

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY
COMMISSION SHIMLA**

In the matter of :-

M/s Sarabai Enterprises Pvt. Ltd.,
Village, Sarabai, P.O. Bhunter,
Distt. Kullu (HP)

...Petitioner

V/s

- (1) The Government of Himachal Pradesh
through Principal Secretary (MPP & Power),
Shimla-171002.
- (2) The HP State Electricity Board Ltd. thro' its
Executive Director (Pers.)
Vidyut Bhawan, Shimla-171004.
- (3) The Himachal Pradesh Energy Development Agency
(HIMURJA), SDA Complex, Kasumpti,
Shimla (HP)-171009

... Respondents

Petition Nos. 26 of 2011
(Decided on 6th January, 2015)

CORAM
SUBHASH C. NEGI
CHAIRMAN

Present: -

for petitioners:	Sh.Ajay Vaidya, Advocate,
for respondent No. 1:	Sh. Shanti Swaroop Legal Consultant
for respondent No. 2	Sh.Ramesh Chauhan (Authorized Representative)
for respondent No.3	Sh. Pardeep Bhanot. (Sr. Project Officer)
Consumer Representative (u/s 94 of the Electricity Act)	Sh.P.N.Bhardwaj

ORDER

(Last heard on 20.12.2014 and orders reserved)

M/S Sarabai Enterprises Pvt. Ltd., having its registered office at Village Sarabai, P.O. Bhunter, Distt. Kullu (HP), through Sh. Yashwant Singh S/o Sh. Bilam

Singh its Director/Authorised signatory (hereinafter referred as “the petitioner Company”), has moved this petition, seeking enhancement of the tariff for its project.

2. The petitioner Company has entered into with the Government of Himachal Pradesh, an Implementation Agreement (I.A) on the 30th May, 2003, to establish, operate and maintain at their cost Gurahan Small Hydroelectric Project (1.50 MW) at on Gurahan Khad in Distt. Mandi (H.P.) (hereinafter referred as the “project”). Subsequently the petitioner Company entered into on 15th March, 2005, a Power Purchase Agreement (in short PPA), with the Himachal Pradesh State Electricity Board (hereinafter referred to as “the Board”), stipulating that the petitioner Company shall abide by the terms and conditions of the Implementation Agreement executed by them with the State Government and the Board shall pay for the net salable energy delivered by the petitioner Company to the Board at the interconnection point at a fixed rate of Rs.2.50 (Rupee two and fifty paise) per kwh.

3. Subsequently the State Government has reviewed its earlier policy and formulated “Hydro Policy of Himachal Pradesh, 2006,” making it obligatory for the developers to cater to stipulations such as mandatory 15% water release, Local Area Development Charges (LADC), payment of revised compensation to fisheries and towards use of forest land etc. The new policy maintained the tariff at the rate of Rs. 2.50/kwh

4. Prior to 2005, condition of release of water was also applicable but there was no minimum normative quantity laid down. If the developer sells power to the Board, the tariff fixed by the GoHP was Rs. 2.50 per unit upto 5 MW projects. The Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as “the Commission”) made the HPERC (Power Procurement from Renewable Sources and Co-generation by Distribution Licensee) Regulations, 2007 (hereinafter referred as “the Regulations”) for determination of tariff, for Small Hydro Projects (SHPs) and in accordance with the provisions of the said Regulations, revised tariff, on account of policy changes, including minimum 15% water release, after signing of Power Purchase Agreement (PPA) on fixed rate of Rs. 2.50, was allowed by the Commission by a generic order dated 29.10.2009, passed in **petition No. 11 of 2008, M/s DSL Hydrowatt Ltd. V/s HP State Electricity Boart & others**, followed by case specific orders in relevant cases.

