

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

Case No. 97 of 2014

In the matter of:-

Amendments in the Model Power Purchase Agreement for purchase of
power by HPSEBL from Small Hydro Electric Projects.

Date of Order: 1st August, 2014

CORAM
Subhash C. Negi
CHAIRMAN

ORDER

The key role of the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred to as “the HPERC” or the “Commission”) is to regulate the specified activities of the electricity industry in the State of Himachal Pradesh. Section 86 of the Electricity Act, 2003 (36 of 2003) (hereinafter referred as “the Act”), delineates the functions of the State Electricity Regulatory Commission. By virtue of Clause (b) of sub-Section (1) of the said Section, power purchase and procurement process (including procurement/purchase price) of the distribution licensee is required to be regulated by the Commission in discharge of its mandatory functions. The erstwhile H.P. State Electricity Board, under Clause (c) of sub-Section (1) of Section 22 of the Electricity Regulatory Commissions Act, 1998, (now repealed) read with guidelines issued by the Commission for preparation of Power Purchase Agreement (PPA) of the Small Hydro Projects (SHP) upto 5 MW, filed a petition with the Commission on 08th February, 2002 for approval of Model Power Purchase Agreement for projects upto 5 MW being executed by the Independent Power Producers (IPPs) in the State of Himachal Pradesh. The Commission, after the due process of public participation, approved the Model PPA subject to the modifications as stipulated in chapter 7 of Commission’s order dated 24th March, 2003. The Order approving the said Model PPA also provides for future amendments as under:

“The Commission reserves the right to review and modify the provisions of the Model PPA as more experience is gained in the implementation and performance of the specific PPAs in future. Such changes in the Model PPA, however, would have only the prospective effect.”

2. The Commission amended the Model PPA time to time as per the inputs from stakeholders. The Commission, vide its order dated 29.03.2004 in petition No.14/2003, also extended the provisions of the Commission’s orders of 24.03.2003 and 12.01.2004 to all the Small Hydro Projects upto and including 25 MW except the provisions relating to the tariff and 12% free power wherever already settled bilaterally between the IPPs and the Government of Himachal Pradesh.

The Commission, based on the proposal moved by the distribution licensee i.e. Himachal Pradesh State Electricity Board Ltd. (in brevity HPSEBL), initiated the present proposed amendments in the Model PPA, keeping in view the provisions contained in the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms & Conditions for Tariff Determinations) Regulations, 2012 (here-in-after referred as ‘RE Regulations, 2012’).

3. In relation to the proposed modifications, the public objections/ suggestions were invited, by making insertion in the leading newspapers i.e. “The Tribune” and “Amar-Ujala” dated 17th January, 2014. The public notice regarding proposal of the HPSEBL was also communicated vide letter dated 17.01.2014 to the various stakeholders,

including State Govt. and the Consumer Representative. The text of the proposal was also made available on the HPERC Website: www.hperc.org. In response, the following stakeholders have submitted their comments suggestions/objections on the proposed amendments :

- (i) The Bonafide Himachali's Hydro Power Developers Association, Sai Bhawan, Sector-IV, Phase-II, New Shimla-171009.
- (ii) The Himachal Small Hydro Power Association, Grover Cottage, Opposite Brockhurst Cottage, Chhota Shimla-171002.
- (iii) M/s Aleo Manali Hydro Power Pvt. Ltd., B-173, Sector 41, Noida-201303, NCR Delhi.
- (iv) M/s Saiurja Hydel Projects(P) Ltd., # 423, Near DAV School, Sector-4, Shivani Bhawan, New Shimla-171009.
- (v) The Himalaya Power Producers Association, C/o Gyamba House, South End, Lane -4. Sector-I, Phase-1, New Shimla-09.

4. On the objections/suggestions received from the Stakeholders, the HPSEBL have further submitted their comments on each objection/suggestion to the Commission and same were also forwarded to the objectors. The Commission issued a notice dated 07.04.2014 to the above objectors (Stakeholders) and also to the State Government, Directorate of Energy, CEO Himurja and Consumer Representative for hearing related to the proposed amendment/ modification in the Model PPA which was held on 25th April, 2014. The list of participants of the aforesaid hearing is annexed as Annexure-A to this Order.

5. The proposal received from HPSEBL for modification of the Model PPA, the relevant suggestions/objections of the stakeholders and replies of the HPSEBL thereon alongwith Commission's views have been briefly discussed in the succeeding paragraphs.

6. Definitions:

(a) **Section 2.2.9**, HPSEBL has suggested that the definition of term "Board" appearing in Section 2.2.9 should be deleted and instead the term "HPSEBL" should be defined. The Commission agrees to incorporate the same in the Model PPA. In this background Clause (a) of Section 11.2 shall also be modified.

(b) **Section 2.2.40**, HPSEBL has suggested that the definition of term 'Government Supply/Govt. Supply' should be revised as under:

"Government Supply/Govt. Supply" means the quantum of Energy which will be supplied by the Company free of cost at the Interconnection Point to the Board, as per the Implementation Agreement including subsequent Supplementary Implementation Agreements (SIA)".

M/s Saiurja has stated that the Section 2.2.40 should be at par with the arrangement proposed for changes in the name. In case changes in name is automatic based on SIA, then the proposed amendment can be accepted otherwise a Supplementary PPA shall have to be signed.

The Commission has considered the submission of M/s Saiurja Hydel Power Projects (P) Ltd. and is of the view that it is the responsibility of IPP to inform the other party of the PPA, if project developer signs SIA with the GoHP. The SIA is required to be made a part of PPA. As such, the Commission agrees to the proposal of HPSEBL in principle. However, the Commission rationalizes the definition of this term as under:

“**Government Supply/Govt. Supply**” means the quantum of electrical energy which will be supplied by the Company, free of cost, at the Interconnection Point to the HPSEBL, as per the Implementation Agreement and also includes the free power to be provided towards the Local Area Development Fund as per the instructions of the Government.”

- (c) **Section 2.2.42**, HPSEBL has suggested that the definition of “Implementation Agreement” be amended to include the subsequent Supplementary Implementation Agreement and modifications, thereto. The Commission accepts the suggestions in view of the position explained at Sr. No.(b) above.

