

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION

In the matter of:-

Delay in completion and cost escalation of HPSEB Khauli (12 MW) Hydro Project in Kangra District executed by the Himachal Pradesh State Electricity Board.

(Suo Motu Case No.239/07)

(Order made on 16.9.2008)

CORAM
YOGESH KHANNA
CHAIRMAN

Counsel for the respondent Board Sh. Narinder Singh Thakur
Advocate

Order

(Last heard on 23.8.2008 and orders reserved)

The facts, in brief, involved are that the Khauli (12MW) Hydro Power Project, is one of the Hydro Power Projects executed by the Himachal Pradesh State Electricity Board, (for brevity sake hereinafter referred as “the Board). The News item titled “Delay in completion of Khauli Project” appearing in the Tribune dated 5th Oct., 2007 reported that against the revised cost of Rs. 67.00 crore in June, 2001, the 12 MW project has now been completed at Rs. 134.00 crore, 3 years beyond the scheduled period and the designed energy of 49 million units is less than normal by 5 Million Units. Resultantly, the cost of generation has gone up to more than Rs. 6.00 per unit as against the average sale price of the Board at Rs. 3.67 per unit particularly in contrast to the cost of generation of Nathpa Jhakri and Baspa Power Project @ Rs. 2.83 per unit and Rs. 2.85 per unit respectively. As per the said newspaper report the cost of the project now comes to Rs. 11.2 crore per MW which is more than double the normal cost of Rs. 5.5. crore per MW.

2. The Board, while filing separate petition for Generation Tariff for Khauli HEP under Multi Year Tariff Petition for the first control period (FY 08-09 to FY 10-11) has not given any justification for the time and cost

overrun for the said project. For determination of the generation tariff for the said project, the Commission is required to consider whether or not the delay, or escalation of cost, in execution of the project could have been averted or curtailed by the Board; or to what extent, in the interest of justice, the cost overrun could be allowed.

3. Taking cognizance of the said newspaper report and also taking into consideration the fact that it is likely to impact the ARR and tariff of the Board, the Commission issued Suo Motu Notice under Regulation 11 of the HPERC (Conduct of Business) Regulations, 2005 to the Board to explain the high capital cost of Khauli Hydro Power Project. The Board was further asked to submit all relevant details in support of its contention relating to alleged undue delay in completion of the Hydro- electric Project, the high Capital Cost including establishment and interest costs, reasons for increase in generation cost alongwith copies of review audit reports on Khauli Hydro Power Project from 2001 onwards so that Commission may take a suitable view based on Board's reply and audit reports.

4. In order to examine, in depth, the issues involving escalation of capital cost and time overrun in power, the Commission, taking lenient and generous view, afforded more than sufficient time to the Board to furnish reply/information/documents, as detailed below:-

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| 1. Notice dated 3.11.07 | Six weeks's time for reply |
| 2. Order dated 5.3.08 | Reply/documents to be submitted by 20.3.08 |
| 3. Notice dated 7.4.08 | Reply/documents to be submitted by 26.4.08 |
| 4. Order 26.4.2008 | 4 week's extension, as asked for, granted upto 24.5.2008 |
| 5. Order 24.5.2008 | 8 week's extension, as asked for, granted upto 26.7.2008 |

5. After consuming a fairly long span of time even in the reply, filed on behalf of the Board on 26.7.2008, the Board has only given a brief justification for the time and cost overrun. No supporting documents as well as copies of the various audits reports, as asked for, have been furnished. Surprisingly enough the concluding para 5 of the said reply reads as under:-

“That the Project Construction Circle, HPSEB, Dharamshala alongwith its construction Division has been closed on 30.6.2008. Consequently, the Khauli Hydel Project has also been finally handed over to the Chief Engineer (Generation), HPSEB, Sundernagar alongwith relevant office record. The above expenditure figures are likely to undergo changes during reconciliation with (F&A) Wing of the Board. The final reconciled figures shall be submitted to the Hon’ble Commission as and when these are ready. However, all efforts will be made to finalise accounts as soon as possible.”

6. The information furnished/supplied by the Board cannot be treated as reliable, adequate, and sufficient so as to arrive at convincing and reasonable conclusions regarding the cost of the project needed for the determination of the generation tariff for the Khauli HEP included by the Board in its Multi Year Tariff petition for FY 08-09 and FY 10-11.

