

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

Petition No. 57/2013

In the Matter of:-

Filing of 2nd APR of 2nd MYT Control Period (FY12-FY14), Revised Annual Revenue Requirement (ARR) for the FY 13 and revised projections for FY14 under Section 62 and 86 of the Electricity Act, 2003 - Supplementary Bills of BBMB thereof.

**Himachal Pradesh State Electricity Board Limited,
Vidyut Bhawan, Shimla -4.**

....Petitioner

CORAM

**Subhash C Negi
CHAIRMAN**

Date of Decision: December 28, 2013)

A1:**GIST OF PETITION FILED BY HPSEBL**

- 1.1 The present petition has been filed by HPSEB Ltd. as a miscellaneous submission in the 2nd APR Petition for the Second Control Period. In the 2nd APR Petition, HPSEBL had submitted the power purchase cost from BBMB stations for FY 2012-13 on the basis of the O&M bills received from BBMB and projected the power purchase from these stations for the financial year 2013-14 accordingly.
- 1.2 HPSEB Ltd. received two supplementary bills from Govt. of Himachal Pradesh through PTC for the power supplied by BBMB to HPSEB Ltd. These bills are for a period of one year (five months of financial year 2011-12 i.e. 1.11.2011 to 31.03.2012 and seven months of financial year 2012-13 i.e. 1.4.2013 to 31.10.2013) amounting to Rs. 22.27 Crores and Rs. 51.69 Crores respectively.
- 1.3 HPSEB Ltd. in its petition has submitted that after the increase in the share of power of the State of Himachal in deference to the decision of the Hon'ble Supreme Court of India, the Govt of Himachal Pradesh took decision to provide the additional quantum of power to HPSEBL at Average Power Purchase Rate. The govt of HP accordingly devised a formula for revenue neutral sale rate (RNSR) of power. This revenue neutral sale rate (RNSR) has been calculated considering the month-wise information of:
- (a) Energy utilized by HPSEBL;
 - (b) HP Share as per Old entitlement;
 - (c) Additional energy received as per Hon'ble Supreme Court verdict;
 - (d) Total expenditure incurred by HPSEBL;
 - (e) Total receipts by HPSEBL;
 - (f) Net Expenditure incurred by HPSEB Limited.

$$\text{RNSR} = \left\{ \frac{\text{PUER} \times \text{old entitlement quantum} + \text{APPC} \times \text{New entitlement Quantum}}{\text{Total Quantum}} \right\} - \text{PUER}$$

Where PUER = Per Unit Expenditure Rate

$$= \frac{\text{(Total Expenditure - Total receipts)}}{\text{Total Units Purchased.}}$$

- 1.4 HPSEBL has requested the Commission to approve the above methodology and the rate of purchase of power from BBMB Stations including both the per unit expenditure rate (PUER) and revenue neutral sale rate (RNSR) for the financial year 2013-14. Vide this petition; HPSEBL has also submitted the two bills dated 30th March, 2013 raised by PTC on behalf of the Govt. of Himachal Pradesh for the additional quantum of power supplied to HPSEBL from the BBMB Power Station for the period 01.11.2011 to 31.03.2012 and 01.04.2012 to 31.10.2013 amounting to Rs. 22.27 Crores and Rs. 51.69 Crores respectively. These bills have been prepared based on the above mentioned formulae for Per Unit Expenditure Rate (PUER) and Revenue Neutral Sale Rate (RNSR).