5. The Electricity Act, 2003 (hereinafter called “the Act”) and the National Electricity Policy provide the policy framework for promotion of non-conventional energy sources (NCES) and also section 61 (h) of the Act requires the Electricity Regulatory Commissions to promote co-generation and generation of electricity from renewable sources of energy and further in section 86 (1) (e) of the Act, the Electricity Regulatory Commission is mandated to promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the Grid and sale of electricity to any person and also to specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of distribution licensee.

6. In compliance with the statutory provisions in the Act, the policy guidelines given in the National Electricity Policy and the National Tariff Policy and directions given by the APTEL, the Commission made the Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewable Sources and Co-generation by Distribution Licensee) Regulations, 2007. Regulation 5 of the regulations (ibid) provides that energy from renewable sources (including upto 25 MW capacity hydro projects) and co-generation, available after the captive use and third party sale outside the State, shall be purchased by the distribution licensee. Sub-regulation (1) of regulation 6 of the regulations (ibid) (as amended on 12th November, 2007), which provides for the determination of tariff for electricity from renewable sources, reads as under:-

“6. Determination of tariff of electricity from renewable sources.–

(1) The Commission shall, by a general or special order, determine the tariff for the purchase of energy from renewable sources and co-generation by the distribution licensee:

Provided that the Commission may determine tariff-

- (i) by a general order, for small hydro projects not exceeding 5 MW capacity; and
- (ii) by a special order, for small hydro projects of more than 5 MW and not exceeding 25 MW capacity, on individual project basis:

Provided further that -

- (i) where the power purchase agreement, approved prior to the commencement of these regulations, is not subject to the provisions of

the Commission's regulations on power procurement from renewable sources, or

- (ii) where after the approval of the power purchase agreements; there is change in the statutory laws, or rules, or the State Govt. Policy ;

the Commission, in order to promote co-generation or generation of electricity from renewable sources of energy, may, after recording reasons, by an order, review or modify such a power purchase agreement or a class of such power purchase agreements”.

7. The second proviso to sub-regulation (1) of regulation 6 of the regulations (ibid), read with clauses (b) and (e) of sub-section (1) of section 86 of the Act, empowers the Commission to review or modify the PPA or class of PPAs, where after the approval of the PPA there is change in-

- (a) statutory laws;
- (b) rules; or
- (c) State Government Policy.

8. Pursuant to the provisions of regulation 6 of the said regulations, referred to in the preceding paras, the Himachal Pradesh Electricity Regulatory Commission issued an Order dated 18th Dec., 2007, determining the general tariff, for Small Hydro Projects, not exceeding 5MW capacity(hereinafter referred as the “SHP Order”), relating to purchase of power generated by the Small Hydro Projects in the State of Himachal Pradesh and the allied issues linked with non-conventional energy sources based on generation and co-generation. The said SHP Order fixes the rate of Rs, 2.87(subsequently raised to Rs.2.95) per Kwh, which is applicable to future agreements and to the existing agreements, approved by the Commission in and after the year 2006 with the specific clause that the tariff and other terms and conditions of the PPA shall be subject to the provisions of the Commission's regulations on the power procurement from renewable sources and co-generation by the distribution licensee.

9. A number of Independent Power Producers moved petitions for upward revision of the generalised tariff of Rs. 2.95/Kwh, mainly on the ground of inflation of construction cost, requirement of mandatory release of 15% water discharge, levy of forest charges, w.e.f. 30th Oct., 2002, revision of fisheries charges w.e.f. 30.4.2007 and levy of Local Area Development charges, referred in Hydro Policy of Himachal

Pradesh, 2006. As all the aforementioned petitions arose out of the same SHP Order dated 18th December, 2007 and similar issues were involved, the Commission clubbed the said petitions for consideration and disposal of the following inter alia generic common issues involved therein; as under i.e. to say:-

- (I) Whether the Commission has power and jurisdiction to re-open the once approved Power Procurement Agreements (PPAs) voluntarily entered into by the IPPs with the HPSEB? If so, to what extent?
- (II) Whether each petition needs to be dealt with on merits separately?