7. Section 86 of the Electricity Act, 2003 delineates the functions of the State Commission. The functions are grouped under two categories – mandatory functions and advisory functions. Determination of tariff for generation, supply, transmission and wheeling electricity, wholesale, bulk or retail within the State, is the mandatory function of the State Electricity Regulatory Commission. While discharging this duty the Commission is required to exercise the prudence check

8. The Apex Court in its verdicts given in **W.B. Electricity Regulatory Commission V/s CESC Ltd 2002 (8) SSC 715 (P 51 & 57) and BSES Ltd V/s Tata Power Corporation Ltd, and others (2004) Supreme Court Cases 195 (paras 16 and 18)**, has clearly ruled that the tariff determination is the sole prerogative of the Commission. In regard to the impact of inefficient management of the licensee the Hon’ble Supreme Court has observed, in para 76 of the Judgement delivered in the West Bengal case (Supra), as under:-

“Now the Commission will have to take into consideration proper, efficient management of the company in all its activities and controlling the distribution loss is also a vital part of the management of the company which has to be efficiently managed. They contend that the conduct of the company in allowing increased distribution losses over the last decade only points out to callousness of the company in not reducing

the distribution loss. They urge that **the consumers whose rights has now to be recognized for a cheaper supply of power, cannot be burdened with this callous expenditure of the company.**”

9. In view of the verdicts of the Apex Court, cited in the preceding para, the Commission has full jurisdiction to take note of the tariff related issues. Keeping in view the larger public interest, to ensure prudent utilization of funds, and to improve the functioning of the licensee Board, it is desirable to examine the issues involving escalation of the capital cost and time overrun in execution of Hydro power projects. The **Hon’ble APTEL, on the appeal filed by the Board, in the similar case concerning the investigation into the facts leading to the cost and overrun in execution of the Larji project** had already ruled on 12.7.2006 that “the Commission is totally justified on going into all questions, which have impact on the tariff of the Utility”. Non-furnishing or delay in furnishing reply/information asked for from the Utility is prolonging this important public issue, unnecessarily. Simultaneously the consumers are in no way to be burdened with the inefficiency and delay prevalent in the Utility.

10. Keeping in view the indifferent/lukewarm attitude of the Board, there is urgent need to investigate and inquire into the high cost escalation and inordinate delay in completion of the (12 MW) Khauli Project, executed by the Board, included in the Board’s petition for determination of generation tariff under its Multi Year Petition for the first control period (FY 2008-09 to FY 10-11)

11. Regulation 26 of this Commission’s Conduct of Business Regulations, which provides for the engagement of experts for such purposes, reads as under:-

“26. Assistance of experts-(1) The Commission may, at any time, take the assistance of any institution, consultants, experts, engineers, chartered accountants, advocates, surveyors and such other technical and professional persons, as it may consider necessary, and ask them to study, investigate, inquire into any matter or issue and submit report or reports or furnish any information. The Commission may determine the terms and conditions for engagement of such professionals.

(2) If the report or information obtained in terms of the regulations or any part thereof is proposed to be relied upon by the

Commission in forming its opinion or view in any proceedings, the parties in the proceedings shall be given a reasonable opportunity for filing objections and making submissions on the report or information.

(3) The Commission may, if it considers necessary, direct payment to the institution, consultant, expert, engineer, chartered accountant, advocate, surveyor and other technical and professional person, engaged under sub-regulation (1), of such fees, costs, expenses by such of the parties to the proceedings as the Commission may consider appropriate.”

12. In the light of the above circumstances the Commission considers that an inquiry into the high cost escalation and excessive completion period in respect of Khauli Hydro Electric Project, in Kangra District being executed by the Board has become necessary so that reoccurrence of such incidents in execution of similar Hydro Electric Projects, causing impact on their tariff determination, may not be repeated and such inquiry can better be conducted by an Independent Committee of experts. The terms of reference to the said expert committee shall be: -

- (1) to conduct detailed investigation into all aspects of project management including planning and design, construction, project management etc clearly spelling-out the reasons for high cost escalation and excessive completion period in respect of Khauli Hydro Electric Project;
- (2) to determine the reasonable date of commissioning and reasonable cost of the project;
- (3) to fix responsibility both for delay in execution as well as excessive escalation in cost; and
- (4) to make recommendations for efficient, economical and competitive project management.

13. The Commission further orders the Board to make its submissions before the Committee to be constituted by the Commission. Further the Board is to ensure that all facilities and co-operation, as may be stipulated in terms of reference, are made available to the member(s) of the said Committee for timely completion of assigned work. The Board shall also produce or cause to be produced all documents/records required during the course of the proceedings before the Committee. The entire expenditure,

on fees, costs and expenses, to be incurred in respect of the said inquiry shall be borne by the Board, which shall be allowed as pass through expenditure in the future Tariff Order.

This order is made and signed on 16th day of September, 2008.

(Yogesh Khanna)
Chairman.