7 Section 3.1:

- 7.1 The HPSEBL has proposed that this Section may be modified to provide that the Company shall achieve Commercial Operation of the Project within Scheduled Commercial Operation Date specified in the approved construction schedule, attached with the PPA.
- 7.2 The Bonafide Himachali’s Hydro power Developers Association and others have made submissions that the GoHP are allowing the extensions to COD on payment, for the reasons beyond the control of the project developer, and the requirement for the Company should be to achieve the Commercial Operation of the Project within the Scheduled Commercial Operation Date (SCOD) specified in the approved construction schedule attached with the PPA or the approved extended SCOD whichever is later.
- 7.3 The HPSEBL has stated that the amendment has been proposed to safeguard the interest of HPSEBL since delay in commissioning forces it to purchase costly power from the open market and that it can’t be linked with the extensions granted by HP Govt. in IA/SIA as these safeguard only their interest of free power. It has further been stated that HPSEBL will abide strictly by the provisions as per PPA and any extension given by HP Govt. afterwards is not enforceable without incorporation of same through Supplementary Power Purchase Agreement.
- 7.4 The Commission feels that any extension in the Scheduled COD as may be allowed by HP Govt. from time to time should normally be accepted by the HPSEBL also so long as the same does not entail any increase in the tariff payable. However, the Company shall be required to enter into a Supplementary PPA with HPSEBL to give effect to such extension.
- 7.5 The HPSEBL has also proposed that the provision be made under this Section to the effect that the Company shall, within six months of the Effective Date, submit to the HPSEBL, the following drawings and documents for the purpose mentioned against each, hereunder: -

Single line diagram.	For approval.
Control and Protection drawings of the generators, transformers and feeders.	For approval.
Settings of the protection relays.	For approval.
Guaranteed technical particulars of the following: -	
Main Inlet Valve	For reference
Turbine	For reference
Generator	For reference
Generator-transformer	For reference
Governor	For reference
AVR	For reference

Generator Circuit breaker	For reference
Outgoing feeder Circuit breaker	For reference
Outgoing Feeder	For reference

- 7.6 M/s Himalaya Power Producers Association have submitted that the developer is dependent upon the equipment suppliers for these inputs. The period of 6 (six) months after Effective Date of signing of PPA is practically too short a period to submit control and protection drawings of Transformers, Generators and feeders and to provide technical particulars. It has also been suggested that the approvals have to be time bound and changes/rejections have to be technically reasoned. The approving authority can be HPPTCL for interconnection with STU network or else HPSEBL for interconnection with distribution network. Authorities to be designated for approval be clearly defined.
- 7.7 The consumer representative has stressed that the HPSEBL have every right to know the technical parameters of project having PPA with the Utility and connected on the distribution system.
- 7.8 The Commission agrees with the view point of the Consumer Representative that HPSEBL have every right to know the technical parameters of the Project having PPA with it and connected on the distribution system. The Commission however, feels that this has to be subject matter of the interconnection agreement rather than the PPA as in some cases the Project may be connected to the distribution system but may not be selling power to HPSEBL. Moreover, depending upon the stage at which PPA is signed, it may not be feasible to adhere to the suggested timelines, at least in some cases. However, Schedule II to the PPA should be modified for submission of these details also in a mutually agreed time frame before Synchronization of the first Unit of the Project and also for making an enabling provision under which the HPSEBL shall be entitled to ask for any technical details relating to the Project from the developer for its reference and for better coordination, at any stage.
- 8. Section 3.3:**
- 8.1 The HPSEBL has proposed that this Section may be modified as under-
 “The Company shall enter into a separate agreement with the Board for execution, operation and maintenance of the Interconnection Facilities before (a) synchronization of the Project with HPSEBL’s grid, (b) any action is taken by HPSEBL under provisions of Article-4 and (c) constitution of the Operating Committee under provisions of Section 5.6, Article-5. The agreement shall inter-alia lay down the details of the Interconnection Facilities and also the charges and other terms and conditions for the execution, operation and maintenance of the Interconnection Facilities. In case the charges specified in the O&M agreement so executed are not deposited by the Company within the time frame specified therein, the same shall be recovered from the energy bills of the firm.”
- 8.2 M/s Aleo Manali Hydropower Pvt. Ltd. have generally accepted the proposal. However, it has been mentioned that conditions under items (b) and (c) relating to provision under Article 4 and constitution of operating committee are neither relevant nor clear and therefore are not acceptable. The Himalaya Power Producers Association is agreeable to the HPSEBL’s proposal.

- 8.3 M/s Saiurja Hydel Projects (P) Ltd. have made their submissions on following lines:
- (i) Operation and Maintenance agreements for interconnection facilities proposed by HPSEBL are essentially about the payment of charges and are skewed in the favour of HPSEBL. HPERC needs to intervene and define service levels for these operation and maintenance of interconnection facilities as these become near monopoly situations.
 - (ii) HPERC needs to intervene and define service level for these services namely operation and maintenance of interconnection facilities including availability, quality data logging and reports to be furnished.
 - (iii) IPPs may not be asked to pay the salaries of the operation and maintenance staff but for the services afforded.
 - (iv) Annual determination of these services against various service levels as per prudent utility practice is in order.

8.4 The HPSEBL has reiterated that the amendment has been proposed keeping in view that O&M agreements are not being signed by most of the IPPs and even after execution of such O&M agreements, they are deferring the payment of O&M charges on one pretext or other. It has been submitted that the service levels can be defined at the time of execution of O&M agreement through mutual discussions.

8.5 Commission's View:

The proposal is basically aimed at ensuring timely execution of O&M agreements. The Commission has laid down the timelines in its RE Regulations, 2012 which should be adhered to by the developers irrespective of the mode of disposal of power. In cases where such time limit has already expired, the HPSEBL can always insist the Company for signing of such agreement before executing the PPA. In cases where such time limit has not expired the interconnection agreement may be executed within the timelines provided for in the RE Regulations, 2012 or three months from the signing of the PPA, whichever is earlier. However, the first Synchronization of the first Unit of the Project should not, in any case, be allowed without such agreement being in place. The Commission decides to make provisions on these lines. It goes without saying that in case of delay in signing of such agreements by the developers, the HPSEBL's liability to provide Interconnection Facilities matching with the synchronization of the first Unit of the Project shall get automatically negated.

As regard the recovery of the outstanding dues under the interconnection agreement through adjustment in energy bills, the Commission feels that the same can lead to additional disputes. The HPSEBL should safeguard its interest about recovery of outstanding amount under the interconnection agreement by providing for suitable remedies in case of continued default by the developer.

The other issues raised by the objectors are important and may need to be looked into separately by Commission as these do not form the subject matter of the Model PPA.

9. Section 3.7:

- 9.1 The HPSEBL has proposed that this Section may be modified to provide that the Company shall give priority to construct the Project Line(s) till the Interconnection Point specified before starting the construction of the Project subject to Infrastructural Development Charges (IDC) as per provisions under relevant HPERC Regulations so that the same line is used for providing

construction power during the construction period and thereafter the same line can be used for evacuation of the power from the Project.

- 9.2 The Himalaya Power Producers Association and others have suggested that this provision should not be incorporated and it should be best left to the mutual understanding between the developer and the HPSEBL. It has also been stated that this provision will delay the construction of the Project as Project Line can be started only after transfer of forest land/ purchase of private land and after all other clearances. M/s Saiurja Hydel Projects(P) Ltd. have submitted that the issue will not arise in case HPSEBL can ensure better availability of its distribution networks as depicted in SAIDI, SAIFI statistics.
- 9.3 The HPSEBL has replied that the amendment has been proposed so as to utilize the same corridor for evacuation of power from the project concerned wherever possible.
- 9.4 The Commission is of the view that even though utilization of the same corridor for the purposes of construction power and evacuation of power can be a positive step, yet the same may not be feasible in all cases due to various reasons. Moreover, this may not be strictly a subject matter of the Model PPA. The Commission therefore, decides not to incorporate the changes proposed by HPSEBL in this Section. However, the Commission finds it necessary to rationalize the provisions of this Section keeping in view the fact that the issues regarding supply of construction power are to be essentially addressed as per the relevant Regulations. Accordingly, Section 3.7 and 9.2(a) shall be modified suitably.

