

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION  
SHIMLA

M/s Ginni Global Private Ltd.  
having its corporate office at SP2/1-2/2,  
RIICO Industrial Area, Neemrana,  
Distt. Alwar, Rajasthan and  
Registered Office at 2<sup>nd</sup> Floor, Shanti Chamber,  
11/6B Pusa Road, New Delhi

...Petitioner

V/s

1. The Himachal Pradesh State Electricity Board Ltd.,  
Vidyut Bhawan, Shimla-171004.

...Respondent No.1

2. The Government of Himachal Pradesh  
through Principal Secretary (MPP & Power) H.P.  
Shimla-171002.

...Respondent No.2

3. The Himachal Pradesh Energy Development Agency  
(HIMURJA) SDA Complex, Kasumpti,  
Shimla (H.P.)

...Respondent No.3

4. The Director of Energy,  
Government of Himachal Pradesh through its  
Director  
Thakur Vatika, Khalini, Shimla H.P.

...Respondent No.4.

Petition No. 135 of 2010

(Decided on 3.12.2010 and released on 17.12.2013)

**CORAM**  
**YOGESH KHANNA,**  
**CHAIRMAN**

Counsels :

for the petitioner

Sh. Sampada Narang  
Advocate

for the respondent No.1

Sh. Ramesh Chauhan  
(authorised representative)

for the respondent No.2 & 4

Sh. K.S. Chauhan  
Dy. D.A.

for the respondent No.3

Sh. Pardeep Bhanot  
P.O.

### **ORDER**

(Last heard on 20.11.2010 and orders reserved)

M/s Ginni Global Private Ltd. having its corporate office at SP2/1-2/2, RIICO Industrial Area, Neemrana, Distt. Alwar, Rajasthan and Registered Office at 2<sup>nd</sup> Floor, Shanti Chamber, 11/6B Pusa Road, New Delhi, a company incorporated under the Companies Act, 1956 (hereafter referred as “the petitioner Company”) has moved this petition under clause (f) j sub-section (1) of section 94 of the Electricity Act, 2003, read with Order 47 rules 1 and 3 of the Code of Civil Procedure, 1908, seeking review of the Order dated 22.5.2010, passed in Petition Nos. 70/2008 and 202 of 2009 whereby the tariff of ₹ 2.50 p.kwh, in relation to the Taraila Hydro Electric Project located at Taraila in Chamba District (H.P), with 5.0 M.W capacity, was increased by 15 paise per unit, i.e. to say fixing it at ₹ 2.65 p.kwh.

2. The petitioner company asserts that there are certain legal and factual inaccuracies in the impugned Order which require Commission consideration and has further assailed the said impugned Order alleging that the Commission has failed to consider the grounds and to give reasons for non-consideration of the said grounds, under the following heads:-

#### **I. Mandatory release of Water Discharge**

The Commission has given the hike of 15 paise per unit as per the impact assessment carried out by the Board. The calculations by which this figure is derived is not clear nor does the impugned order provide any specific reasons for the raise given at 15 paise per unit. Assuming that the actual loss to the petitioner company is only 1.76

M.U, as claimed by Respondent No.1, taking into account the said generation, loss per unit increase should be 22 paise per unit.

## **II. Minimum Alternate Tax (MAT)**

The petitioner company is required to pay the MAT, the Commission, therefore, should have allowed this relief with retrospective effect. There is fundamental error because when tariff at rate of ₹ 2.50 per unit was fixed there was no concept of MAT. This is an error of law and fact and, therefore, MAT as levied from time to time has to be allowed as a pass through to the petitioner over and above of ₹ 2.50 p.unit

## **III. Service Tax**

The petitioner company paid the service tax @ 11.20% on Engineering Consultancy, Errection and Commissioning services @ 3.40% on construction services availed by it during construction of its project. Thus this component of service tax as admittedly has to be part of the capital cost and allowed as pass through.

## **IV. Fisheries Charges**

Since the petitioner has paid the entire fisheries charges amounting to ₹ 10.50 lacs as required under the existing rate and policy, the entire amount paid towards the fisheries charges by the petitioner should be allowed as pass through.

## **V. Forest Charges**

The impact of each forest charges could not have been considered by the State Government, while fixing the tariff at ₹ 2.50 per unit, as the levy came into effect only in the year 2002. Therefore, the petitioner needs to be compensated for the paid amount of ₹ 344861/- towards the forest charges on 3.5.2005 and amount payable towards such levy, should have been granted as the pass through expenditure.

