

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

Review Petition No. 77/2015

In the Matter of:

Review Petition u/s 94(1) (f) of the Electricity Act, read with regulation 63 of the HPERC (Conduct of Business) Regulations, 2005 for Review of First Annual Performance Review Order for Third MYT Control Period (FY 15 - FY 19) & Determination of Tariff for FY 2015-16 passed by the Commission on date 10th April, 2015 in case No. 219/2014.

AND

In the Matter of:

Himachal Pradesh State Electricity Board Limited
Vidyut Bhawan, Shimla –171004

....Petitioner

- (1) Sh. Tek Chand, Vill. Bhatagan, P.O. Pipla aage, Teh.Bhunter, Distt. Kullu-175125;
- (2) Sh. Dola Ram, Vill. Bhatagan, P.O. Pipla aage, Teh.Bhunter, Distt. Kullu-175125;
- (3) Sh. Sanjay Kumar, Village Ruaru, P.O. Pipla aage, Teh.Bhunter, Distt. Kullu-175125;
- (4) Sh. Rakesh Bansal representing M/S Confederation of Indian Industry, M/S BBN Industries Association, M/S Parwanoo Industries Association and Nalagarh Industrial Association.
- (5) M/S Ambuja Cements Ltd., Vill. Navagraon, P.O. Jajhra, Teh-Nalagarh, Distt. Solan, H.P.-174101;
- (6) M/S Vardhman Textiles Ltd., Sai-Road, Baddi, Tehsil Nalagarh, Distt. Solan, H.P.-173205;
- (7) M/S Jaiprakash Himachal Cements Plant, Vill. Baga, P.O. Kandhar, Tehsil Arki, Distt. Solan, H.P.-171102;
- (8) Er, P.N. Bhardwaj, consumer Representative, ARCADIA, Vill. Ghat-ki-Ber P.O. Dharpur, Distt. Solan HP-173209.

....Respondents

CORAM

Subhash C Negi
CHAIRMAN
(Decided on 18.08.2015)

Counsels:-

for the petitioner/applicant:

Sh. Ramesh Chauhan, Authorized Representative

ORDER

A1: PURPOSE OF THE ORDER

- 1.1 The Himachal Pradesh State Electricity Board Limited (hereinafter referred to as 'HPSEBL') has moved a petition on 17th June, 2015 before the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred to as 'the Commission' or 'HPERC') seeking review of the Commission's Order dated 10th April, 2015 on First Annual Performance Review Order for Third MYT Control Period (FY 15 - FY 19) & Determination of Tariff for FY 2015-16 passed by the Commission in case No. 219/2014.

A2: POWER TO REVIEW

- 2.1 The Commission's powers to review its own orders flow from Section 94(1)(f) of the Electricity Act, 2003 and are the same as those conferred on a civil court by the Code of Civil Procedure (CPC). These have been spelt out in Section 114, read with Order 47, of the CPC. The review application has to necessarily meet the requirements of Section 114 and Order 47 of the CPC;
- 2.2 As per the said provisions, the specific grounds on which an order already passed can be reviewed are:
- (a) if there are mistakes or errors apparent on the face of the record, or
 - (b) on discovery of new and important matter or evidence which, after due diligence was not within the knowledge or could not be produced at the time of making the order, or
 - (c) if there exist other sufficient reasons.
- 2.3 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 it cannot be exercised on the ground that decision was erroneous on merits. But simultaneously the materials on record, which on proper consideration may justify the claim, cannot be ignored;
- 2.4 Clerical or arithmetical mistakes in judgments or orders or errors arising therein from any accidental slip or omission may at any stage be corrected by the Commission under Section 152 of the CPC, either of its own motion or on the application of any of the parties. The use of word "may" shows that no party has a right to have a clerical or arithmetical mistake corrected. The matter is left to the discretion of the Court. Such discretion is required to be exercised judiciously to make corrections necessary to meet the ends of justice. The word "accidental" qualifies the slip/ omission. Therefore, this provision cannot be invoked to correct an omission which is intentional, however erroneous. Because Section 152 does not countenance a re-argument on merits of fact or law, the Commission has the limited powers to correct any clerical or arithmetical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission.

A3: COMMISSION'S OBSERVATIONS AND ORDERS ON VARIOUS ISSUES RAISED IN THE REVIEW PETITION

3.1 The issues raised by the petitioner in respect of the Review of Commission's APR Order dated 10th April 2015, the respective observations and speaking orders of the Commission on each of these issues are as follows:-

Issue No.1: –Consideration of Incentive Grant of Rs. 132.99 Cr. from Govt of India as source of revenue

3.2 The Commission in its Tariff Order dated 10th April, 2015 has considered the amount of Rs. 132.99 Crores of incentive grant available to Himachal Pradesh from Govt. of India as a source of revenue in the ARR of HPSEBL for FY16. This grant is to be provided by Govt. of India for the development of renewable power and is in line with the recommendations of the 13th Finance Commission.

