed the O&M expenses on actual basis subject to prudence check for previous years. However, the Appellant claimed even higher O&M expenses. This claim was disallowed by this Tribunal in Appeal No.72 and 141 of 2009. The following is the observation:

"17. The next issue is Operation and Maintenance (O&M) expenditure allowed by the State Commission. According to the Learned Counsel for the Appellant, the State Commission ought to have allowed the actual expenditure incurred towards operation and maintenance in the previous 3 years with a normal escalation of 4%. The State Commission, in the previous years, allowed O&M expenditure as claimed by the Appellant with respect to the old units. Even in the present order tariff order passed by the State Commission, the expenditure as claimed by the Appellant, has been approved by the State Commission. There has been no reduction whatsoever by the State Commission in approving the O&M expenditure claimed by the Appellant. The allowance of

O&M expenses on actual basis is subject to prudence check by the State Commission".

28. The above observation would clearly indicate that there was no direction whatsoever by the Tribunal as claimed by the Appellant that the State Commission is required to approve the operation and maintenance expenses on actual basis for all times to come. In the present year 2010-11, the State Commission is required to arrive at a normative value of O&M expenses in terms of the Regulations framed by the State Commission. In this regard, we would refer to the Regulations 16 (1) (iv) of the Regulations which is as under:

" (iv) Operation and Maintenance Expenses

(a) The actual level of O&M expenses incurred in the preceding three years would be the guiding factor for allowing O&M expenses. In the absence of third party certified levels of the various components of O&M expenses the Commission may endeavour to determine O&M expenses on a normative basis for the first tariff review period. In that case the normative O&M cost approved by the Commission shall be recognised as actual and shall form the approved base values."

29. As per this Regulation, the normative value arrived at using the actual level of expenses for the preceding three years. However, in view of the revised Regulations by the Central Commission providing for normative values, the State Commission has taken the norms as prescribed in the Regulations of the Central Commission for similarly placed stations. In this context, it would be proper to refer to the findings of the State Commission on this issue:

" 2.14 Operation & Maintenance (O&M) Expenses

The O&M charges comprise of Repair and Maintenance charges (R&M), Employees cost and Administrative expenses. Efficiencies

are derived gradually over a long period of time; hence R&M efforts should start from day one after commissioning to address any shortfall in performance with reference to the design parameters.

The guiding factor for working out O&M expenses should have been the actual level of such expenses incurred during the preceding three years for the existing stations escalated by an appropriate factor to account for inflation. However, in the light of revised per MW CERC norms the Commission has considered Rs.2.62 Million/MW for PTPS (1-4), Rs.1.82 Million/MW for PTPS (5 to 8), Rs.1.237 Million/MW for RG TPP (1&2), Rs.1.692 Million/MW for DCR TPP (1&2) while the O&M expenses allowed by the Commission in the case of WYC & Kakroi is as proposed by HPGCL. Additionally, the Commission has also considered HPGCL's petition filed vide Memo No.HPGCL/Flin/ Reg-200/2235 dated 27.01.2010 seeking additional amount on account of salary arrears due to the implementation of the recommendations of the 6th pay revision committee report. While allowing O&M expenses as per norm revised by the CERC in FY 2009-10 the Commission allowed Rs.4367.6 million as against Rs.3142.4 millions as per the old O&M norms with the observation that any difference in employees cost due to implementation of the recommendations of the sixth pay commission may be trued up in the next tariff review. Hence additional Rs.1225.1 million was allowed as O&M expenses. Out of this amount Rs.834.3 million was on account of employees cost. HPGCL has now claimed Rs.1660 million on this account, thus the balance Rs.825.7 million is being allowed as part of O&M expenses. This amount shall be trued up on the basis of audited annual accounts of the relevant years.

The O&M expenses claimed by HPGCL and allowed by the Commission are presented in table 2.10:

Table 2.10 O&M Expenses (FY 2010-11)

	PTPS					*DCR TPP*	*RG TPP*	*WYS & Kakori*
	Unit 1-4	*Unit 5*	*Unit 6*	*Unit 7*	*Unit 8*	*Unit 1 &2*	*Unit 1 & 2*	
HPGCL Proposal (Rs Million)	*1127.28*	*528.65*	*528.65*	*629.34*	*629.34*	*1015.2*	*1484.4*	*219.92*
HERC Approval (Rs Million)	*1536.61*	*477.51*	*477.51*	*568.47*	*568.47*	*1225.12*	*1484.4*	*219.92*

30. In view of the above findings, which have been correctly rendered, there is no merit in the claim of the Appellant for higher O&M expenses.