## **VI. LADA Charges**

The petitioner has already spent the total amount of 1% of its project cost and incurred the expenditure of ₹ 45,10,054 on

construction of infrastructure such as roads in consultation with the local authorities for local area development as per the then existing policy of 2006 prior to commissioning of its project in 2007. It is unreasonable to demand the petitioner company to deposit an amount with the LADC at this time. The amount ₹ 34.89 lacs should have been allowed as the pass through on the basis of certificate from the Chartered Accountant or confirmation from the local authorities of the works carried by the petitioner.

3. No response has been received from respondent Nos.2, 3 and 4 i.e. the Government of H.P., the Himachal Pradesh Energy Development Agency (HIMURJA) and Directorate of Energy (H.P.) Only the respondent No.1 i.e. HPSEB has filed its response. The Commission has no option other than to consider the matter on the basis of reply filed by respondent No. 1. In response to this review petition, the respondent Board submits that the review petition is not maintainable for the reasons that:-

- (a) the petition is bad for non-joinder of necessary parties;
- (b) the petitioner company is praying for a substitution of the order sought to be reviewed by a fresh order;
- (c) the grounds of the review are the same which had already been advanced and considered while making the original order, now sought to be reviewed;
- (d) the petitioner company can not expect the Commission to sit in appeal over its own judgment while exercising the power under review;
- (e) as in review proceedings the scope of interference is very limited, the review can be granted only in case of glaring omission, patent mistake or the like grave error and not for rehearing the case;
- (f) no such relief can be granted on the grounds of discovery of new matter or important evidence, which the applicant alleges was not within his knowledge, or could not be addressed by him when the order was passed or made, without strict proof of such allegation;

- (g) the grounds advanced in the review petition are the grounds which are available to the petitioner company in appeal only;
- (h) the averments to the effect that the Commission has failed to consider certain grounds and give reasons for non-consideration of the said grounds are not correct;
- (i) the PPA executed between the parties is a binding and subsisting contract which is legally enforceable and the same cannot be reopened.

4. In support of its calculations and also for just and equitable decision in the matter the respondent Board has placed on record the calculations indicating the impact on account of 15% discharge of water and also the extract of the provisions in the Implementation Agreement regarding minimum discharge of water. The copies of the aforesaid calculations also stands exchanged by the parties.

5. In rejoinder to the reply of the respondent Board, the petitioner company states -

- (a) that the case of the petitioner company is that the calculations for hike in tariff are wrong and incorrect and thus, there being an error apparent on the face of the records, the petitioner has filed this review petition.
- (b) that the petitioner company has moved the application under Order VI rule 17 CPC, for the impleadment of the Directorate of Energy, H.P. Government, and the Himachal Pradesh Energy Development Agency (HIMURJA);
- (c) that the respondent Board has completely misread and misinterpreted the present review petition. The Commission has the power under section 94 (1) (f) of the Electricity Act, 2003 to review its own order and, therefore, this review petition is within the jurisdiction of the Commission and is maintainable;
- (d) that the present review petition is not based on the same grounds as advanced during the proceedings in original jurisdiction. There are errors in the calculations permitting increase in the tariff and the Commission failing to consider certain legal grounds, the petitioner company is preferring this review petition.

- (e) that the petitioner company has placed on record the relevant facts and supporting documents to establish that the new statutory levies introduced by the GoHP should be considered and, therefore, the present review petition is maintainable. In any case the petitioner company is not required to bring on record fresh facts for a case of review. The petitioner company has filed the review petition on the ground that there exist an error in the calculation of tariff and has placed on record material to support the same. Therefore in present review petition the Commission is not sitting in appeal over its own judgment, but exercising its power of review stipulated in Electricity Act, 2003;
- (f) that the petitioner company has preferred the review petition on the ground that there is an error apparent on the face of the record/calculations, there is a patent mistake for not considering the grounds of the petitioner company in its petition and an omission in calculating the tariff. Therefore this is not a case of re-hearing as alleged by respondent No.1. The petitioner company is not placing any new matter or evidence before this Commission and therefore Order 47 rule 4(2)(b) of Civil Procedure Code is not applicable to this review petition.

