

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
AT PANCHKULA**

Case Nos. HERC/RA-08 of 2019

Date of Hearing: 17.09.2019

Date of Order : 18.09.2019

In the matter of

Petition under Regulation 77 & 78 of Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 for review of the Commission's order dated 07.03.2019 in case of HPGCL True-up for FY 2017-18, Mid-year Performance review for FY 2018-19 and determination of generation tariff for the FY 2019-20.

And in the matter of

Haryana Power Generation Corporation Limited (HPGCL)

Petitioner

QUORUM

Shri D.S. Dhesi,	Chairman
Shri Pravindra Singh Chauhan,	Member
Shri Naresh Sardana,	Member

ORDER

Brief background of the Case

1. The Commission, in exercise of the powers vested in it under section 62 of the Electricity Act, 2003 read with section 11 of the Haryana Electricity Reforms Act, 1997 and all other enabling provisions in this behalf, had passed the Order dated 07th March, 2019, determining the True-up for FY 2017-18, Mid-year Performance review for FY 2018-19 and determination of generation tariff for the FY 2019-20 in accordance with the provisions of Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012.
2. HPGCL, the State Generating Company, vide memo no. 1717/HPGC/FIN/Reg-487 dated 18.04.2019, has filed the present petition seeking review of the said Order passed by the Commission on certain issues as under:-
 - a. Disallowance of Depreciation for FY 2017-18.
 - b. Reduction of Non-Tariff Income from True-up amount of FY 2017-18.
 - c. Non consideration of leap year in tariff computation for FY 2019-20.

3. Commission's Analysis & Order

In Order to examine the scope of review jurisdiction, the Commission has perused the provision of Regulation 57 & 58 of the HERC (Conduct of Business) Regulations, 2019, which empowers the Commission to exercise review jurisdiction. The relevant regulation is reproduced below:-

“REVIEW OF THE DECISIONS, DIRECTIONS, AND ORDERS:

57 (1) All relevant provisions relating to review of the decisions, directions and orders as provided in the Code of Civil Procedure 1908, as amended from time to time, shall apply mutatis mutandi for review of the decisions, directions and order of the Commission.

Provided that the Commission may on the application of any party or person concerned, filed within a period of 45 days of the receipt of such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission may deem fit.

(2) No application for review shall be considered unless an undertaking has been given by the applicant that he has not preferred appeal against the decision, direction, or order, sought to be reviewed, in any Court of Law.

(3) No application for review shall be admitted/ considered unless an undertaking has been given by the applicant that in case he files an appeal of the decision, direction or order of which review is pending adjudication, he shall immediately inform the Commission regarding the fact of filing the appeal.

58 The Commission may on its own motion or on the application of any party correct any clerical or arithmetical errors in any order passed by the Commission.”

Further, the relevant clause of Order no. XLVII of Code of Civil Procedure 1908, is reproduced below:-

“1. Application for review of judgment-

(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes.

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except

where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

[Explanation - The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]”

Further, the Commission has also perused the judgment of Hon'ble Delhi High Court in Aizaz Alam Versus Union of India & Others (2006 (130) DLT 63: 2006(5) AD (Delhi) 297. The relevant extract from the aforesaid judgment is reproduced below:-

“We may also gainfully extract the following passage from the decision of the Supreme Court in Meera Bhanja V. Nirmala Kumari Choudhury, where the Court, while dealing with the scope of review, has observed:

The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. The review petition has to be entertained on the ground of error apparent on the face of record and not on any other ground (emphasis added). An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivable be two opinions. The limitation of powers of courts under Order 47 Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the Orders under Article 226.

Applying the above principles to the present review petition, there is no gainsaying that the review of the Order passed by this Court cannot be sought on the basis of what was never urged or argued before the Court (emphasis added). The review must remain confined to finding out whether there is any apparent error on the face of the record. As observed by the Supreme Court in Lily Thomas and Ors.V Union of India & Ors., the power of review can be used to correct a mistake but not to substitute one view for another (emphasis added). That explains the reason why Krishna Iyer, j. described a prayer for review as “asking for the moon” M/s Northern India Caterers (India) Ltd. V. Lt. Governor of Delhi”.