10. Section 3.8:

- 10.1 The HPSEBL has proposed that this Section may be deleted, since the monitoring during execution, management of Hydro Power Projects and multidisciplinary committee is the subject matter which pertains to the HP Govt. and Agencies like HIMURJA, Department of Energy and Pollution Control Board etc. have been authorized by the HP Govt. for this purpose.
- 10.2 No comments have been offered by the stakeholders on the above proposal.
- 10.3 As no comments have been received on the proposal, the Commission agrees to delete the Section from the Model PPA. The Commission also finds it appropriate to rationalize the Section 3.6 relating to the communication system and shift the same to Article 5. This shall also be incorporated in Section 9.1.

11. Section 4.1:

- 11.1 The HPSEBL has, alongwith the modification proposed for Section 3.1, proposed that the following conditions should also be met before declaring a Unit to be ready for Synchronization under Section 4.1.2 -
- (iv) all the protection relays, current and potential transformers have been successfully tested through secondary and primary injection by the Board.
 - (v) the Company has entered into a separate agreement with the Board for execution, operation and maintenance of the Interconnection Facilities.
- 11.2 M/s Saiurja Hydel Projects(P) Ltd. have suggested that it may lead to unnecessary time wastage. The HPSEBL/HPPTCL may instead depute its Engineer during commissioning of the Protection and Switchgear System by the vendor after getting a fifteen days advance notice as well as detailed testing procedure. M/s

Aleo Manali Hydro Power Private Limited submits that since 4.1 (v) is already covered under Section 3.3; the same need not to be added.

- 11.3 HPSEBL has replied that as per the past experience and since the system shall become part of the Distribution Network after integration, the amended provisions proposed to be added are essentially required so as to provide safeguard as per Standard Utility Practice and to have a prudent check against use of sub-standard equipment. Further, since after the expiry of the term of the Power Purchase Agreements the Project shall be transferred to the Govt., the provisions proposed are justified to safeguard the interest of the State. It has also been mentioned that the amendments have been proposed to ascertain the completion of the essential activities prior to the Commissioning.
- 11.4 The Commission is of the view that proposed addition in Section 4.1.2(iv) relates to testing of relays etc. and may automatically be taken care of under the existing provisions. However, the proposed Section 4.1.2 (v) can be added, to ensure that the requisite O&M agreement must be in place, at the time of declaration of the first Unit to be ready for Synchronization. The Commission decides to rationalize the aforesaid Section suitably.

12. Section 4.1.6:

- 12.1 The HPSEBL has proposed that this Section may be modified to read as under-
“The Company shall conduct Commissioning Tests within fifteen (15) days from the date of synchronization, in the presence of an Independent Engineer appointed by both the parties. Thereafter, fifteen days’ trial operation of the Unit(s) shall be carried out by the Company to prove the reliability and stability of the Generating Unit(s). The Independent Engineer and the authorized representative of the HPSEBL shall submit a certificate of the tested capacity and necessary performance tests of the plant to the Chief Engineer (Commercial) HPSEBL, Vidyut Bhawan, Shimla-171004.”
- 12.2 The Bonafide Himachali’s Hydro Power Developers Association have stated that the amendment is not warranted. It has been submitted that insertion of the above requirement for 15 days trial operation shall lead to delay in achieving the Commercial Operation Date, unnecessary bureaucratic interferences and loss to the IPP as free power will flow to the licensee during the fifteen days trial period. M/s Aleo Manali hydropower private limited and M/s Saiurja Hydel Projects(P) ltd. have submitted that since independent engineer (reputed & experienced) is appointed by the HPSEBL, the induction of authorized representative of HPSEBL over & above the Independent Engineer is not justified. It has been mentioned that for IPP, HPSEBL is single entity. The Himalaya Power Producers Association have suggested that the words “Chief Engineer Commercial” should be replaced with “Chief Engineer (SO&P)” since the work stands transferred to CE(SO&P).
- 12.3 The HPSEBL has submitted that the COD of a project can be declared within 72 hours of Synchronization subject to condition that all the Commissioning Tests are completed and inspecting authorities are able to ascertain the capacity, performance of the units besides adequacy of the interconnection and evacuation arrangement. Further, HPSEBL has proposed to designate authorized officers to declare the capacity and performance of the units as per PPA conditions on their behalf.

12.4 The Commission feels that the provision for additional trial run of 15 days has been refuted with the apprehension that the same shall lead to delay in achieving the Commercial Operation Date and loss to the IPP as power will flow to the HPSEBL (Distribution Licensee) free of cost during the 15 days of trial period. During the course of hearing, the Commission informed the stakeholders that there is no provision for in firm power (energy) for SHPs. The HPSEBL is liable to pay for Net Saleable Energy after the first Unit of the Project is synchronized with the Grid for the first time. Accordingly, the Commission decides to incorporate the provision for a trial run of 15 days as suggested by HPSEBL.

13. Section 4.1.8:

13.1 The HPSEBL has proposed that this Section may be modified as under-
“The commercial operation of a Unit shall have occurred as on the date such Unit successfully completes the fifteen days’ trial operation after having passed the Commissioning Test(s) and have been duly certified by the Independent Engineer. The Superintending Engineer (Designs), Power House Electrical shall intimate the project having achieved the Commercial Operation Date (COD) which shall be further be declared by the Chief Engineer (Commercial), HPSEBL, Vidyt Bhawan, Shimla-171004.”

13.2 The Bonafide Himachali’s Hydro Power Developers Association and other stakeholders have requested for validation of their comments against Section 4.1.6 and have stated that modification of Section 4.1.8 gets automatically redundant in the event of acceptance of their objections to modification of Section 4.1.6.

13.3 The HPSEBL has submitted that the CoD of a project can be declared within 72 hours of Synchronization subject to condition that all the Commissioning tests are complete and inspecting authorities are able to ascertain the capacity, performance of the units besides adequacy of the interconnection and evacuation arrangement. Further, HPSEBL has proposed that the designated officers shall be authorized to declare the capacity and performance of the units as per PPA conditions on their behalf.

13.4 The Commission finds the proposal to be in line with the proposal of HPSEBL for Section 4.1.6 and the Commission accepts the same in principle.

14. Section 4.1.9:

14.1 The HPSEBL has proposed that the words “and subject to provisions under Section 16.3 (shortfall in tested capacities)” be inserted in this Section relating to situations where the commercial operation is delayed after synchronization.