6. The Hon'ble Appellate Tribunal in its two latest judgments delivered in **Appeal Nos. 18 and 30 of 2009 – Ispat Industries Ltd Mumbai V/s Maharashtra Electricity Regulatory Commission Mumbai (2009 ELR (APTEL) 0618 and review petition No, 5 of 2008 Maharashtra State Electricity Distribution Co. Ltd Mumbai V/s Erotex Industries and Exports (Ltd) and one another (2009 ELR (APTEL) 0700**, has concluded that section 94(1)(f) of the Electricity Act, 2003 empowers the Commission to review its decisions, directions and orders and provides that they are vested with the same power which is given to a Civil Court under Order 0.47 rule 1 of the Code of Civil Procedure, 1908.

7. The Commission has certainly the power to review, its own order on account of some mistake or error apparent on the face of record, or on any of the sufficient reasons. The arguments of the respondent Board that the PPA, being a concluded contract cannot be re-opened has no relevance as the same,

after due deliberation, already stands disposed of vide Commission's **Order dated 29<sup>th</sup> Oct, 2009 passed in petition No. 11/2008 M/s D.S.L. Hydrowatt Ltd. V/s HPSEB and others** wherein it has been concluded that the Commission has the power to re-open the PPAs concerning non-conventional energy projects, within the framework of the Act and the regulations framed thereunder.

8. The scope and authority of review is derived from section 94(1)(f) of the Electricity Act, 2003 and regulation 63 of the Himachal Pradesh Electricity Regulatory Commission (Conduct and Business) Regulations, 2005, read with section 114 and Order 47 rule 1 of the Code of Civil Procedure, 1908. A person aggrieved by an order, from which no appeal has been preferred or no appeal is allowed may prefer a review on the following grounds:-

- (a) discovery of new and important matter which, after the exercise of due diligence was not within his knowledge or could not be produced at the time when the order was passed or made, or
- (b) mistake or an error apparent on the face of the record, or
- (c) any other sufficient reason.

9. The law in relation to the scope of review has been settled by the **Hon'ble Supreme Court in case of Parsion Devi V/s Sumitri Devi (1997) 8 SCC 715, Aribam Tulsehwar Sharma V/s Aribam Pishak Sharma AIR 1979 SC 1047, Raja Shatrunji V/s Mohd Azmat Azim Khan (1971) 2 SCC 200, Smt. Meera Bhanja V/s Nirmala Kumari Chaudhary AIR 1995 SC 455 and has also been followed by the Appellate Tribunal for Electricity in its Orders (dated 17.11.2006) in Appeal No. 40 of 2006, dated 23.11.2006 in appeal Nos. 80 to 197 of 2006 and Appeal No. 226 of 2006, dated 31.10.2007 in appeal Nos. 159 of 2005, 162 and 167 of 2006.**

10. To sum up the power of review, legally speaking, is permissible where some mistake or error apparent on the face of record is found and the error apparent on record must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. A review cannot be equated with the original hearing of a case. A

review petition has a limited purpose and cannot be allowed to be an appeal in disguise and cannot be exercised on the ground that the impugned order was erroneous on merits.

But simultaneously the materials on record, a proper consideration of which may justify the claim, cannot be ignored.

11. In light of the above discussion and limited scope for review, the Commission, now keeping in view pleadings made by the parties, proceeds to examine itemwise claim raised by the petitioner company in the review petition as under:-

**(I) Mandatory release of water discharge**

12. Sub-para (B) of para 30 of the Commission's Order dated 29.10.09 passed in petition No. 11 of the 2008 – M/s DSL Hydrowatt Ltd V/s HPSEB Ltd, reads as under:-

“B Mandatory release of 15% water discharge. -

*Even though the risk on account of change in Government policy with respect to minimum flow of water immediately down stream of the project was allocated in the IA/PPA and the IPPs have agreed to it at the time of signing the agreement, the Commission, in order to incentivise the SHP generation, feels it prudent to factor in the impact of the mandatory release of water in the tariff. For this it needs to be ascertained as how much this mandatory release of discharge (which is average of 3 lean months i.e. December, January, February) has affected the project. Thus the hydrological data in the DPRs of individual project needs to be analyzed to assess the impact on generation and on the tariff;”*