4. The Commission has examined the review sought, issue wise, by the petitioner on including maintainability tested on the anvil of the aforesaid Regulations / Case Laws as under:-

a) Disallowance of Depreciation for FY 2017-18.

HPGCL has submitted that in the impugned Order dated 07.03.2019, the Commission has disallowed depreciation amounting to Rs. 53.77 Crore on account of capitalization of dismantling of assets and spares for FY 2014-15 to 2016-17 stating that disallowance of the depreciation for the said period should be Rs. 127.28 Crore whereas Commission had disallowed only Rs. 73.51 Crore cost in its Order for the respective years. HPGCL has further submitted that the disallowance should have been on account of shortfall amounting to Rs. 21.62 Crore only, as detailed under:-

Particular	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Total
Dep. required to be disallowed (a)	8.08	42.76	25.28	19.01	95.13
Depreciation already disallowed in previous Orders (b)	8.08	42.76	22.67	-	73.51
Shortfall (c=a-b)	-	-	2.61	19.01	21.62

This excess disallowance of Rs. 32.15 Crore (Rs. 53.77 Crore as per impugned Order minus Rs. 21.62 Crore), may be allowed as pass through.

The Commission observes that the following was recorded in the impugned order dated 07.03.2019:-

“The Commission is further constrained to note that HPGCL is not furnishing the desired information e.g. the HPGCL was directed to provide unit-wise PLF, however, HPGCL submitted PLF for PTPS-Units 5 & 6 clubbed, Units 7 & 8 clubbed, DCRTTP Unit 1 & 2 clubbed, RGTPP Unit 1& 2 clubbed. HPGCL was directed to recast the Memorandum Account in the desired format, however, it was submitted that the Memorandum Account already submitted is correct. During the hearing, HPGCL informed the Commission that it has already submitted fixed assets register, however, the same was not submitted even after the hearing. HPGCL was directed to furnish unit-wise profitability, however, HPGCL replied that unit-wise revenue has already been supplied along with petition and expenditure is now being supplied. Therefore, HPGCL left it for the Commission to determine the unit-wise profitability. HPGCL was directed to submit exception report wherein full availability for any unit was not declared. However, the same was not provided. In this regard, HPGCL is directed to strictly comply with the directions of the Commission in future and appropriate action may be taken against the delinquent officers.”

The Commission has taken serious note of the casual manner in which the petitioner complies with the Order/directions of the Commission. It needs to be noted that non-furnishing of additional details to the Commission for taking important

decision may be considered by the Commission as waiver of the rights for claiming any amount which in the absence of additional information could not be verified by the Commission.

The Commission has further examined the depreciation details provided by HPGCL vide memo no. 1771/HPGC/FIN/Reg-487 dated 19.07.2019 and observe that during the FY 2016-17, HPGCL had re-casted fixed assets schedule for the FY 2015-16 also. While doing so, Gross block of fixed assets as on 01.04.2015 (including spares capitalized during FY 2014-15 amounting to Rs. 154.53 Crore) has been replaced with net block of fixed assets as on 31.03.2016. Further, unapproved additions have been incorporated in the said recast during the FY 2015-16 i.e. decommissioning cost: Gross Rs. 73.22 Crore, Net Rs. 44.50 Crore, Spares: Gross Rs. 144.97 Crore, Net Rs. 96.43 Crore.

Accordingly, HPGCL was directed to substantiate the depreciation claim for the FY 2016-17 (Rs. 405.24 crore) and FY 2017-18 (Rs. 393.27 Crore) by establishing that the same does not include depreciation on the spares capitalized during the FY 2014-15.