10. After due consideration of the submissions made, documents produced and arguments advanced by the respective learned Counsels on behalf of the petitioners, the Commission vide its Order dated 29th Oct., 2009 **passed in petition No. 11 of 2008 M/s DSL Hydrowatt Ltd V/s HPSEBL** and others concluded that:-

- (i) the Commission has the power to re-open the concluded PPAs for the purpose of incentivising the generation from non-conventional energy projects, within the framework of the Act and the regulations framed thereunder;
- (ii) each petition needs to be dealt with on merits. The Commission, can review or modify the concluded PPAs, prospectively, within the scope of the second proviso to sub-regulation (1) of regulation 6 of the regulations (ibid) to cater to the stipulations such as mandatory release of 15% water discharge, payment of revised compensation to fisheries and towards use of forest land; and the LADA charges. While revising the tariff construction cost inflationary factor need not be taken into consideration, and only the narrow area of Govt. policy changes and their impact on tariff is to be quantified prospectively.

11. Further the Commission decided to consider each petition on its merits and to issue individual projectwise orders based on the furnishing of necessary data / detailed calculations (alongwith supporting documents) on an affidavit with respect to the claims regarding mandatory release of water discharge, payment of differential amount on account of compensation to fisheries and towards the use of forest land; and also the levy of LADA charges.

12. In the meanwhile, the Commission issued the Order dated 10.2.2010, supplementing the provisions of the SHP Order dated 18.12.07; wherein the

adjustments on account of the change in the Minimum Alternate Tax/ Income Tax and royalty were dealt with.

13. With the back ground, as set out in the preceding paras, the petitioner Company has moved this petition, for increasing the tariff, in relation to its project, mainly on the ground of inflation of construction cost, requirement of mandatory release of 15% water discharge, levy of forest charges and levy of local Development charges, referred to in the Hydro Power policy of the State of Himachal Pradesh.

14. By that time the Board has moved, before the Hon'ble H.P. High Court, 8 writ petitions registered as petition Nos. 7649 of 2010; 8285 of 2010; 8426 of 2010; 8427 of 2010; 8472 of 2010; 8492 of 2010; 8531 of 2010 and 8532 of 2010; assailing the Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewal Sources and Co-Generation by Distribution Licensee) (First Amendment) Regulations, 2007 and Order dated 18.12.2007 made thereunder and also other orders reviewing the orders passed, by this Commission, on different dates in favour of certain Independent Power Producers in each petition fixing enhanced tariff for the tariff already mutually agreed in the respective PPAs. The Hon'ble High Court stayed the operation of the aforesaid Regulations and orders and further stayed the proceedings in relation to the aforesaid petitions specifically and also in general proceedings in relation to similar cases pending before this Commission. Ultimately the said writ petitions were disposed of by a common judgement dated 6th August 2013 delivered by the Hon'ble Division Bench of the H.P. High Court in **CWP No. 8426 of 2010 i.e. the Himachal Pradesh State Electricity Board Ltd. Vrs. the Himachal Pradesh Electricity Regulatory Commission and another**, upholding the validity of the Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewal Sources and Co-Generation by Distribution Licensee) (First Amendment) Regulations, 2007 and also of the reviewing orders passed, on different dates, by this Commission enhancing tariff in favour of the petitioners. The proceedings on this review petition, therefore, remained stayed during the period in which related issues were under adjudication before the Hon'ble High Court.