**Submissions of petitioner**

13. (a) The Government of Himachal Pradesh (“GoHP”) vide a notification dated 9<sup>th</sup> Noember,2005 made it mandatory for all the IPPs to maintain a minimum flow down-stream of the diversion structure, throughout the year at the threshold value of not less than 15% of water flow, without allowing the petitioner company to utilize this water for power generation and as a consequence it has to forgo equivalent power generation potential. This has affected the power generation potential of the project of the petitioner company.
- (b) The said policy was amended and amended policy requires the petitioner company to ensure minimum flow of 15% of lean period water discharge



i.e. average discharge of December to February. The Respondent No.1 brought this fact to the notice of this Commission and also submitted that as per Respondent No.1's calculations there is a loss of 1.76 MU to the petitioner company on account of 15% minimum discharge of water.

- (c) The Commission in the said Order considered the 15% mandatory water release and granted a hike in tariff by 15 paise per unit as per the impact assessment carried out by the respondent Board. The petitioner company alleges that though the Commission has given the said hike of 15 paise per unit, the calculation by which this figure is derived is not clear nor does the said Order provide any specific reasons for the raise being given at 15 paise per unit. Assuming that the actual generation loss to the petitioner company is only 1.76 MU, as claimed by Respondent No.1, taking into account the said generation loss per unit increase in tariff should be 22 paise per unit. A calculation supporting the said rate of 22 paise per unit is furnished as Annexure "A-2" for the consideration of this Commission.

#### **Response of the Board.-**

14. In reply it is submitted that the petitioner company had raised the similar grounds in the original petition bearing No.70/2010 under the heads:-

1. Mandatory release of water discharge,
2. Minimum Alternate Tax (MAT),
3. Service Tax,
4. Fisheries charges,
5. Forest charges and LADA charges,

and these averments were contested by the replying respondent as well as other respondents by filing replies and the Commission has discussed and addressed the grievances of the petitioner company under various heads in its Order dated 22.05.2010 and, therefore, no further indulgence by way of review is called for and hence the review petition deserves rejection.

#### **Commission's View**

15. Since the petitioner company has disputed the calculations resulting in the tariff increase of 15 paise per unit, the Commission again examined the calculations submitted by the Board and the petitioner company. The respondent Board had submitted only the soft copy and the petitioner company

had submitted both hard as well as soft copies of their calculations. On scrutinizing the Board's calculations it is observed that the methodology followed by the Board to calculate the mandatory release impact assessment is similar to the one carried out while responding to the original petition and adopted by Commission in its Order of dated 22.05.2010. The calculations have been based upon the 75% dependable discharge as approved in the DPR and deducting the sacrificial discharge from it (which is average on 3 lean months) to get the net discharge available for power generation. The loss in generation has been assessed by the Board by calculating the energy generation on the net discharge and comparing it with energy generation without 15% sacrificial discharge as per the approved DPR. On the other hand on scrutiny of the calculations submitted by the petitioner company, it is observed that it has determined the tariff by building its own tariff model and it has taken its own cost parameters and assumptions. Based on this tariff model it has determined the tariff of ₹ 3.22 per unit without considering 15% sacrificial discharge and ₹ 3 per unit after considering 15% mandatory release. The petitioner company has claimed the difference i.e. 22 paise per unit as compensation. The methodology adopted by the petitioner company for calculating the impact of 15% sacrificial discharge is totally incorrect. As amply indicated in the impugned Order dated 22.5.2010, the Commission did not construct any tariff model for mandatory release impact assessment, but ascertained the energy/loss on the methodology where as the loss on energy was calculated after calculating the net energy (considering 15% sacrificial discharge and comparing it with gross energy (without considering 15% sacrificial discharge). This is methodology followed by Board. The petitioner company should have commented on the calculations carried out by the Board, which have been adopted by the Commission. The Commission, therefore, discards the methodology taken by the petitioner company. Hence the Commission does not accede to the prayer of the petitioner for increase in tariff on account of 15% mandatory release of water and directs that the same shall remain on 15 paise as allowed by the Commission in the impugned Order dated 22<sup>nd</sup> May, 2010.