14.2 M/s Aleo Manali Hydro Power Private Limited have submitted that the existing Section is OK and that reference to Section 16.3 here does not serve any purpose. The HPSEBL has however replied that the amendment proposed is only a cross reference to concerned Section which shall be applicable for any shortfall in the tested capacity.

14.3 The Commission finds that Section 16.3 which is proposed to be referred in this Section relates to payment of liquidated damages in case where the Company fails to achieve the required contracted capacity within a period of 90 days from the date of Commercial Operation of the Unit/Project. Since, the Section 4.1.9 relates to the situation where the developer fails to achieve Commercial Operation Date within the prescribed time limit after the first Synchronization of the last Unit of

the Project, the proposed insertion may only lead to ambiguities. The Section 16.3 shall come into picture only after the Commercial Operation Date of all the Units has occurred. Accordingly, the Commission declines to accept the HPSEBL's proposal.

15. Section 6.1:

15.1 The HPSEBL has proposed that first para of Section 6.1 may be modified as under-

“From the Date of Synchronization of the first Unit of the Project, the Company shall supply the electrical energy from the Project at the Interconnection Point/ Deemed Interconnection Point. The Government Supply including 1% energy towards LADF shall be delivered by the Company to the HPSEBL at the Interconnection Point free of cost. The Company shall sell and the HPSEBL shall purchase at the Interconnection Point the Net Saleable Energy i.e. the Energy received from the Project at the Interconnection Point subject to maximum of 110% of rated installed capacity less the Government Supply.”

15.2 The Bonafide Himachali's Hydro Power Developers Association, M/s Aleo Manali Hydro Power Private Limited and the Himalaya Power Producers Association have objected to the proposed amendment on the following lines:

- (i) The Himachal Pradesh Power Policy/Rules validate power generation in excess of the rated capacity by 20% i.e. generation up to 120% of the rated capacity does not attract any penalty/penal action/license fee.
- (ii) The analysis of generation from SHPs commissioned in last three years shall reveal that most of them have generated less power than projected in the DPR. Restriction in maximum generation will reduce the viability of the future SHP projects.
- (iii) The hydro generating units shall be capable of generating upto 110% of rated capacity (subject to rated head being available) on continuous basis.
- (iv) Regulation 32 (2) of CEA Regulations titled “Technical Standards for Construction on Hydro Electric Generating Stations” provides that “the maximum continuous overload capacity of the Unit at the generator terminals during the high head conditions or high discharge conditions or both as guaranteed by the manufacturer shall be based on hydraulic parameter of the station”. The equipment manufacturers design the Generator Unit in such a way that it is able to run upto 30% maximum continuous overload to tap the potential.
- (v) In cases where the developer is selling the power in the market based on market rates like APPC, Open Access etc., this capping should not be done as the developer is not protected by the Preferential Tariff but is prone to market risks. No capping on generated energy should be done atleast for such projects who sell power at market rate.
- (vi) Capping of the generation to 110% of rated installed capacity will lead to untapped potential of the stream during monsoons, lower generation and hence lower share of free power to the State Government. It will also lead to lower achievement of PLF than the norms fixed by Commission and make the Small Hydro Projects absolutely unviable.
- (vii) The Himalaya Power Producer Association has suggested that the maximum limit should be 130% of the rated installed capacity instead of 110%.

15.3 The HPSEBL has responded on these objections/suggestions on the following lines:

- (i) As per standard practice being followed in HPSEBL also, the installed capacity of the generating units is rated capacity +10% continuous overload. The interconnection and evacuation arrangement is also being built up accordingly. The proposed amendment has been made keeping in view the same.
 - (ii) It has been observed that IPPs are achieving generation at rated capacity + 20% (or even more) continuous overload. This indicates that IPPs are using higher capacity machines and generating with continuous 20% or even more overload. IPPs are mis-declaring their capacity thus putting strain on HPSEBL evacuation system.
 - (iii) In case of under drawl by HPSEBL at State periphery, HPSEBL is being directed to back down its own generation and facing financial loss whereas the IPPs are enjoying 20% or even more overload at that time.
 - (iv) By using higher rated machines, the IPPs are misleading the HP Govt. also by not utilizing the higher water availability and by not paying the royalty and fees etc. as per installed machines.
 - (v) The amendment has been proposed in order to bring the IPPs at par with HPSEBL system, safeguard the HPSEBL network of evacuation and also to check the practice of IPPs using higher rated machines with higher continuous overload putting HPSEBL and HP Govt. at financial loss. Existing higher installed capacity of the IPPs can be put on check through use of SEMs and analyzing their generation data.
- 15.4 During the course of hearing also, the HPSEBL officers reiterated their stand on the subject. It was however also informed by the representative of HPSEBL that even though presently the system is adequate to handle such cases, but in future, this issue needs to be addressed.
- 15.5 The consumer representative suggested that the Commission may take a balanced decision on this proposal. On one hand, the apprehensions shown by the HPSEBL are right as far as evacuation system is concerned and on the other hand, the IPPs have valid concerns.
- 15.6 Commission's View:
- (i) As brought out in the foregoing paras, the term Govt. supply as per Section 2.2.40 shall be suitably amended to clarify that such supply shall also include the free power on account of Local Area Development Fund. Accordingly the proposed addition of the words "including 1% energy towards LADF" in this Section shall not be necessary.
 - (ii) The suggestion regarding inclusion of the words deemed interconnection point shall be taken care of by adding a new Section under Article 4 to provide as under:-

"INTERIM ARRANGEMENT FOR EVACUATION OF POWER
In case power cannot be evacuated from the Project at the Interconnection Point due to non commissioning of the Project Line, non availability of evacuation system beyond the Interconnection Point or any other technical constraints, the Parties may mutually agree to an interim arrangement, alongwith the terms and conditions thereof, for evacuation of power from the Project till such time the same can be evacuated under the regular arrangement envisaged in the Agreement. However, the Deemed Generation benefit under Section 6.4 or any other provisions of the Agreement shall not be available to the Company for the period during which power is evacuated under such interim arrangement."
 - (iii) As regard the suggestion for including the words "subject to maximum of 110% of rated installed capacity" the Commission feels that it may not be fair to include

any restrictive provisions in the PPA particularly when it is our National Policy to promote renewables. Since this Section provides for purchase of Net Saleable Energy, it may not be appropriate to include these words in this Section keeping in view the fact that SHPs have been considered as must run projects at the Central level and even otherwise also adequate safeguards are available to HPSEBL under the Model PPA.

16. Section 6.2:

16.1 The HPSEBL has proposed that provision should be made that it pays only for the energy corresponding to the rated installed capacity plus 10% overload capacity of the plant. The maximum power generated by the power plant can be ascertained/ verified by installing ABT meters with logging of power generated at fifteen minutes intervals at the Interconnection Point. This Section has been proposed to be modified as under-

“The HPSEBL shall pay for the Net Saleable Energy delivered by the Company to the HPSEBL at the Interconnection Point, subject to maximum of 110% of rated installed capacity, at a fixed rate of Rs. _____ (Rupees _____) per Kilowatt hour with/ without accelerated depreciation benefit and before/ after adjustment for capital subsidy as per sub-regulations 45.3 of Regulation 45 of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations 2012. The rate is firm and fixed without indexation and escalation and shall not be changed due to any reasons except for provisions under Regulation 19 of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations 2012.”