15. In the meanwhile, the GoHP, issued clarification in relation to the State Policy regarding the 15% minimum water discharge vide its decision dated 21.4.2012. This Commission, after taking note of the fact that the GoHP issued revised policy decision

dated 21.4.2012, stating that policy of minimum 15% water release will not apply retrospectively on projects which are commissioned prior to 9.9.2005 and also on those which are not commissioned, but Implementation Agreement (IA)/Power Purchase Agreement (PPA), are signed prior to 9.9.2005, clubbed the petitions, including the present petition, due to common issues of release of water, and decided vide its Order 10th September,2014, passed in **HP State Electricity Board V/s M/s Him Kailash Hydro Power Pvt. Ltd. and others**, holding that:-

“46 Therefore, PPAs already concluded can be reopened under regulation 6(1) of the Regulations 2007 prospectively i.e. tariff will be applied prospectively. Prudent cost allowed under forest and fisheries and LADA expenses will be recovered in tariff prospectively. Whatever tariff required to be enhanced to give effect to minimum 15% release is to be determined by the Commission and hence will be applied prospectively, after so determined and from actual implementation of directions thereafter, whichever is later. Obligation to release water as per directions of the State Govt./State Pollution Control Board is already cast upon the developer as per IA, even at the fixed tariff of Rs. 2.50 per unit applicable on projects where IA/PPA are signed till June 2006.

47 Therefore, revised enhanced tariff will be applicable w.e.f. the date of determination of such revised tariff by the Commission and actual implementation of 15% release directions thereafter. On the same lines, revised tariff based on the decision, in relation to the policy change with respect to PPAs/projects from where power is purchased by the HPSEBL, taken by the State Govt. dated 18.4.2012 and conveyed to the CMD, HPSEBL by letter dated 21.4.2012 will also apply prospectively from the date of passing the order by the Commission, including interim Order, if any, unless the parties have implemented the decision dated 18.4.2012/21.4.2012 before such Order of the Commission, in which event revised tariff will apply from such date of actual implementation of the revised policy reflected in the GoHP letter dated 21.4.2012 on IA/PPAs signed before 9.9.2005.

48. Both the policy decisions i.e. dated 9.9.2005 and 18/21.4.2012 are in public interest, the earlier one on environmental considerations and the later

one (limited to projects having PPAs with HPSEBL) on the tariff consideration. Therefore, tariff allowed pursuant to 9.9.2005 policy on projects which are commissioned after 9.9.2005 but IA/PPA signed before 9.9.2005, are withdrawn in view of decision dated 18.4.2012/21.4.2012 so that benefit of reduction in tariff, due to reduction in water release, where ever provision as per TEC/MoU/IA/PPA is less than 15%, is passed on to the consumers. Higher tariff was allowed to projects to compensate the reduction in generation due to release of additional water to comply the 15% minimum release of water down stream and since now release will continue to be as per TEC/MoU/IA/PPA as per revised policy, additional tariff shall be withdrawn. For the generator, the policy is revenue neutral and hence there is no loss or gain due to any change in condition of water release.”

16. The Govt. of Himachal Pradesh, Respondent No. 1, through its Directorate of Energy, the HPSEBL Respondent No. 2 and Respondent No. 3 the Himachal Pradesh Energy Development Agency (HIMURJA), which is the Nodal Agency in the development of SHPs in the State, have filed their response to the petition moved by the petitioner Company. The Commission now keeping in view the said response proceeds to examine itemwise claims made by the petitioner Company, as under:-

I. MANDATORY RELEASE OF WATER DISCHARGE-

Submission of the petitioner

17. The petitioner Company submits that after the signing of Implementation Agreement and Power Purchase Agreement, State of Himachal Pradesh issued certain guidelines under the Hydro Power Policy, 2006, the Water Act, 1974 and the Environment Protection Act, 1986, wherein, it has provided that all the existing and upcoming hydro projects in the State of Himachal Pradesh shall maintain a minimum flow, down-stream of the diversion structure, throughout the Year, at the threshold value not less than fifteen percent water flow immediately downstream of the diversion structure of the project all the time including lean seasons from November to March to the main river/water body whose water is being harnessed by the project. This implies that this directive requires the petitioner Company to mandatorily release and maintain not less than 15% (Could be more if desired by Pollution Control Board) of the available discharge immediately downstream of the diversion structure with-out allowing the company to utilise it for power generation and as a consequence forego