## **II. Minimum Alternate Tax**

### **Submissions by the petitioner**

16. (a) Minimum Alternate Tax(MAT) was introduced by the Finance (No.2) Act,1996 with effect from 1.04.1997 vide section 115JA, but the same was not made applicable to “the amount of profits derived by an industrial undertaking from the business of generation or generation and distribution of power”. Sub-clause (iv) of the proviso to sub-section (2) of section 115JA excluded the income/profits derived out of power generation business from the ambit of MAT. Therefore, in the year 2000 when the GoHP fixed the tariff at the rate of ₹ 2.50 /unit , there was no MAT levy on the income of power generating companies and, therefore, the GoHP could not have considered and accounted for such levy in the tariff rate of ₹ 2.50/unit;
- (b) The Finance Act,2000 substituted a new section 115JB in place of section 115JA which made the MAT levy on the generating companies with effect from 01.04.2000. The petitioner company signed the PPA on 7.06.2004 and was thus liable to pay the MAT levy on the profits derived from its generation business from the date of commissioning of its project in the year 2007.
- (c) The Commission in its Order dated 18.12.2007 while discussing the Tariff Structure at paras 4.30 and 4.31 has included ‘levies and duties imposed by the Government of India and the Government of Himachal Pradesh’ as one of the component of the Annual Fixed Charge for SHPs;
- (d) It is to be noted that though MAT was introduced in the year 1997, but when the tariff was fixed by the GoHP at ₹ 2.50/unit in the year 2000, admittedly there was no concept of MAT being applicable on income/profits derived from the power generation business. The profits derived from power generation business were exempted from MAT levy until 1.04.2000 and therefore, the GoHP could not have considered MAT while fixing the tariff at ₹ 2.50/unit and tariff at ₹ 2.50/unit could not

have recognized MAT. Further on the date of signing of PPA i.e. on 7<sup>th</sup> June, 2004, the MAT was applicable at the rate of 7.80% of cess, which was not considered by the GoHP while fixing the tariff ₹ 2.50/unit.

- (e) Further it is an admitted position that all actual imposition will be pass through. Therefore, going by principal already upheld by the Commission all taxes actually paid have to be allowed as pass through. When the petitioner company commissioned its project in 2007, it become liable to pay MAT at 11.30%, although tariff was fixed at 2.50/unit (which did not factor MAT). MAT revised to 16.99% & 19.93% by Finance Bill 2009 & Finance Bill 2010 respectively. Therefore, entire MAT Tax of 19.93% has to be allowed and not differential from 7.80% MAT rate applicable on the date of signing of PPA;
- (f) The justification of taking out the differential amount on the basis of signing the PPA is based on a wrong premise which is that the developer was getting MAT as a part of tariff of ₹ 2.50/unit. This is a fundamental error because when tariff at the rate of ₹ 2.50/unit was fixed there was no concept of MAT. This is an error of law and fact and therefore, MAT as levied from time to time has to be allowed as a pass through to the petitioner company over and above the tariff of ₹ 2.50/unit.
- (g) It is submitted that as the petitioner company is required to pay the amount towards the MAT from the date of its levy, the Commission should also allow this levy from retrospective date i.e. from the date of its applicability on the small hydro power generating plants and not from the date of the Order and clarify this in its Order to this Review Petition.

### **Response of Board**

17. The reply submitted to the corresponding paras of the original petition in respect of Minimum Alternate Tax is re-iterated and re-affirmed.

### **Commission's View**

18. The Commission does not agree with the contention of the petitioner company that entire MAT tax since its inception should be allowed and not the differential amount i.e. difference between the current revised MAT and the MAT at the time of signing the PPA. *The Commission observes so because the Board liability to pay the additional MAT arises only after it has committed itself after signing the PPA. The petitioner company on the other hand was aware of the MAT at the time of signing the PPA and any MAT at that point of time cannot be considered as change in goal post. Any change of MAT after signing the PPA becomes the change in goal post for which the IPP should be compensated for which the formulation has already been given by the Commission in the impugned Order dated 22.05.2010.*

19. The Commission, therefore, rejects the prayer of the petitioner and compensation account of MAT shall be as per the formulation stipulated in the Commission's impugned Order dated 22.05.2010.

### **III. Service Tax**

#### **Submission of the petitioner**

20. The Commission in its Order dated 18.12.2007 only considered hard cost of physical assets for determination of Capital cost of ₹ 6.50 Crore on normative basis. The Commission has ignored entirely certain Government levies/taxes which were paid at the construction stage such as service tax. Similarly GoHP might have also considered only hard cost of assets for determining Capital cost for the purpose of fixing tariff at ₹ 2.50/unit. Assuming applicable taxes were also considered in the Capital cost, but certainly taxes such as service tax which came into existence subsequent to that could not have been considered. It appears that due to oversight the Commission has left out the tax component/liability imposed at the construction stage which has been absolved by the Developer i.e. herein petitioner company. The Commission in its calculation so far has only recognized the taxes/levies linked to generation, that are borne by the beneficiary. There is no justification for excluding taxes and other statutory duties that are imposed on the developer at the construction stage such as service tax which are payable to the contractor.