In reply, vide memo no. 1783/HPGC/FIN/Reg-487 dated 22.08.2019, HPGCL submitted that depreciation claim for the year FY 2016-17 and FY 2017-18 was Rs. 404.17 Cr & Rs. 390.20 Cr respectively (claimable depreciation exclusive of solar business), as detailed below : -

Sr. no.	Particulars	FY 2016-17	FY 2017-18
A	Depreciation as per audited Balance Sheet	430.53	412.29
B	Less: Depreciation on		
	a) Capitalized spares during FY 2014-15	5.94	5.96
	b) Other adjustment of INDAS	19.34	13.06
	Total	25.28	19.02
C	Sub-total (A-B)	405.24	393.27
D	Less: Dep on Solar Business	1.08	3.08
E	Net Depreciation claimed (C-D)	404.17	390.20

The Commission has examined the submissions of the Petitioner and finds merits in the same. Accordingly, the excess disallowance of depreciation amounting to Rs. 32.15 Crore (Rs. 53.77 Crore as per impugned Order minus Rs. 21.62 Crore), is allowed as pass through along with carrying cost thereon @ 9.95% from 01.04.2018 to 31.08.2019 amounting to Rs. 4.53 Crore.

HPGCL is directed to continue to provide along with ARR Petitions, the details of fixed assets as was provided vide memo no. vide memo no. 1771/HPGC/FIN/Reg-

487 dated 19.07.2019. Further, gross fixed assets, depreciation and net fixed assets are required to be segregated, unit-wise, between the approved and non-approved.

b) Reduction of Non-Tariff Income from True-up amount of FY 2017-18.

HPGCL has submitted that in the impugned Order dated 07.03.2019, the Commission has disallowed the entire amount of other income of HPGCL amounting to Rs. 32.30 Crore. However, actual non-operating income included in the other income of HPGCL for F.Y. 2017-18 is Rs. 12.20 Crore only (comprising of income from sale of scrap, staff welfare activities, others amounting to Rs. 6.35 Core, Rs. 0.03 Crore and Rs. 5.82 Crore, respectively), as detailed hereunder:-

Rs. in crore

Particulars	As on 31 March, 2018	As on 31 March, 2017
<u>Interest Income</u>		
Interest on staff loans and advances	0.77	0.28
Interest on fixed deposits with banks etc.	5.49	5.83
Interest from other deposit	-	-
Interest on late payment surcharge by Discom	6.77	307.84
<u>Other non operating income</u>		
Income from sale of scrap	6.35	43.33
Income from Staff Welfare Activities	0.03	0.06
<u>Misc. Receipts</u>		
Interest on Income tax refund	7.07	-
Others	5.82	4.74
Provision reversed	--	12.75
Total	32.30	374.84

HPGCL has further submitted that interest on staff loans & advances, fixed deposits etc. are derived from the investment made out of the regulated return of equity of HPGCL, hence, these does not constitute the part of non-operating income. Similarly regarding interest on income tax refund, it is submitted that Regulation 25 of HERC Regulations, 2012 do not treat the income tax as expense or a pass through component in the tariff and it is out of pocket expense for generating company, as such interest on income tax refund shall not be included in non-operating income for the truing up. Delayed payment surcharge is a payment discipline mechanism exercised by HPGCL as per Regulation 43 of HERC Regulations, 2012 for ensuring timely payment and it has to arrange additional fund for the delayed period. HPGCL further submitted that as the methodology adopted by the Commission in its previous Orders, the non-tariff income for FY 2017-18 has worked out as Rs. 12.20 Crore, against the Rs. 32.30 Cr as considered by the Commission in the impugned Order.

The Commission has examined the submissions of the Petitioner and find merits in the same. Accordingly, the excess disallowance of Non-Tariff Income amounting to Rs. 20.10 Crore (Rs. 32.30 Crore as per impugned Order minus Rs. 12.20 Crore), is allowed as pass through along with carrying cost thereon @ 9.95% from 01.04.2018 to 31.08.2019 amounting to Rs. 2.83 Crore.

c) Non consideration of leap year in tariff computation for FY 2019-20.