A2: BACKGROUND

- 2.1 The Bhakra Beas Management Board (hereinafter referred to as “BBMB”) is operating and maintaining the Multi-purpose Projects of Bhakra-Nangal (Comprising of Bhakra, Ganguwal and Kotla Hydro Power Stations.), Beas-I (Comprising of Dehar Power Station) and Beas-II (Comprising of Pong Hydro Power Station). Rajasthan’s share in the power generated from these Hydro Power Stations is 15.22%, 20% and 58.5% respectively. Rest of the power generated from these stations is divided in to the partner states of HP, Punjab, Haryana and UT of Chandigarh in predetermined fixed ratios. The power from various BBMB hydro power stations is being shared among partner states as per their quota and the Operation and Maintenance Cost is billed to the partner states in proportion to their power allocation.
- 2.2 Prior to 27.09.2011, Himachal was issued power at a rate of 2.5 % from Bhakra-Nangal Project and a fixed share of 15 MW from Dehar Power Plant on adhoc basis.
- 2.3 On 27.09.2011, the Hon’ble Supreme Court of India, while disposing of the Original Suit No. 2 of 1996 (State of Himachal Pradesh vs Union of India and Ors) fixed the share of Himachal Pradesh from the power produced from various power projects of BBMB at 7.19% (after excluding the share of Rajasthan). This share was fixed by the Hon’ble Supreme Court on the bases of ratio of population of transferred territory of the newly constituted state of Himachal Pradesh vis-a-vis the composite State of Punjab. While disposing the petition, it was also directed by the Hon’le Supreme Court that the power share of 7.19% should be given to the State of Himachal Pradesh with effect from 1st November, 2011. In deference to the judgement of the Hon’ble Supreme Court of India, the Ministry of Power, Govt. of India vide its letter no. 02/13/96-BBMB(Vol-VI) dated 31.10.2011 conveyed the increase in the allocation of power share to Himachal to 7.19% with effect from 1.11.2011.
- 2.4 Subsequent to the decision of the Hon’ble Supreme Court of India, the Govt. of Himachal Pradesh in Cabinet meeting on 15th February, 2012 decided that the additional quantum of power available after the decision, shall be made available to Himachal Pradesh State Electricity Board Ltd. at a rate that is revenue neutral to HPSEBL i.e. the old allocation shall be made available at O&M charges on previous pattern while the additional new allocation shall be made available at Average Power Purchase Cost (APPC) rate. This decision of the Govt. of H.P. was conveyed vide letter no. GoHP/DOE/Sale of Power/2012-8404-05 dated 15.03.2012, which is reproduced below:

“It is to inform that CMM in its meeting held on dated 15-02-2012 has decided that GoHP power from power houses under Bhakra Complex, BSL Project and Pong hydro Power Station shall be made available to HPSEBL at a rate that is revenue neutral to HPSEBL. While considering the present level of APPC of Rs. 2.23 per unit as also the likely procurement cost of 33 paise per unit for quantum of power available pre Supreme Court verdict, the rate that neutralizes the revenue impact on HPSEBL after taking into account the cost of power works out to Rs. 1.24 per unit. The figures mentioned above are illustrative only to establish the principle. In effect the regulation of power with revenues accruing thereof to GoHP as also the impact on HPSEBL shall get governed by the corresponding rates prevailing from time to time.

The above decision of CMM shall be applicable for one year only (i.e. from 1st November, 2011 to 31st October, 2012).”
- 2.5 The Commission in its Tariff Order for FY 13 dated 24th April, 2012, accordingly allowed the purchase of additional energy available after the Hon’ble Supreme Court order by HPSEBL, at APPC rate as a provisional measure and accordingly worked out the weighted average cost of power from BBMB stations for FY 13. The said arrangement was accepted by the Commission because it was not known as to who will make the BBMB power available to HPSEBL and what is the billing and payment mechanism etc.

A3: QUARIES AND RESPONSE OF THE PETITIONER ON QUERIES OF THE COMMISSION

3.1 The Commission invited the comments of HPSEB Ltd. and the Govt. of Himachal Pradesh through Director, Directorate of Energy vide its letter no. HPERC/F(3)(3)/MYT2APR2/2013-14-405-405 dated 04.05.2013 which is reproduced below:

“HPSEBL is requested to comment and inform the Commission on the following:-

- 1 BBMB is a generator, in this limited context, and beneficiary States or its Electricity Boards will be consumers and hence there will be agreements, including power purchase agreements. Has the billing for additional quantity also been done on the same principles and rates for old quantities or it is different for new quantities by the BBMB. What is the PPA provision relevant to deal with the present context?*
- 2 Has the HPSEBL paid for the total revised quantity as per billing by BBMB ?*
- 3 Under the Electricity law and policies, can the State Govt. charge additional amount over and above the generators cost/price duly fixed (in this case by BBMB management) for supply within its own territory and if so, under what situations and what is principle for such rate i.e. whether it should be trading margin or a mutually agreed price. What is or should be, the grounds for applying two rates for purchase by the same distribution company for same purpose (supply within the State) from the same source for quantities entitled before and after the Hon’ble Supreme Court Order?*
- 4 Is the mutual arrangement of GoHP and HPSEBL for higher rates in accordance with the Stated policy of GoHP for claim of power from BBMB and its usage.*

Before decision on allowing these claims are considered, please send above comments and information to assist the Commission to come to a reasonable and just conclusion. Consumer interest groups had been suggesting passing on part of the relief granted by Hon’ble Supreme Court to the HPSEBL in the interest of DISCOM and the consumers, therefore, the decision on this matter should meet the test of electricity laws, public policies and public interest. ”