21. In this context the total service tax paid by the petitioner company is ₹54,38,564/-. The relevant Government notification dated 2.07.1997 imposing

service tax on Engineering Consultation Services, and the Government notification dated 20.06.2003, imposing service tax on Erection, Commissioning or Installation Services and a copy of Finance Act (2) of 2004, imposing service tax on Construction services are furnished. The petitioner company paid service tax @ 11.20% on Engineering Consultancy, Erection and Commissioning Services and @ 3.40 on construction services, availed by it during construction of its project. Thus this component of service tax as admittedly has to be part of the Capital Cost and allowed as a pass through.

**Response of Board**

212. The reply submitted to the corresponding paras of the original petition in respect of Service Tax is re-iterated and re-affirmed.

**Commission's View**

23. The Commission has, in its **order dated 29.10.09 passed in petition No. 11 of 2008 – M/s D.S.L. Hydrowatt V/s HPSEB and others** stated in clear terms that the Commission shall, after consideration of each petition on its merits, issue individual project-wise order based on furnishing of necessary data/documents with respect to the claim regarding mandatory release of water discharge, payment of differential amount on account of fisheries and forest and local area development charges. Therefore, the claim of the petitioner company with respect to service tax does not fall within the ambit of the said order. Keeping in view the limited scope of reopening of the concluded PPAs, as stated in the Commission's aforesaid Order dated 29.10.2009. The Commission does not accede to the claim raised by the petitioner company.

**IV. Fisheries charges.-**

24. Sub-para "D" of para 30 of **Order dated 29.10.09 passed in petition No. 11 of 2008 – M/s D.S.L. Hydrowatt V/s HPSEB and others** read as under :-

*"D Fisheries. The State Government through a notification dated 30<sup>th</sup> April, 2007 revised the fisheries charges. The fisheries charges are based on length of tail race capacity. Since this amendment is with "immediate effect", the information w.r.to compensation paid by these projects after the issuance of notification and which was supposed to be paid prior to notification needs to be ascertained to arrive at the differential amount to be considered for impact on the tariff;"*

### **Submission of the Petitioner**

25. (i) At the time of fixing the tariff at the rate of ₹ 2.50 paise/unit, no Fisheries charges was payable by Small Hydro Projects in the State. Under Hydro Power Policy of 2000 of GoHP, IPPs were to give an undertaking only to the Fisheries Department of the local area that wherever feasible, rearing of fish shall be promoted by the IPPs area at the time of final implementation of the project. Therefore, tariff of Rs.2.50/unit could not have recognized and provided for such charges.
- (ii) Subsequently an amendment was made in Hydro Policy by inserting following clause:  
“The Fisheries Department will charge compensation @ 0.50 lac per K.M. from Tail Race to weir of the project. In addition the IPP will pay 0.50 lac per MW to the Fisheries Department.”
- (iii) Accordingly, prior to commissioning of its Project, the petitioner company paid an amount of ₹ 10.50 lacs vide a DD No.528963 dated 27.05.2006 to the Fisheries Department.
- (iv) Though the Fisheries charges have been reduced and acknowledged by this Commission, but petitioner company has paid the entire amount of ₹10.50 lacs as required under the then existing rate and policy. Therefore, it would be appropriate if entire amount paid towards fisheries charges by the petitioner company be allowed as a pass through.

### **Response of Board**

26. The reply in rebuttal to the averments made in respect of Fisheries charges are re-iterated.

### **Commission's View**

27. Sub para 'D' of Para 30 of Commission's aforesaid Order dated 29.10.2009 clearly stipulates that compensation paid after issue of this notification and which was supposed to be paid prior to notification needs to be ascertained to arrive at the differential amount to be considered for impact on tariff. The petitioner company instead of aforesaid stipulation has again reiterated the claim further entire amount paid towards fisheries charges.

In view of above the plea of the petitioner is not acceded to.