equivalent generating potential of the project. These directives, as issued by the State of Himachal Pradesh, will reduce the power generation of the project drastically and cost of production is bound to increase and also affect the financial viability, potentiality and economic stability of the project. Further, during the lean season, the discharge of water will barely be adequate to operate even one turbine out of the generally two turbines installed in a project. The mandatory release shall force a total shut down of the plant during the lean season commencing from the month of November, of a year up to the month of March of the succeeding year i.e. for four months. Except the monsoon period of high flows, the generation shall stand reduced in the balance months as well. This loss of generation of electricity is bound to affect the project and this can lead to a disastrous situation for the petitioner and same cannot be compensated unless tariff is re-determined by the Commission.

Response of the Board

18. Respondent Board submits that as per clause 13.3 of the Implementation Agreement entered between the petitioner Company and the Govt. of HP on 30th May, 2003 the Company was under legal obligation to ensure minimum flow of water immediately downstream of the weir/barrage/dam for downstream requirements as directed by the Government/State Pollution Control Board. The Hydro Power Policy 2006, as notified by the Govt. of Himachal Pradesh, only quantifies the said discharge at 15%, therefore, it is wrong to allege that the petitioner company has been burdened with any additional liabilities which are likely to affect its generation and or increase the cost of production etc. After quantification of the discharge at 15% by the Hydro Policy-2006, no impact on generation has been caused. The minute difference which might be experienced by the petitioner company during lean seasons can very well be compensated by overloading the machines when more water discharge is available in the river. Since the petitioner Company has agreed to a fixed tariff of Rs. 2.50 per kilowatt hour for a period of 40 years without any escalation on any account whatsoever, therefore, the company is not within its rights to claim re-determination of tariff as is being sought in the present proceedings.

19. Moreover, the main ground on which the enhancement of tariff is being sought by the petitioner is change of hydro policy by the State Govt. and mandating of fifteen percent discharge of water etc. which condition is not applicable to the petitioner in view of the decision of the Govt. of H.P., conveyed to the replying respondent by their

communication dated 21.4.2012 which clearly indicates that the condition of the 15 percent of discharge of water shall be prospective and shall be applicable only on the projects which shall be commissioned after 09.09.2005 and in case of projects which have entered into PPA/IA before the issuance of notification dated 09.09.2005 but not commissioned, a minimum discharge as agreed or accounted for as per TEC/MoU/IA/PPA (where no specific condition quantifying water discharge has been imposed) or as per any specific condition in MoU/IA/PPA shall be applicable till, based on a long term study, the minimum discharge in their case is determined.

HIMURJA response

20. The response of the HIMURJA on this issue is the same as submitted by the Board.

Response of the Directorate of Energy

21. The Directorate of Energy, representing the State Govt. i.e., the respondent No. 1, furnishes the hydrological data and calculations pertaining to the impact of 15% mandatory water discharge on generation of power from the project of the petitioner, stating that as per approved DPR the gross annual generation was 7.93 MU with 60.35% PLF. After considering 15% release of water down stream of diversion structure, the gross annual generation works out as 7.946 MU with 60.47 PLF, which shows that the impact of 15% mandatory release of water down stream of diversion structure generation loss of works out to 7.943 MU, which is not causing any impact. Since the PLF after considering the 15% sacrificial discharge is still 60.47%, there is no loss to be occurred to the petitioner as alleged in the petition.

Commission's View

22. In this case M/s Sarabai Enterprises Pvt. Ltd. entered into an Implementation Agreement (IA) with the GoHP, on 30.05.2003 to establish, operate and maintain at their cost Gurahan Small Hydro Electric Project, with installed capacity of 1.5 MW located on Gurahan Khad, in Distt. Mandi (H.P.). The Power Procurement Agreement (PPA) was executed with the HPSEBL, on 15th March, 2005 stipulating that the Board shall pay for the Net Salable energy delivered to the Board at the interconnection point at a fixed rate of Rs.2.50, per kWh. The project was commissioned on 30.09.2010.