3.2 The response of Directorate of Energy, Govt. of H.P. to the queries raised by the Commission was received vide their letter no. GoHP/DOE/Sale of Power/2012-1760 dated 15.06.2013 which is reproduced below:

“The issues raised by the Commission in the above referred letter have been analyzed and the point wise comment of this office on the same is as hereunder:-

- 1 This office is not aware as to whether any PPA has been executed between HPSEBL and the BBMB. The billing by this office through PTC has been done on the decision of taken by Council of Ministers Meeting dated 15-02-2012 applicable for one year i.e. Nov., '11 to Oct., '12 and the same was communicated to HPSEBL. No PPA has been executed between GoHP and HPSEBL in the past for any power including this and free or equity share, as the decision of GoHP for diversion pf power to HPSEBL were communicated to HPSEBL and PTC for further implementation.*
- 2 The issue raised at point no. 2 pertains to HPSEBL and hence no comments of this office are required on the issue. However, in the calculations of the neutral tariff same has been assumed to be paid by HPSEBL.*
- 3 The Electricity Act, 2003 does not talk about the charging of additional rate over and above the generator cost/ price. The justification of charging premium by GoHP on this power is due to:-*

- i) *Power houses under Bhakra Complex, Dehar Hydro power station and Pong Hydro Power station were constructed and commissioned long back but the problem of resettlement and rehabilitation still persists and remains to be settled for one reason or the other. The state government has, therefore, to provide economic support for the resettlement and rehabilitation of affected people, create fresh avenues for agriculture and horticulture, take steps for restoration of wild life, balancing the environment etc. that have been adversely affected by location of these hydroelectric projects in the State. In order to provide need based comfort to the affected people, the state government is required to plan, evolve and implement various schemes, which call for sufficient financial support to meet the objective.*
- ii) *The state government in the past too has provided support to the project affected people within the available means, which at the same time, meant retardation in other developmental activities of various other sectors. These aspects too need to be speedily addressed as to have all round growth in the Pradesh. To supplement these development activities finances have to be arranged.*
- iii) *The Hon'ble Supreme Court in its judgement on 27-09-2011 has not favoured the state by allowing the benefit of free power. This free power component could have been effectively utilized for generating finances to meet the financial requirements of the state in addressing issues listed above. The only way left, therefore, is to make effective use of power available to GoHP on account of partnership share in Bhakra, Dehar & Pong Hydro Power Stations.*
- iv) *The state of this power to HPSEBL was in such a manner that it is not only revenue neutral to the HPSEBL. HPSEBL, while procuring power under merit order despatch, shall not be required to purchase high cost power to the extent of availability of entire power from Bhakra, Dehar & Pong HPS corresponding to GoHO's entitlement against partnership share during the shortage period viz October to April each year. On the other hand availability of this power to HPSEBL during other months of the year shall facilitate HPSEBL to trade this power in an effective manner & generate revenues to meet its other obligations.*

4 *GoHp has no state policy regarding the same."*

- 3.3 In response to Commission's query, HPSEBL submitted that no PPA had been executed between HPSEBL and BBMB. It was submitted by HPSEBL that prior to the decision of Hon'ble Supreme Court; the power allocated to HPSEBL was as per Central Government's notification for apportioning the assets, rights and liabilities of erstwhile PSEB among successor states in accordance with Punjab Re-organization Act. The following quantum of power was allocated to Himachal from different Hydro Power Stations of BBMB:

Sr. No.	Name of Hydro Power Station	Power Allocation
1.	Bhakra Nangal	2.5%
2.	Beas-I	15 MW (fixed)
3.	Beas-II	Nil

The Hon'ble Supreme Court of India disposed of the Original Suit No. 2 of 1996 (State of Himachal Pradesh vs Union of India and Ors) on 27.09.2011 and fixed the share of Himachal Pradesh from the power produced from various power projects of BBMB at 7.19% (after excluding the share of Rajasthan). It was also directed by the Hon'ble Supreme Court that this power share of 7.19% should be given to the State of Himachal Pradesh with effect from 1st November, 2011.

HPSEBL has further submitted that two bills amounting to Rs. 22.27 Crores and Rs. 51.69 Crores have been received by it and the payment of these bills had not been done yet due to financial constraints.