16.2 M/s Aleo Manali Hydro Power Private Limited, the Himalaya Power Producers Association and the Himachal Small Hydro Power Producers Association have made submissions on similar lines as discussed under para 15 in relation to Section 6.1. M/s Saiurja Hydrel Projects(P) Ltd. have stated as under:

- (i) The proposal is ambiguous and forecloses HPSEBL’s option of requisitioning higher generation. Constraint is important only if there is contention for the transmission capacity. Due to changes in hydrology some of the projects are able to achieve the desired designed energy only by operating at 120% of the capacity during peak generation season.
- (ii) It is also not equitable as HPSEBL has a waiver for Grid failures of 480 hours which is in excess of 8%-9% of the generation time including the start time for outages less than 20 minutes. Further machine outages and floods etc. take away another 5%-10% of the generation time.
- (iii) If at all, then this curtailment be tagged to the improved grid availability and be implemented only in case HPSEBL ensures Grid availability higher than 97%.
- (iv) In view of the higher PLF assumed in the tariff calculation, such restriction coupled with loss of generation time (10% to 15%) shall significantly impact the viability of a number of SHPs.

16.3 The HPSEBL has also made submissions on similar lines as under Section 6.1.

16.4 In view of the discussion under preceding para 15 , the Commission declines to accept the HPSEBL’s proposal that HPSEBL should pay only for the energy corresponding to the rated installed capacity plus 10% overload capacity of the

plant particularly when it shall otherwise also be un-lawful to refuse payment for the energy actually received. The Commission however accepts in principle the proposal regarding amendment of the last sentence of the Section 6.2 of the existing Model PPA as the same would make these provisions in conformity with the RE Regulations, 2012. However, the detailed provision shall be included in Section 8.8 and in this Section, only reference to Section 8.8 shall be made .

17. Section 6.4:

17.1 The HPSEBL has proposed that the last para of Section 6.4 relating to Deemed Generation, may be modified as under-

“The HPSEBL shall pay for the Saleable Deemed Generation only in case of permanent interconnection point, worked out on the basis of Deemed Generation on above lines, at a fixed rate specified in Section 6.2 above on monthly basis. Further, in case of interim Interconnection point/Deemed Inter connection Point specified as stop gap arrangement; no Deemed Generation shall be applicable.”

17.2 The Himalaya Power Producers Association has submitted that the Deemed Energy should be paid in case there is delay in the construction of Interconnection Point by HPSEBL beyond the schedule agreed to and appended with PPA or delays in projects as a result of reasons beyond the control of IPP and officially allowed by the HP Govt. M/s Saiurja Hydel Projects(P) Ltd. has also suggested that Deemed Energy should be paid in case there is delay in the construction of Interconnection Point by HPSEBL beyond the schedule agreed to and appended with the PPA.

17.3 The HPSEBL has responded that in order to compensate the IPPs for loss of generation during normal course in absence of permanent allotted Interconnection Point, it has been stated that the IPP can't get benefitted twice and hence deemed energy will not be applicable.

17.4 The Commission is of the view that HPSEBL should not be liable to pay any Deemed Generation under the PPA in cases where interconnection is allowed as an interim arrangement. However, in case of any delays under the interconnection agreement, the matter can be dealt as per the terms and conditions under that agreement. The provision relating to interim arrangements for interconnection may be incorporated in shape of a separate Section under Article 4. Such a provision can also be helpful in a situation, apart from others situations, where the Company may intend to Synchronization a Unit before the Scheduled Date. Accordingly, reference to proposed new Section shall be included in the existing Section 4.1.1 also. As regard the rate for payment of the Saleable Deemed Generation, the Commission agrees to the proposal of the HPSEBL in principle and shall make suitable changes in the Model PPA. However, the Commission also finds it appropriate to define the saleable component of the Deemed Generation as Net Saleable Deemed Generation and shall accordingly substitute the Clause 2.2.62 (Saleable Deemed Generation) with Net Saleable Deemed Generation. Moreover, the term Transmission Losses as defined under Clause 2.2.72 shall be rationalized and substituted with the term 'Project Line Losses' as under:-

“**Project Line Losses**” means the difference of the electrical energy measured at the sending end and receiving end of Project Line (i.e. the Station and the Interconnection Point) and these Losses shall be deemed to be 0.7% of the

Deemed Generation for the purpose of computing the Net Saleable Deemed Generation.”

18. Section 7.1:

The HPSEBL has proposed that ABT/smart meters with AMI interface should be installed. The Commission feels that the provisions based on the proposal for including the specifications of meters need to be incorporated in Section 7.2 keeping in view the fact that the definition of term Main Meter also refers to Section 7.2.

19. Section 7.2:

19.1 The HPSEBL has proposed that the following para be added at the end of the Section -

“In case HPSEBL at later stage decides to install Advanced Metering Infrastructure (AMI) or online reading of the both the meters through Automatic Meter Reading (AMR), further, to be connected to the SAP system at Data Center, Shimla for automatic billing, payment and improving the billing/ payment cycle, the Company shall have no objection to same.”

19.2 M/s Aleo Manali Hydro Power Private Limited and the Himachal Small Hydro Power Association have submitted that they have no objection if AMI/AMR is provided and the cost is borne by the HPSEBL. M/s Saiurja Hydel Projects(P) Ltd. have submitted that AMI/AMR arrangements and hardware as well as policies need to be defined before changes can be accepted.

19.3 The HPSEBL has submitted that such a provision has been proposed in order to bring transparency in the billing and reduce the time cycle of energy bill generation and payment by bringing the technology available. Further, efforts are to make the system at par with the system being implemented in HPSEBL through ERP. This will help the IPPs to improve the payment cycle and reduce inefficiencies in the system by bringing standardization. It has further been mentioned that the HPSEBL henceforth suggests to use SEMs for Main and Check Meters for the new Projects falling under the provisions of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012. As regards the cost of metering system it has been mentioned that as per existing provisions, the cost at metering level is to be shared between IPP and HPSEBL. However, the central solution for AMI/ AMR and billing is to be borne by HPSEBL.

19.4 The Commission agrees to the proposal in principle as it is a forward step towards adoption of Emerging Technology in the Power Sector. However, since the requirements/specification may undergo changes from time to time, the Commission shall only include a general provision to the effect that Main and Check Meter as per Section 7.1 shall be capable of measuring and recording the parameters for various time/frequency blocks as per Prudent Utility Practices and shall conform to the specifications and requirements based on the latest available technology as may be adopted by the HPSEBL from time to time and that these shall include, without limitation,-

- xxxx
- xxxx
- features of ABT/Smart meters with interface for Advance Metering Infrastructure (AMI) as may be stipulated by HPSEBL; and
- any other requirement as per Central Electricity Authority (Installation and Operation of Meters)Regulations, 2006.