23. From the above, it is clear that in relation to the Gurahan Small Hydro Electric Project, the IA was signed on 30.05.2003 and the PPA was executed on 15th March,

2005 before the 9.9.2005 and the project was commissioned on 30.09.2010, after the 9.9.2005. Per the Cabinet decision dated 18.04.2012, conveyed to the CMD, HPSEL on 21.04.2012, the projects where IAs/PPAs are signed before 9.9.2005, but are commissioned after 9.9.2005, minimum discharge is required to be determined in these cases based on long term study and till such time minimum discharge, as provided in the TEC/MOU/PPA, in each case, is to apply and not 15%. Further as stated in para 47 of Commission's Order dated 10.09.2014 (Supra), the revised enhanced tariff is to be applicable prospectively w.e.f. the date of determination of such revised tariff by the Commission, unless the parties have implemented the decision dated 18.04.2012/21.04.2012, before such order of the Commission, in which event revised tariff will apply from the date of the actual implementation of 15% release directions thereafter. In view of decision dated 18.04.2012/21.04.2012, enhancement in tariff already allowed pursuant to 9.9.2005 policy on projects, which are commissioned after 9.9.2005, but IAs/PPAs are signed before 9.9.2005, has been withdrawn, w.e.f. the 25th April, 2014, i.e. the date on which the Commission took cognizance of the State Govt. clarification contained in the letter dated 21.4.2012 and stayed the operation of the orders passed in the tariff petitions with respect to the PPAs, where enhancement has been granted on account of 15% mandatory water release, unless the parties have implemented the revised Policy, reflected in the GoHP letter dated 21.4.2012, on the IAs/PPAs signed before 9.9.2005.

24. The Commission has categorically mentioned in sub-para (B) of para 30 of its Order dated 29.10.09 passed in **petition No. 11 of 2008 M/s DSL Hydrowatt Ltd. V/s HPSEBL and others** that the mandatory release of water discharge is average of 3 lean months as clarified by the Government of H.P. vide its notification No. MPP-F(2)-16/2008 dated 29.1.09. In spite of this the petitioner has calculated the same on the basis of 15% incoming discharge throughout the year. Therefore, the calculations by the petitioner are not correct. On examining the response of the Board, the Commission observes that the mandatory release impact assessment by the Board has been carried out based upon the 75% dependable discharge as approved in the DPR and deducting the sacrificial discharge from it (which is average in 3 lean months) to get the net discharge available for power generation. Thus the contention of the petitioner Company that the mandatory release during the months of November of a year upto March of the proceeding year forces total shutdown of the plant during these four months is not correct.

25. Further, the perusal of the hydrological data submitted by the Directorate of Energy reveals that the impact of 15% release of water down stream of diversion shows that the impact of 15% mandatory release of water down stream of diversion structure generation loss works out to 7.943 MU, which is not causing any impact. As the PLF after considering the 15% sacrificial discharge is still 60.47%, as such there is no loss to be occurred to the petitioner as alleged in the petition.

26. Apart from the above this project has been commissioned on 30.09.2010, the actual generation data is available for barely for 3 years period only, which is grossly inadequate, and, therefore, cannot be relied upon for mandatory release impact assessment. Thus, the Commission, at present has no option, but to rely upon the mandatory water release impact assessment based on the DPR projections.

27. The Board's contention that loss on account of 15% mandatory release can easily be covered by overloading the plant during the peak season is not tenable. The Commission is constrained to allow upgrades in tariff based on a change of goal posts/change in law which will impact on tariff in term of what an entrepreneur calculates in a "before" & "after" scenario. Additionally, DPR energy projections are generally oriented with bankability/viability considerations of the project but wherever no other projection is available, this will need to be considered as a basis, subject to a caveat that it will have only marginal relevance in the present context and cannot be used across the board where other more relevant parameters are available.