HPGCL has submitted that the Commission while determining the tariff for FY 2019 - 20 has missed to consider the year as leap year. As FY 2019-20 is a leap year, therefore, one day's extra generation needs to be added.

The Commission has examined the submissions of the Petitioner and observes that one day's extra generation does not have any impact on fuel cost (Rs./kwh). However, it does marginally affect the annual fixed cost due to normative allowance of interest on working capital and cost of oil. Accordingly, the revised generation tariff (fuel & fixed cost) has been determined for the FY 2019-20, as under:-

ENERGY/VARIABLE CHARGES FOR PTPS AND RGTPS (FY 2019-20)

Parameters	Unit	Derivation					RG IPS		DCR IPS		WYC	Total HPGCL
			Unit 5	Unit 6	Unit 7	Unit 8	Unit 1	Unit 2	Unit 1	Unit 2		
Installed Capacity (MW)			210	210	250	250	600	600	300	300	62.4	2782.4
Gross Generation	MU	A	645.62	645.62	1,866.60	1,866.60	4,479.84	4,479.84	2,239.92	2,239.92	238.43	18702.40
PLF (%)			35.00	35.00	85.00	85.00	85.00	85.00	85.00	85.00	43.5	
Auxiliary Energy Consumptio	%		10.00%	10.00%	8.50%	8.50%	6.00%	6.00%	8.50%	8.50%	1.00%	7.31%
Generation (Ex-bus)	MU	A1	581.06	581.06	1707.94	1707.94	4211.05	4211.05	2049.53	2049.53	236.05	17335.20
Station Heat Rate (SHR)	Kcal/kwh	B	2550	2550	2500	2500	2387	2387	2344	2344		
Specific Oil Consumption	ml/kwh	C	1	1	1	1	1	1	1	1		
Gross Calorific Value of Oil	Kcal/litre	D	10482	10482	10482	10482	10757	10757	10458	10458		
Gross Calorific Value of Coal	K cal/Kg	E	3855	3855	3855	3855	3641	3641	3605	3605	NA	
Overall Heat	G.cal	F=(A*B)	1646341	1646341	4666500	4666500	10693378	10693378	5250372	5250372	NA	
Heat from Oil	G.cal	G=(A*C*D)/1000	6767	6767	19566	19566	48190	48190	23425	23425	NA	
Heat from Coal	G.cal	H= (F-G)	1639574	1639574	4646934	4646934	10645188	10645188	5226947	5226947	NA	
Oil Consumption	KL	I=G*1000/D=A*C	646	646	1867	1867	4480	4480	2240	2240	NA	
Coal Consumption	MT	J=(H*1000/E)	425311	425311	1205430	1205430	2923699	2923699	1449916	1449916	NA	
Cost of Oil per KL	Rs/KL	K	51627	51627	51627	51627	53066	53066	53915	53915	NA	
Cost of Coal	Rs/MT	L	4950	4950	4950	4950	4879	4879	4719	4719	NA	
Total Cost of Oil #	Rs .Mln	M=(K*I)/10*6	33.33	33.33	96.37	96.37	237.73	237.73	120.77	120.77		
Total Cost of Coal	Rs.Mln	N=(J*L)/10*6	2105.29	2105.29	5966.88	5966.88	14264.73	14264.73	6842.15	6842.15	NA	58358.10
Total Fuel Cost	Rs.Mln	O=M+N	2105.29	2105.29	5966.88	5966.88	14264.73	14264.73	6842.15	6842.15	NA	58358.10
Fuel Cost/Kwh	Rs.	P=O/A1	3.62	3.62	3.49	3.49	3.39	3.39	3.34	3.34	NA	3.37

WORKING CAPITAL AND INTEREST FOR FY 2019-20 (RS. MILLION)