31. The next issue is **Return on Equity.** According to the Appellant, the State Commission has allowed only 14% return on equity as against the 15.50% pre-tax and with grossed up return on equity at 19.38% claimed by the Appellant for all its plants in view of the Central Commission Regulations. The State Commission, in the present case has followed the Regulations of the State Commission. The Regulations of the State Commission provide for the Return on Equity at the rate of 14%. Let us now refer to Regulations 16 (iii) of the Regulations which is as under:

> *"(iii) Return on Equity*
>
> *Return on equity shall be computed on the equity base determined in accordance with regulation 15 @ 14% per annum.*
>
> *Provided that equity invested in foreign currency shall be allowed a return up to the prescribed limit in the same currency and the payment on this account shall be made in Indian Rupees based on the exchange rate prevailing on the due date of billing."*

32. While dealing with this issue, the Tribunal in Appeal No.72 and 141 of 2009 has directed that the Return on Equity ought to be allowed only in terms of the Regulations of the State Commission. The relevant observation giving such direction is as follows:

> *"21. We note that relaxation in norms has been allowed by the State Commission due to several valid reasons as enumerated in the impugned order. Fourteen percent Return on Equity is as per norms. If this is arbitrarily reduced to 10%, then the effect of allowing relaxed norms would get defeated. Once the State Commission had concluded that the norms need to be relaxed due to several factors such as vintage of the plants and the renovation and modernization etc., there was no reason to lower the Return*

on Equity and negate the relaxation allowed. In our view, 14% Return on Equity is justified. We order accordingly."

33. So, in terms of the above, the State Commission has correctly followed the Regulations as well as the directions issued by the Tribunal and has accordingly allowed Return on Equity at the rate of 14%. Therefore, the Appellant cannot claim for higher Return on equity more than what is prescribed in the Regulations of the State Commission. Thus, this contention also would fail.

34. The **next issue is Fuel Price Adjustment and Carrying Cost thereof.** The Appellant has claimed that the Fuel Price Adjustment ought to be allowed in terms of the Regulations on a monthly basis instead of six monthly basis. This issue has been considered by the State Commission in the Review Order and the relief on this issue, has already been granted by the State Commission in the Review Order as such, the grievance of the Appellant on this issue does not survive.

35. The **next issue is Carrying Cost of Pay Revision Arrears.** On this issue, the Appellant claimed that the interest/carrying cost on the pay revision arrears for its employees at SBI PLR rate and the same ought to have been allowed by the State Commission. As a matter of fact, the State Commission in this regard has not rejected the claim of the Appellant. It merely directed the Appellant to provide the details of the loan on the interest rates applicable. In stead of providing those details, the Appellant has approached this Tribunal, challenging the said order on this issue. This is not a proper approach. The State Commission has in the Review order has held as under:

"*11. <u>Amount on account of salary arrears</u>: The Commission has already ordered that any difference in employee cost due to*

implementation of the recommendations of the Sixth Pay Commission shall be trued up as per actual. The Commission may consider allowing holding cost if complete details along with proper justification are provided. Simply submitting that the Petitioner had to bear holding cost does not make any convincing case. The Petitioner should submit proof of hiring loans only for payment of salary arrears so as to enable the Commission to take a decision in this regard. The Appellant ought to provide the details of the interest rates, the loans taken etc., before claiming interest for the delayed recovery of the salary arrears. Mere claim of interest rate at the SBI PLR rate cannot be accepted in the absence of any supporting data"

36. Thus, the Appellant was directed to submit the proof of hiring loans for payment of salary arrears so as to enable the State Commission to take an appropriate decision in this regard. Without doing that, the Appellant has raised this issue before the Tribunal unnecessarily. Therefore, the Appellant is directed to submit the required details to State Commission to enable the State Commission to consider the issue of carrying cost and decide the same.

37. **Summary of Our Findings**

(a) **Section 61 of the Act mandates the State Commissions to frame Regulations fixing terms and conditions for determination of tariff and in doing so it is to be guided by the principles and methodology specified by the Central Commission, the National Electricity Policy and Tarif Policy etc. Once the State Commission has framed the Regulations, it shall determine tariff in accordance with its own Regulations.**

(b) **The State Commission has relaxed various norms after giving due consideration to the concerned unit's past performance.**

The State Commission has also recorded reasons for making such relaxations as per Regulation 33 of the Tariff Regulations 2008. No further relaxation would be desirable. The Appellant has to improve its efficiency to achieve targeted normative parameters as per Regulations.

(c) **The Claim of the Appellant for higher Coal Transit Loss cannot be entertained.**

(d) **The State Commission has already relaxed its norms for Operation and Maintenance Expenses by adopting norms fixed by the Central Commission. There is no merit in the claim of the Appellant for higher O&M expenses.**

(e) **The Appellant cannot claim for Return on Equity more than what has been specified in the Tariff Regulations 2008.**

(f) **The State Commission has provided appropriate relief to the Appellant in the review order and the grievance of the Appellant in regard to fuel price adjustment and carrying cost does not survive.**

(g) **The Appellant is directed to submit the proof of loan taken for payment of salary arrears to enable the State Commission to take decision in this matter.**

38. In view of the above finding, we do not find any merit in this Appeal. Hence the Appeal is dismissed. However, there is no order as to costs.

(V.J. Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 01st March, 2012

Reportable/Not Reportable