In view of foregoing discussion and the fact that the sacrificial discharge considered at the time of TEC stage is more than the mandatory release of water, the claim of compensation by the petitioner Company is not tenable. However, either party, on the availability of the actual data for a period of 10 years, can approach the Commission to review the matter.

II. LOCAL AREA DEVELOPMENT CHARGES (LADC)

Submissions by the petitioner

28. The State Government policy for small hydro power projects in the State, requires the IPPs such as the petitioner Company to spend 1% of the total project cost on the local developmental activities on account of the LAD charges.

Response of Board

29. The petitioner Company has claimed LAD charges without any supporting documents. Even if there is any marginal impact on account of LAD charges it can be covered by overloading the machines during high flow season.

Response of HIMURJA

30. Response of the HIMURJA on this issue is similar to the one submitted by the Board. That the averments made in the petition are admitted to the extent that 1% of total project cost is to be contributed by the Petitioner Company towards LADF. However, the Petitioner Company has not attached any supporting documents which could prove the expenditure incurred by the petitioner Company, hence cannot be considered.

Commission's view.

31. The Commission points out that there is a procedure and structure which has been laid down by the Government of Himachal Pradesh through notification for payment on account of local area development.

In view of above, the Commission concludes that in the absence of proper and sufficient documentary proof of payment on account LADC as per the Government framework the petitioner Company's claim cannot be considered. However, as the claim has arisen on account the change in policy, it is payable. The net present value of the additional tariff components levelised over a period of 40 years to offset the loss on account of LADC, shall be as per the following formula:-

$$x = \frac{PV}{8.80075 y} \text{ whereas}$$

PV is the total amount in lacs paid on account of Local Area Development Charge minus amount payable for local area development works specified in the approved DPR

x is Additional tariff component in Rs./unit levelised over a period of 40 years to offset the loss on account of LADC.

y is Annual saleable energy units in lacs (as per approved DPR).

This tariff component shall be subject to the production of sufficient documentary proof to the satisfaction of the Board and shall be payable from the date of complete payment of LADC or Commercial Operation Date whichever is later.

III. FOREST AND FISHERIES CHARGES.- Sub-paras “C” and “D” of para 30 of Order dated 29.10.09(Supra), read as under :-

“C Forest Charges

The forest charges were applicable w.e.f. 30th 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;”

D Fisheries

The State Government through a notification dated 30th 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;”

Submissions by the petitioner

32. The Department of fisheries charges compensation @ Rs.0.50 lakh per kilometer of breeding/ feeding grounds lost and Rs. 0.50 lakh per megawatt capacity of power set up. This change has been made in the policy in the year 2007.

Response of Board

33. In response the Board submits that 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, and the compensation payable prior to the revision of charges and after the revision of charges for the project, needs to be considered for impact on tariff. The differential amount as desired vide Commission’s Order dated 29.10.2009 has neither been worked out nor any details of the charges which would have been required to be paid by the Company are given in support of their claim. Therefore no claim on this account is justified.

Further the fisheries charges are based on length of tail race capacity. Since the amendment dated 30.4.07 in relation to fisheries charges is with immediate effect, the compensation paid by the petitioner Company after the issuance of the notification and which was supposed to be paid prior to notification needs to be ascertained by the petitioner to arrive at the differential amount to be considered for the impact on the tariff. The petitioner Company has not supplied any detailed information as

required/desired by the order of the Commission. However, it is understood that the revised charges with reference to fisheries are lower than the charges prescribed prior to the notification. Hence no claim on this account is admissible.

Response of HIMURJA

34. Response of the HIMURJA on this issue is similar to the one submitted by the Board.

Commission's View

35. The claim on account of fisheries is without any documentary proof and sufficient details of the amount required to be paid by the petitioner Company on account of the forest and fisheries charges. Thus the Commission concludes that the claims of the petitioner on account of forest and fisheries are not tenable.