3.3 HPSEBL vide current review petition has submitted that the matter was taken up with Principal Secretary (Power) and Principal Secretary (NES) to the GoHP for the release of the aforesaid amount and no response in this regard has been received. The petitioner has requested the Commission to not consider the amount of Rs. 132.99 Crore as a source of revenue while computing the revenue gap, as the same is not likely to be received from the GoHP. However the Commission has now received letter no. NES-C(16)-1/2012 dated 3rd August, 2015 from the Additional Chief Secretary (NES), GoHP wherein he has expressed the views of Finance Department, GoHP that the Commission has erred in considering the incentive grant as receipt in the ARR of HPSEBL.

3.4 The Secretary, Govt. of India, Ministry of New and Renewable Energy vide his D.O. letter no. 8/4/2010-NT(EFM) dated 2nd January, 2015 had informed about the recommendation of the 13th Finance Commission for providing an incentive grant of Rs. Rs. 5000 Crore for grid connected renewable energy based on the achievement of various states in renewable energy capacity addition between 1st April, 2010 to 31st March, 2014. The likely incentive grant for Himachal Pradesh was calculated to be Rs. 132.99 Crores. It has also been conveyed that the incentive grant is to be utilized for strengthening Discoms for procuring renewable power & ensuring timely payment and meeting the gap in RPO compliance by procuring Renewable Energy Certificates (RECs).

3.5 This amount by definition and intent is an incentive grant and not a source of revenue to the State. The incentive grant as per MNRE communication has been calculated based on the renewable energy capacity addition from FY11 to FY14. The renewable energy capacity addition has been triggered primarily by two factors namely purchase mechanism for renewable energy and creation of required evacuation facilities.

3.6 The Commission has been fixing the Generic levelled Tariff for purchase of renewable energy by HPSEBL in accordance with Sections 61(h) and 86(e) of the Electricity Act, 2003; which cast responsibility of promotion of renewable energy upon the Commission. In view of non-viability of Renewable Energy in open market due to its higher cost, this has helped in the development of renewable in the State. Further HPSEBL has been purchasing renewable energy beyond its Renewable Power Purchase Obligation in the above period even though the cost of renewable energy is higher including the cost of network and losses. Therefore the consumers of the State have borne this additional cost.

3.7 The requisite evacuation facilities require necessary infrastructure. During the period of FY11 to FY14 creation of evacuation network mainly 33 kV and 66 kV in the distribution system by HPSEB Ltd. For this purpose the Commission had approved a capital expenditure of Rs.1795.05 Crores (Rs.309.55 Crores during FY 11 and Rs.1485.5 Crores for 2nd Control Period FY 12-14 for distribution network creation/ up-gradation). A total amount of Rs. 466.73 Crores was approved as depreciation for principal repayment as per electricity sector principles and Rs. 289.58 Crores as interest and finance charges; totalling Rs. 756.31 Crores in the Annual Revenue Requirement of HPSEBL during this period. All these charges have been passed on to the consumers through tariff. No grant was received for creation of this network from the State Govt. Also no new network has been added by HPPTCL during this period. Therefore the

Commission reiterates its stand that this incentive grant cannot be utilized by the State Govt. as a revenue receipt and the benefits of the 13th Finance Commission grant should be passed on to the HPSEBL (eventually to the consumers) who have borne entire cost of promoting renewable.

- 3.8 Procedurally the Commission could have adjusted this incentive grant towards the power purchase cost which also comprise of the power purchase cost of the renewable energy. Alternatively this grant could have been adjusted in the Depreciation and Interest & Finance charges components of ARR. However all these are procedural issues and therefore the Commission has offset this amount against the total ARR of HPSEBL.
- 3.9 The Commission feels that the responsibility for undertaking concerted efforts for release of this amount of incentive grant from the State Government lies with the HPSEBL.
- 3.10 No review is required and the issue is decided accordingly.

Issue No.2 – Return banking pertaining to FY 2014-15

- 3.11 The Petitioner has submitted that the Commission has not approved return banking obligation of HPSEBL pertaining to FY 2014-15 to the tune of 600 MUs and the same has not been accounted for while computing the demand & supply position for FY 2015-16. The net deficit for FY2015-16 should therefore be 1384.61 MUs instead of 784.61 MUs.
- 3.12 The Commission observes that the HPSEBL vide its letter no. HPSEBL/CE(Comm)/SERC-26/2015-17122 dated 17.01.2015 had informed Commission about the forward banking of 600 MUs during FY 2014-15 to be returned during FY 2015-16. However there was no specific prayer in the tariff petition for allowing the power purchase for this quantum of energy and therefore the claim of petitioner is unjustified.
- 3.13 Further it is observed that the HPSEBL undertakes number of banking arrangements (forward-banking as well as contra-banking) with the neighbouring states for managing seasonal surplus/ shortfall of power. However, for the purpose of ARR and energy balance, these transactions are considered to be completed in the same financial year as carry forwards or adjustment in this regard shall result in difficulty of accounting.
- 3.14 Also the Commission observes that while the petitioner may be required to return the quantum of power received under the banking arrangement, the Commission had approved power purchase cost against the quantum of power requirement for the previous year, which has not been utilized by HPSEBL as some of the quantum has been arranged by way of banking which is a cashless transaction. Therefore, it is believed that HPSEBL would have saved power purchase cost from previous year against such power purchase quantum which can be utilized to return its banking obligation. Any variation in power purchase cost shall be trued-up as per the audited accounts and prudence check.
- 3.15 No review is made out to this effect. This issue is decided accordingly.