20. Section 7.3:

20.1 The HPSEBL has proposed that this Section may be modified as under-
“The copies of certified results of the factory calibration tests for the Main Meter and the Check Meter conducted in accordance with Prudent Utility Practices shall be provided by each concerned Party to the other Party. The Company as well as the HPSEBL shall keep requisite sets of metering equipment, duly tested/calibrated, as spares, for replacement as and when required. Main Meter or Check Meter shall be replaced by spare set of meter after every six months. Meters installed at the time of replacement shall be reversed i.e. Main Meter shall become Check Meter and vice versa.”

- 20.2 M/s Aleo Manali Hydropower Private Limited have suggested that –
- (i) the six monthly testing of main & check meter (this is current practice though not specified in current PPA) is neither desirable nor useful. The testing of one meter costs about Rs 13,500/-. This does not include cost of time and travel of IPP, HPSEBL engineer & cost related to M&T for removal/installation & travel etc.;
 - (ii) in almost all power generating SHPs, no error/error within acceptable norms has been seen in test reports of meters tested by PGCIL labs;
 - (iii) such type of meter testing is not done for large/bulk power consumers, who consume electricity comparable to average generation from SHPs;
 - (iv) the meter testing may be done in situ by portable test meters by HPSEBL if so desired;
 - (v) the existing Section 7.5 (a) seems to be OK, expect removal of six monthly testing & addition of average of main & test meter reading (if they are within acceptable error limit). This will take care of the ambiguity in test and main meter readings and the issue of interchanging them.

The Himalaya Power Producers Association has suggested that the copies of certified results of the factory calibration test for the Main Meter and the Check Meter conducted in accordance with Prudent Utility Practices shall be provided by each concerned Party to the other Party. The Company as well as HPSEBL shall keep requisite sets of metering equipment, duly tested/calibrated, as spares, for replacement as and when required. Main Meter or Check Meter shall be replaced by spare set of meter after every one year.

M/s Saiurja Hydel Projects(P) Ltd. have submitted also suggested that they are agreeable to the proposal of HPSEBL.

- 20.3 The HPSEBL has replied that the change over time for main and check meters can be increased to one year. However, it is suggested that without changing the physical connections, the main meter will become Check Meter and Check Meter will become Main Meter after every six months for energy recording purpose. Further, the input will be used from the same set of CT/ PT unit.
- 20.4 The Commission agrees to the proposal of the HPSEBL so far as it relates to interchange of Main and Check Meters after every six month. However, mandatory replacement of meters with spare meters after every six months is not accepted.

21. Section 7.15:

21.1 The HPSEBL has proposed that the following para shall be added at the end of Section 7.15 as under-

“In case the meters are read remotely after installation of AMI/AMR, no JMR shall be done at the Interconnection Point. In that case, the corrections factors, if required due to difference beyond permissible limits, shall be applied as per various provisions under this Article. Further, the readings of the main and check meters recorded remotely shall be shared with the Company as per arrangement mutually agreed.”

21.2 M/s Saiurja Hydel Projects(P) Ltd. have suggested that as HPSEBL’s processes are still not in place, AMR method and timelines should be agreed to separately and supplementary PPA be signed.

21.3 The HPSEBL has replied that, in its opinion, in case of implementation of AMI/AMR, there will not be any requirement for JMR and the readings can be shared with the IPPs, if required. Further, any change due to these will be effected through Supplementary Power Purchase Agreement. The MRI data recorded at that particular time can be used to be signed by both parties and used to prepare the monthly energy bills by the IPPs.

21.4 The Commission feels that the requirement of joint meter readings cannot be totally dispensed with. However, the modalities to be followed in case of installation of AMI/AMR can be mutually agreed between the Parties as and when such arrangement is put in place. A general provision to this effect shall be made in shape of a new Section at the end of Article 7.

22. Section 7.18:

22.1 The HPSEBL has proposed that a new Section 7.18 may be added in the Model PPA in the Article 7 i.e. ‘Metering Standards and Testing’ as under-
“In case AMI/ AMR is implemented at any stage by HPSEBL, all the Sections pertaining to JMR and subsequent actions by designated field officers/ officials of HPSEBL pertaining to JMR shall be treated as not applicable.”

22.2 M/s Saiurja Hydel Projects (P) Ltd. have suggested that as HPSEBL’s processes are still not in place AMR method and timelines should be agreed to separately and Supplementary PPA be signed.

22.3 The HPSEBL has submitted same reply as above on objections/suggestions for section 7.15.

22.4 The Commission feels that addition proposed by HPSEBL under this Section is not required in view of the discussion under para 21. However, a general provision shall be made on the lines discussed under para 21.

23. Section 8.1,8.2 and 8.3:

23.1 The HPSEBL has proposed changes in these Sections to account for the following provisions of the RE Regulations, 2012: -

- (i) the due date for payment of bill shall be 60 days from the date of billing.
- (ii) for payment of bills of the renewable energy generator through letter of credit, a rebate of 2% shall be allowed.
- (iii) where payments are made other than through Letter of Credit within a period of 30 days of presentation of bills by the renewable energy generator, rebate of 1% shall be allowed.

23.2 M/s Saiurja Hydel Projects(P) Ltd. have submitted that there is no basis for the change and is not acceptable. It has been mentioned that unilateral changes are not

in line with principles of natural justice or in conformity with the terms of loans and equity investment available to the IPP. The Himalaya Power Producers Association and M/s Aleo Manali Hydropower Private Limited have suggested that the existing provision need not to be replaced and M/s Aleo Manali Hydropower Private Limited have suggested that late payment surcharge be 1.25% per month at compound interest rate instead of simple interest.

- 23.3 The HPSEBL has replied that the amendments proposed are as per Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations 2012
- 23.4 The Commission accepts, in principle, the HPSEBL's proposal for amendments in these Sections and shall suitably incorporate the same in the Model PPA duly taking into account the basis intent of the provisions of RE Regulations, 2012.

24 Section 8.8.

- 24.1 The HPSEBL has proposed that this Section relating to 'LEVIES, TAXES, DUTIES, CESS ETC' may be replaced/modified as under:

“Tariff shall be inclusive of all Taxes and duties and shall not be subjected to any change except for the provisions specified as under which shall be firm and shall not be subject to any review.

- 1) Impact of any change(s) in the rate of free power under the general policy for allotment of sites, but only to the extent permitted under RE Regulations, 2012 and further within the limit of 13% as per the National tariff policy and/or National hydro policy, shall be payable/adjustable as per the provisions of RE Regulations, 2012.
- 2) If, there is any change on the following parameters considered for determination of generic levelised tariff for the control period under RE Regulations, 2012:
 - (i) A water cess or tax on generation is levied which impacts all or any of the projects, and /or
 - (ii) The limit of 13% for the pass through of free power in the tariff, as per the National Hydro Policy/Tariff Policy is revised, and/or
 - (iii) The mechanism or the quantum of the capital subsidy or budgetary grant mentioned in regulation 21 of RE Regulations, 2012 is changed as a matter of policy, and/or
 - (iv) The State Government revises its instructions with regard to the minimum flow of water downstream of diversion structure of the SHPs and implements the same.”