#### **V. Forest charges**

28. “C Forest Charges  
*The forest charges were applicable w.e.f. 30<sup>th</sup> Oct., 2002 and these were revised vide notification dated 9.1.2004. The revised forest charges are based on the percentage of forest cover. Since the forest cover is project specific, therefore, the details of the forest cover, the compensation payable prior to the revision of charges and after the revision of charges for each project needs to be ascertained to arrive at the differential amount to be considered for impact on tariff;”*

#### **Submission of the Petitioner**

29. (i) As admittedly stated in its said Order by this Commission, the Forest charges were applicable w.e.f. 30.10.2002 and these were revised vide a notification dated 9.1.2004. As the Commission has recognized that the details of the forest cover, the compensation payable prior to the revision of charges and after the revision of charges for each project needs to be ascertained to arrive at the differential amount to be considered for impact on tariff.
- (ii) It is clear that the impact of such Forest charges could not have been considered by the State Government while fixing the tariff at ₹ 2.50 per unit as the levy came into effect only in the year 2002. Therefore, the petitioner company needs to be compensated for the amount payable towards such levy.
- (iii) It is submitted that the petitioner company has paid a total amount of Rs.3448461/- towards the Forest charges on 3.5.2005. Therefore, this Commission may be pleased to grant this as a pass through in the tariff of the petitioner company. A copy of the confirmation regarding the payment of forest charges vide Demand Draft dated 3.5.2005 is annexed and marked as Annexure ‘A-6’.

#### **Response of Board**



30. Similarly, the reply in rebuttal to the averments made in respect of Forest charges are also re-iterated.

**Commission's views**

31. The Commission in sub-para 'C' of its aforesaid Order dated 29.10.2009 has clearly stipulated that compensation payable prior to revision of charges and after the revision of charges for each project needs to be ascertained to arrive at the differential amount to be considered for impact on tariff. In spite of aforesaid stipulation the petitioner company seems to have again asked for entire differential amount towards forest charges and has not given any documentary proof of the differential amount.

Therefore, plea of the petitioner company is rejected.

**VI. Local Area Development Charges (LADC)**

**Submissions by the petitioner**

32. As per the Hydro Power Policy-2006, the Petitioner's project is liable to bear the additional burden of pay compensation in terms of LADA charges @ 1% of the approved Capital cost of the project of ₹ 2411.91 lacs. This additional burden was not taken into consideration while fixing the tariff @ ₹2.50 per unit in the year 2000. The Commission has appreciated that inclusion of this provision is to be given due recognition and its impact be considered on tariff. The compensation payable on this account in terms of Hydro Policy 2006 and the Implementation Agreement comes to ₹ 24.11 lacs being 1% of the approved capital cost. On this ground the petitioner company deserves to be compensated and consequently the tariff has to be enhanced from ₹ 2.50 per unit. The differential amount is ₹ 0.25 per unit. The differential amount is ₹ 0.25 per unit, being the percentage as calculated with respect to the approved capital cost.

**Response of the Board**

33. Similarly, the reply in rebuttal to the averments made in respect of LADA charges while responding the original petition are re-iterated.

**Commission's views**

34. The Commission in its Order dated 22<sup>nd</sup> May,2010 has allowed local area development charges through a formulation and petitioner can approach the Board in-accordance with the aforesaid Order.

**Conclusion.**

35. In view of the above discussions and taking into consideration the conclusions drawn in the Commission Order dated 29.10.2009 passed in petition No. 11 of 2008 M/s DSL Hydrowatt Ltd V/s HPSEB and Order dated 22.05.2010 in petition No. 70 of 2008 and further submissions made, calculations/data supplied by the parties i.e. the petitioner company and the Board, the Commission, hereby orders :-

- (i) that the claim for increase in compensation tariff of impact of 15% mandatory release of water down stream of diversion structure is not acceded to. The compensation shall remain 15 Paise/Unit as fixed in the Commission's Order dated 22.05.2010.
- (ii) that the claims for forest, fisheries, service tax and construction cess are not acceded to;
- (iii) the additional claim with respect to MAT is not acceded to and compensation on account of MAT shall be as per formulation given in the Commission's Order dated 22.05.2010.
- (iv) the petitioner can approach the Board for LADC in accordance with the Commission's Order dated 22.05.2010.

This review petition is disposed of accordingly.

(Yogesh Khanna)  
Chairman