HERC COMPUTATION OF WORKING CAPITAL AND INTEREST									
RS. MILLION FY 2019-20									
ITEMS	DERIVATION	PTPS				RGIPS	DCR IPS	WYC	TOTAL
		Units 5	Unit 6	Unit 7	Unit 8				
Coal Stock	2 months	350.88	350.88	994.48	994.48	4754.91	2280.72	0	9726.35
Oil Stock	2 months	5.56	5.56	16.06	16.06	79.242	40.26	0	162.73
O&M Expenses	1 months	55.60	54.018	74.87	64.11	166.39	134.28	31.70	580.97
Maint. Spares	10%/7.5% of O&M	66.72	64.82	89.84	76.94	299.51	241.70	28.53	868.06
Receivables	1 month	240.20	253.86	639.69	629.67	3017.12	1502.15	52.13	6334.81
W/C Requirement		718.95	729.13	1814.94	1781.26	8317.17	4199.11	112.36	17672.92
Int (@ 9.95%		71.54	72.55	180.59	177.23	827.56	417.81	11.18	1758.46

FIXED COST FOR FY 2019-20 (RS. MILLION)

EXPENSES	PIPS-5	PIPS -6	PIPS -7	PIPS - 8	RGTPS 1	RGTPS 2	DCR TPS 1	DCR TPS 2	WYC	TOTAL
Operation & Maintenance (O&M)										
a) R&M Expenses	142.08	139.39	397.40	318.20	353.71	353.71	267.25	267.25	34.86	2273.85
b) A&G Expenses	13.69	15.44	22.93	19.54	35.62	35.62	36.50	36.50	6.79	222.62
c) Employees Cost	317.27	299.25	302.29	255.85	373.71	373.71	307.97	307.97	207.88	2745.89
d) Employee Cost of PTPS 1-4, as per HPGCL	194.14	194.14	175.77	175.77	235.32	235.32	193.96	193.96	130.91	1729.28
Total O&M (a+b+c+d):	667.17	648.22	898.39	769.36	998.36	998.36	805.68	805.68	380.44	6971.66
Depreciation	0.00	18.20	307.10	319.20	1035.60	1034.20	546.00	545.80	185.30	3991.40
Interest & Finance	0.00	13.60	6.15	6.15	658.00	658.00	240.30	240.30	29.70	1852.20
W/C Interest	71.54	72.55	180.59	177.23	413.78	413.78	208.91	208.91	11.18	1758.46
ROE @ 10%	5.10	155.10	220.80	220.80	495.20	495.20	249.20	249.20	18.90	2109.50
Fixed Cost	743.81	907.67	1613.03	1492.74	3600.94	3599.54	2050.09	2049.89	625.52	16683.21
Cost of Oil	33.33	33.33	96.37	96.37	237.73	237.73	120.77	120.77	0.00	976.38
Total Fixed Cost	777.14	941.00	1709.40	1589.11	3838.66	3837.26	2170.85	2170.65	625.52	17659.59

TARIFF	PTPS -5	PTPS -6	PTPS -7	PTPS - 8	RGTPS 1	RGTPS 2	DCR TPS 1	DCR TPS 2	WYC	TOTAL
Fuel Cost Rs/kWh	3.62	3.62	3.49	3.49	3.39	3.39	3.34	3.34	NA	3.37
Fixed Cost Rs. (million)	777.14	941.00	1709.40	1589.11	3838.66	3837.26	2170.85	2170.65	625.52	17659.59

Since, the tables have been re-casted, the typographical error pointed out by the Petitioner in the table, has also been got redressed.

In terms of the above findings / decisions on each issue, the review petition preferred by the HPGCL against the Commission's Order dated 07th March, 2019 (Case No. HERC/PRO-59 of 2018) is disposed of. The petitioner may claim the differential amount, consequent to the present Order from its beneficiaries.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 18th September, 2019.

Date: 18.09.2019 (Pravindra Singh Chauhan) (Naresh Sardana) (D.S. Dhesi)
Place: Panchkula Member Member Chairman