- 24.2 M/s Saiurja Hydel Projects (P) ltd. have submitted that original provisions of the Model PPA be retained. The HPSEBL has however replied that the proposed amendment is in line with the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012.
- 24.3 The Commission accepts the HPSBL's proposal in principle as this is in conformity with the provisions of RE Regulations, 2012.

25. Section 9.1 (g):

- 25.1 HPSEBL has proposed that this clause 9.1 (g) should be modified to read as under—

“(g)enter into a separate agreement with the Board for the implementation of Interconnection Facilities before Commercial Operation Date of the project.”

- 25.2 M/s Saiurja Hydel Projects(P) Ltd. have made submissions on similar lines as given in another para dealing with the subject.
- 25.3 The HPSEBL has replied that the amendment has been proposed keeping in view that the O&M agreements are not being signed by most of the IPPs and even after execution of the O&M agreement, they are deferring the payment of O&M charges on one pretext or other.
- 25.4 The Commission accepts the HPSEBL’s proposal in principle. However, the timelines for execution of the interconnection agreement shall be in line with the provisions of Section 3.3. As regards the service levels and charges under the interconnection agreement, the Commission feels that this does not form subject matter of the Model PPA.

26. Sections 10.1:

- 26.1 The HPSEBL has proposed that the term of the Agreement be linked with the Commercial Operation Date (CoD) of the first Unit of the Project instead of the Synchronization Date thereof and has suggested this Section should read as under

–
“The Agreement shall become effective upon execution and delivery by the Parties hereto and unless earlier terminated pursuant to provisions of the Agreement, shall have a term from the date hereof until forty (40) years after the Commercial Operation Date (CoD) of the first Unit of the Project.”

- 26.2 The Himalaya Power Producers Association has submitted that this “has to be as per IA and any subsequent agreement with Government of Himachal Pradesh. Concession period can be curtailed by Government.”
- 26.3 The HPSEBL has replied that the Power Purchase Agreement is drawn from the Implementation Agreement executed with the HP Govt. and similarly any change in Implementation Agreement conditions has to be incorporated through Supplementary Power Purchase Agreement to make it legally enforceable. However, the term of PPA can’t be changed as and when required. This will affect its long term power purchase requirements quite often, which is neither desirable nor in the benefit of the consumers of the State.
- 26.4 The Commission declines to accept the HPSEBL’s proposal to link the term of the Agreement with Commercial Operation as the same may lead to conflict with the timelines normally followed in the Implementation Agreements. However, the definition of the terms ‘Scheduled Synchronization Date’ and ‘Synchronization Date’ under Sections 2.2.65 and 2.2.68 shall be modified slightly by adding the words “for the first time” so as to provide more clarity.

27. Section 13.1:

- 27.1 HPSEBL has suggested that Sections 13.1(a) and 13.2 be modified on following lines:

(i) Section 13.1(a) has been proposed to be modified as under:

“(a) either Party shall give to the other a written notice setting out the material particulars of the Dispute and requiring an authorized senior executive officer each from the HPSEBL and the Company, to meet personally at Shimla, Himachal Pradesh, India or at any other mutually agreed place within twenty (20) working days of the date of receipt of such notice by the relevant Party to attempt, in good faith, negotiation and using their best endeavours at all times, to resolve the Dispute. Subject to the prior concurrence of the competent authority of the each Party, the settlement, evidencing the resolution of the dispute shall be reduced in writing and signed by the senior executive officers of both the Parties.”

- (ii) Section 13.2 (a) has been proposed to be modified as under:
- (a) Except as otherwise provided in the Agreement, all Disputes arising out of or relating to the Agreement, as are not resolved during the period as per Section 13.1, shall be adjudicated upon or referred to arbitration by the Commission as per Section 86 (1) (f) read with Section 158 of the Electricity Act, 2003.
- (iii) Section 13.2 (b) has been proposed to be deleted and rest of the numbers to be re-arranged accordingly.
- 27.2 M/s Saiurja Hydel Projects(P) Ltd. have submitted with reference to Section 13.1(a) that authorized senior representatives should have the requisite authorities else the consultations be held with the competent authority in real, finite time and not based on assumption of unlimited time. It has also been suggested that that original Sections be retained as the existing Section 13.1(b) is superior to amendments being proposed, and the rationale for amendments is not clear.
- 27.3 The HPSEBL has submitted reply on objections/suggestions that the amendment has been proposed to reduce the litigations in absence of settlement of the resolution which will benefit the IPPs as well as the HPSEBL. It has also been stated that deletion of Section 13.2(b) has been proposed in view of proposed reference to Section 158 of Electricity Act 2003 in Section 13.2 (a), which itself refers to the Arbitration and Reconciliation Act, 1996.
- 27.4 The Commission finds it appropriate to modify the provisions under Article 13 as under:

**“ARTICLE 13
RESOLUTION OF DISPUTES**

13.1 GOOD FAITH NEGOTIATIONS

In the event of a dispute, disagreement or difference (a "Dispute"), arising out of or relating to the Agreement between the Parties, in respect of which a procedure for the resolution of the Dispute is not otherwise provided for in this Agreement, the following provisions shall apply:

- (a) either Party shall give to the other a written notice setting out the material particulars of the Dispute and requiring nomination of an authorized senior executive officer each from the HPSEBL and the Company, to meet personally at Shimla, Himachal Pradesh, India or at any other mutually agreed place, to attempt, in good faith negotiations and using their best endeavors at all times, to arrive at mutually acceptable recommendations to facilitate resolution of the Dispute;

- (b) the Parties shall nominate their Senior Executive (s) within 7 days from the date of delivery of the notice, as per (a) above and the Senior Executive(s) so nominated shall meet personally within 15 days thereafter at Shimla, or any other mutually agreed place for carrying out such good faith negotiation;
- (c) if the Senior Executives succeed in arriving at a mutually acceptable recommendations to facilitate resolution of the Dispute, they shall jointly reduce such recommendations in writing and shall submit the same to their respective Chief Executive Officers for acceptance thereof;
- (d) the provisions of the succeeding clause (e) shall apply–
 - (i) if the Party receiving notice under clause (a) fails to nominate its Senior Executive Officer for good faith negotiation within a period of 30 days after the receipt of such notice from the other Party; or
 - (ii) if the Senior Executive Officers nominated under clause (b) fail to arrive at any mutually acceptable recommendations to facilitate resolution of the Dispute, as evidenced by the terms of the settlement being reduced to writing and signed by them within 30 (Thirty) working days after the date of receipt of the notice mentioned in clause (a); or
 - (iii) if the recommendations jointly signed by the Senior Executives of both the Parties under clause (c) above are not accepted by the respective Chief Executive Officers within 30 working days from the date on which such recommendations are so made; or
 - (iv) if the Senior Executive Officers, after having been nominated under clause (b), fail to meet personally for good faith negotiations within 30 working days from such nomination:

Provided that in case where the relevant time limit(s) mentioned in sub-clauses (i) to (iv) of clause (d), is mutually extended, the provisions of clause (e) shall apply after expiry of such extended time limits;

- (e) after the expiry of the relevant time limits mentioned in clause (d), either Party may give notice to the other requiring, the Chief Executive Officers of both the Parties to meet at Shimla or at any other mutually agreed place within thirty (30) working days to attempt, in good faith, negotiations and using their best endeavor at all times to resolve the Dispute within a further period of 60 (sixty) days and if the Dispute is still not resolved as evidenced by the terms of the settlement being reduced to writing and signed by both the Chief Executive Officers, then the provisions of Section 13.2 shall apply, unless the said period is mutually extended.