Issue No.3 – Allocation of GoHP Free Power

- 3.16 HPSEBL has submitted that it had requested the GoHP to allocate free power from CGS station in order to compensate for the shortages on account of surrender of power from Tehri, Koteshwar, Parbati III, Chamera III & Koldam. However, the GoHP has turned down the request of HPSEBL and therefore due to non-availability of 622 MUs approved by the Commission, HPSEBL would not have any surplus power for interstate sale leading to a financial loss of Rs. 243.35 Cr.
- 3.17 With regard to the concern raised by the Petitioner over availability of 622 MUs additional free power considered by the Commission for FY 16, the intention in the APR Order was to urge the petitioner to procure power based on merit order principle and evaluate all options available on commercial basis. Therefore HPSEBL should weigh its

options for procuring additional GoHP Free Power on commercial principals and make appropriate efforts for the same for meeting demand-supply gap; if any, in case the GoHP has not tied-up for this capacity. However, in case of non-availability of this power, other options may be considered on commercial basis which shall form part of truing up of the respective year.

3.18 No review is made out to this effect. This issue is decided accordingly.

Issue No.4 – Surrender of costly power from Anta, Auraiya and Dadri Gas Stations

3.19 In the fourth issue, the Petitioner has submitted that the surrendering of the costly power from Anta, Auraiya and Dari gas stations is under process and letter has been written to Ministry of Power. Further, the petitioner has submitted that power from these sources shall be required during FY 2015-16 to fulfil the power requirement of the state due to non-availability of 622 MUs of GoHP free power post Bhabha scenario.

3.20 In the APR Order dated 10.04.2015, the Commission had stated:

“5.8.18 As also stated in the MYT Order for the 3rd Control Period, the Commission reiterates its intention of strategic shift in power procurement policy towards total green energy. It is observed that HPSEBL has already taken steps by way of surrendering of PPAs from thermal plants like Anta, Auraiya and Dadri. Considering the upcoming hydro stations in the State, the Commission is of the view that adequate availability of green energy shall be there for meeting the demand of the State while any shortfall can be met by procuring power from less costly conventional thermal stations.

5.8.19 Furthering the strategic intent of green energy, the Commission has considered the same while preparing the merit order for FY16. The energy from clean sources have been considered for meeting the State demand and shortfall to meet the state requirement in FY16 has been considered from GoHP equity share in Rampur, additional free power, unallocated share in CGS and less costly conventional thermal stations. While the balance power required to be procured as the PPA obligation has been considered towards contingency power as well as surplus power.”

3.21 Based on the submissions of the HPSEBL, the Commission had approved surrender of costly power from the gas-based generating stations and had considered deficit quantum to be met through alternative sources including GoHP free power, GoHP equity share in Rampur and unallocated share in central generating stations.

3.22 In line with the philosophy adopted by the Commission, it is clarified that the Petitioner is required to undertake proper planning with respect to the power procurement from various sources and the petitioner should make best efforts for arranging power from alternate sources in case of non-availability from an approved sourced. The Commission reiterates that it cannot allow HPSEBL to pass the burden of its inefficiencies to the consumers of the State on the pretext of purchase of costly power form stations with which it has entered in to PPAs. Further any variation in power procurement cost on account of this shall be considered at the time of truing-up subject to prudence check by the Commission.

3.23 The Commission declines to revise the power purchase cost for FY16. There is no error or mistake apparent on the face of record. No review is made out to this effect. This issue is decided accordingly.

Issue No.5 – Additional Revenue Gap on account of non-receipt of grant from GoHP and additional Power purchase cost

3.24 The Petitioner has submitted that an additional power purchase amounting to Rs. 78.26 Crore is required to be done to meet the shortfall of the power in the State in the absence of GoHP Free power of 622 MUs. Simultaneously there will be revenue deficit of Rs. 132.99 Crores on account of non-receipt of grant from GoHP and Rs. 243.35 Crores due

to non availability of surplus power for interstate sales. Accordingly, the HPSEBL has requested the Commission to approve additional revenue gap of Rs. 396.71 Cr. on account of these reasons.

- 3.25 As discussed in the previous paras, no review has been made out on account of the non-receipt of the grant from GoHP, additional power purchase cost or for revenue loss due to non availability of surplus power for inter-state sale. Further, the Commission feels that any variation on account of power purchase quantum and cost as well as revenue from sale of surplus power from various sources shall form a matter of true-up in line with the guidelines provided in the Himachal Pradesh Electricity Regulatory Commission (Term and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011. Therefore, no revision in power purchase cost or ARR of HPSEBL is envisaged at this stage. The fifth issued is decided accordingly.

The Petition and connected applications are accordingly disposed.

Shimla :
Dated: 18th August, 2015

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(Subhash Chander Negi)
Chairman