A4: COMMISSION'S OBSERVATIONS

- 4.1 Prior to the decision of the Hon'ble Supreme Court of India on Original Suit No. 2 of 1996 (State of Himachal Pradesh vs Union of India and Ors) on 27.09.2011, various partner states were charged O&M charges on proportionate basis for the quota of power allocated to them from BBMB stations. For the share of Himachal, these charges were billed by BBMB to HPSEB Ltd. Hence prior to the decision of Hon'ble Supreme Court, power to HPSEBL was allocated on adhoc basis and pro-rata O&M charges were billed to it.
- 4.2 The Hon'ble Supreme Court of India disposed of the Original Suit No. 2 of 1996 (State of Himachal Pradesh vs Union of India and Ors) on 27.09.2011 and fixed the share of Himachal Pradesh from the power produced from various power projects of BBMB at 7.19% (after excluding the share of Rajasthan). It was directed by the Hon'ble Supreme Court that this power share of 7.19% should be given to the State of Himachal Pradesh with effect from 1st November, 2011. In compliance to the judgement of the Hon'ble Supreme Court of India, the Ministry of Power, Govt. of India vide its letter no. 02/13/96-BBMB(Vol-VI) dated 31.10.2011 increased the allocation of power share of Himachal to 7.19% with effect from 1.11.2011.
- 4.3 In compliance to the above direction of the Ministry of Power, BBMB started allocation of power to Himachal at enhanced share with effect from 1st November, 2011. HPSEBL has submitted the energy bills for BBMB power for pre November 2011 and post November 2011 periods. The bills raised by BBMB to HPSEBL for post November 2011 period clearly indicate that the O&M charges are being billed by BBMB on the pre November 2011 pattern i.e. proportionate O&M charges are billed even after the increase in the share of power for the State of Himachal after the decision of the Hon'ble Supreme Court of India.
- 4.4 The present petition has been filed by HPSEBL for the recovery of the amount billed by GoHP through PTC for a period of one year (five months of financial year 2011-12 i.e. 1.11.2011 to 31.03.2012 and seven months of financial year 2012-13 i.e. 1.4.2013 to 31.10.2013) and for approving the methodology adopted by the GoHP, for the financial year 2013-14. The petitioner has therefore requested to approve the arrangement proposed by the GoHP for the recovery of the additional amount over and above the O&M cost recovered by BBMB from HPSEBL. The justification given by the GoHP is that the claim of free power from BBMB stations has been denied by the Hon'ble Supreme Court of India in the Original Suit No. 2 of 1996 and that fund required for the resettlement and rehabilitation activities of people affected by these projects can be met with the funds so generated.
- 4.5 It is clear from the pre and post November bills submitted by HPSEBL that after the decision of the Hon'ble Supreme Court and increase of share of power from BBMB Power Stations to Himachal, HPSEBL is paying O&M charges to BBMB in proportion to the increased share of power. Prima-facie after the decision of the Apex court nothing except the share of HP has changed as HPSEBL is being billed by BBMB at proportionate O&M charges.
- 4.6 Therefore, the bills issued by the Govt. of Himachal Pradesh through PTC are merely technical bills which have been issued subsequently. Even today BBMB is raising bills to HPSEBL for O&M charges as it used to do before the decision of the Hon'ble Supreme Court of India. This implies that the entire power allocated to HP is being billed by BBMB to HPSEBL for O&M charges and the supplementary technical bills are being raised by PTC; on behalf of Govt. of H.P., later on to HPSEBL.
- 4.7 In the present case the generator (BBMB) is charging same rate (O&M charges) from different partner states in accordance with their power share. However the Govt. of Himachal Pradesh decided to recover APPC rate for the additional quantum of electricity after the decision of the Hon'ble Supreme Court of India. There is no provision in the Electricity Act, 2003 for recovering any charges over and above the generation cost. In case of trading activity only trading margin as determined by the appropriate Commission is admissible and the present mechanism does not fall in scope of trading also.
- 4.8 The Commission, therefore, does not find any legal and regulatory provisions under

which the Govt of H.P. can recover additional charges for the additional power of BBMB available to HPSEB as HP's share after Apex Court's decision. Therefore, the correct price the HPSEBL should pay is only such price that is billed by BBMB to HPSEBL i.e. same rate as is applicable to all the partner states of BBMB.

4.9 In accordance with provision of Section 86(1)(b) of the Electricity Act, 2003, the price of purchase of electricity by the DISCOM i.e. HPSEBL from the generator i.e. BBMB (HP share) is to be regulated by the Commission. The Commission, accordingly decides that the power from BBMB power stations shall be purchased by HPSEBL at proportionate O&M charges billed by BBMB.

4.10 The Petition is accordingly disposed of.

Shimla:
Dated: December 28, 2013

(Subhash Chander Negi)
Chairman