IV. MINIMUM ALTERNATE TAX AND SERVICE TAX

Submissions by the petitioner

36. Subsequent to the GoHP notification dated 6th May, 2000 small hydro projects, have been subjected to additional taxation under various Union budgets. Specific instances of these are the levy of MAT tax on book profits @ 10.3% and increase in service Tax from 5% to 12.36%. This is an additional levy which had adversely affected the project cost and therefore, needs to be compensated by approving a higher tariff for the electricity generated from the project.

Response of the Board

37. This additional cost is not justified due to reasons that without supplying the actual rate of the MAT, which have been taken into consideration at the time of working out the cost of Rs. 2.50/unit, there is no justification of taking into account the differential component of MAT as calculated by the Company, at the present rate. The Order dated 29.10.2009 of the Commission does not require any submission for the calculation and impact on account of service tax.

It is, further submitted that differential worked out on the MAT and Service Tax etc., if any, can easily be covered considering the overloading capacity of the plant during the peak season.

Commission's View

38. As pointed out in para 10 of this Order, the Commission has already 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 including the claim for payment of differential amount on account fisheries and forest and local area development charges. However, the Commission considers change in MAT after the signing of the PPA as change of goal post and, therefore, feels that the IPP should be compensated as has been done for all the IPPs, falling within the ambit of Commission's on SHPs order 18.12.2007, through the supplementary order dated Feb., 10, 2010.

The Commission, therefore, concludes that any change in MAT from the one existing at the time of signing of PPA in the first 10 years of the generation of the project shall be payable by the respective party as per the following formula –

(Total amount on account of revised effective MAT)–(Total amount on account of MAT at the time of signing of PPA)

The adjustment on account of change in the MAT shall be subject to the furnishing, to the satisfaction of the Board, of documentary proof of the actual payment by the petitioner Company to the Board and shall be made at the end of each financial year as per the above formula.

Conclusion

39. In view of the above discussion and taking into consideration the conclusions drawn in the Commission's Order dated 29.10.2009 passed in **petition No. 11 of 2008 M/s DSL Hydrowatt Ltd. V/s HPSEBL & others**; and Order dated 10th September, 2014 passed in **HP State Electricity Board V/s M/s Him Kailash Hydro Power Ltd. & others** and further submissions made, calculations/data supplied by the parties i.e. the petitioner Company, the Board, the Himurja and the State Govt. through the Directorate of Energy the Commission hereby orders that:-

- (i) the sacrificial discharge considered at the time of the TEC is more than the mandatory release of water down stream of diversion structure, the claim of compensation by the petitioner Company is not tenable. However either party on the actual data available for a period of 10 years may approach the Commission to review the said increase.
- (ii) the additional tariff component to offset the loss on account of LAD charge shall be calculated as per the following formula:-

$$x = \frac{PV}{8.80075 y} \text{ whereas}$$

PV is the total amount in lacs paid on account of Local Area Development Charge minus amount payable for local area development works specified in the approved DPR

x is Additional tariff component in Rs./unit levelised over a period of 40 years to offset the loss on account of LADC.

y is Annual saleable energy units in lacs (as per approved DPR).

This tariff component shall be subject to the production of sufficient documentary proof to the satisfaction of the Board and shall be payable from the of date of complete payment of LADC or Commercial Operation Date whichever is later,

- (iii) the claims for forest, fisheries and service tax are not acceded to;
- (iv) any change in MAT after signing of PPA in the first 10 years of the generation of the project shall be payable by the respective party as per the following formula: –

(Total amount on account of revised effective MAT)– (Total amount on account of MAT at the time of signing of PPA)

The adjustment on account of change in the MAT shall be subject to the furnishing, to the satisfaction of the Board, of documentary proof of the actual payment and shall be made at the end of each financial year as per the above formula.

In view of above, the tariff, in relation to Gurahan SHP, shall continue to be Rs. 2.50 per kwh.

-Sd-
(Subhash C. Negi)
Chairman