13.2 **ARBITRATION**

- (a) Except as otherwise provided in the Agreement, or in the Electricity Act, 2003, all Disputes arising out of or relating to the Agreement, as are not resolved during the period as per Section 13.1, shall be adjudicated upon or referred to arbitration by the Commission as per Section 86 (1) (f) of the Electricity Act, 2003 read with section 158 thereof.
- (b) The arbitration shall be initiated/conducted at Shimla, India. The Laws of India shall govern the validity, interpretation, provisions contained in the Agreement.
- (c) Judgement upon the award rendered in such arbitration and/or for any interim relief or direction or otherwise, during the pendency of arbitration proceedings and upto the date of making of the award in such arbitration, may be entered in any court of competent jurisdiction, at Shimla, having jurisdiction in respect of any application made for the filing of the arbitration agreement.

13.3 **JURISDICTION**

All legal proceedings arising and in connection with this Agreement shall be subject to the jurisdiction of the Himachal Pradesh High Court and its subordinate courts in the state of Himachal Pradesh, irrespective of the place of performance/execution of the Agreement. In respect of the matters falling in the purview of State Commissions under the Electricity Act, 2003, the Commission shall be the Appropriate Commission.”

28. Section 15.1:

28.1 The HPSEBL has proposed that this Section may be modified as under:-

“The Agreement can be amended only with the written consent of both the Parties and shall become enforceable only after approval of the Himachal Pradesh Electricity Regulatory Commission.”

28.2 Himalaya Power Producers Association have submitted that the proposal is not agreeable.

28.3 The Commission declines to make any changes in this Section as it is felt that in all such cases where prior approval of the Commission is required before execution of any Agreement or Supplementary Agreement, the Parties should obtain such prior approval before execution of any such agreement.

29. Section 15.19:

29.1 The HPSEBL has proposed that the Section 15.19 may be deleted as in the event of captive use of the power generated from the project during the currency of the agreement with HPSEBL, the Renewable Power Purchase Obligations of HPSEBL will be disturbed.

29.2 M/s Saiurja Hydel Project(s) Ltd. have commented that the rationale is not tenable as there is no dearth of renewable energy in HP and HPSEBL is refusing to buy power from the renewables on the pretext that the RPO is met.

29.3 HPSEBL has replied on objections/suggestions on the following lines:

- (i) As per Hydro Power Policy 2006, amended up to date, it is not mandatory for HPSEBL to purchase power from every IPP.
- (ii) In order to safeguard its interest of Renewable Power Purchase Obligations, HPSEBL can't allow the IPPs, who execute PPAs on Generic Levelled Tariff to go out of Power Purchase Agreement to make captive use during agreement period which will further disturb the RPPOs.
- (iii) IPPs have now various options to dispose off its renewable energy through Open Access or Captive use or third party sale outside State etc and they may not prefer to sell their power to HPSEBL on long term basis. So saying that there is no dearth of renewable energy in HP is not true with reference to HPSEBL.

29.4 The Commission feels that now since many other modes of disposal of power, such as open access, REC mechanism, third party sale, are available to the SHPs, it shall only be fair, if the existing Section is deleted as proposed by HPSEBL. The developers intending to make captive use of the power at any subsequent stage during the useful life of the project can adopt any of the other options for disposal of power during the interim periods instead of going for long-term PPA with the HPSEBL. The Commission accordingly decides to delete this Section from the Model PPA.

30. Section 16.2:

- 30.1 The HPSEBL has proposed that this provision should be modified to provide that-
- (i) the scheduled date of Commercial Operation should be reckoned strictly as per the schedule attached to this agreement and irrespective of the extension provided by the HP Govt. through Implementation Agreement.
 - (ii) the maximum limit of liquidated damages should be increased from 180 days to 240 days.

30.2 M/s Himalaya Power Producers Association and M/s Saiurja Hydel Projects(P) Ltd. have suggested that delays condoned and accepted by State authorities be accepted and that the extension provided by the HP Government has to be accounted for as the provision of IA override the provision of the PPA. M/s Aleo Manali Hydropower Private Limited are agreeable to the proposal subject to the conditions that the liquidated damages are reduced to Rs.100 per MW per day and should be linked with IA/SIA period.

30.3 The HPSEBL has given comments on the following lines:

- (i) the Liquidated Damages @ Rs. 1,000/- per MW per day are deterrent to avoid delays in CoD and are as per Standard Practice. Further, the Liquidated Damages are meant to safeguard the interest of HPSEBL since delay in commissioning forces HPSEBL to reschedule its power purchase and purchase costly power from the open market. It has been stated that it can't be linked with the extensions granted by HP Govt. in IA/SIA which safeguard only their interest of free power.
- (ii) the HPSEBL will abide strictly by the provisions as per PPA and any extension given by the HP Govt. afterwards is not enforceable without incorporation of same through Supplementary Power Purchase Agreement.

30.4 Commission's View:

The Commission does not find it appropriate to carry out the proposed amendment to increase the limit of liquidated damages from 180 days to 240 days in view that -

- (i) even the change in limit from 180 days to 240 days shall not serve any useful propose,
- (ii) the generic levelled tariff payable by the developer remains unchanged even if the Project gets delayed,
- (iii) the developer is, in any case, required to get the approval of the HP Govt. for the revised construction schedule in case of delays,
- (iv) as regards the power planning, HPSEBL can project the requirements realistically keeping in view the actual status of completion of the projects for which PPA have been executed.

Accordingly, the existing provisions shall be retained. The issues regarding the execution of Supplementary PPA in case of approval of construction schedule by HP Govt. has been dealt in a separate part of this order.

31. Schedule-II:

The HPSEBL has suggested certain changes in Schedule II relating to the technical limits. No Comments, except those under para 7, have been received on the proposal. The Commission decides to rationalize this schedule by including the suggested changes and provisions for submission of the additional drawing and documents as referred to HPSEBL's proposal under Section 3.1. Enabling provisions for submission of any additional technical particulars, as may be

specifically required by HPSEBL at any stage, by the developer shall also be included.

- 32. Modification/amendment proposed by M/s Saiurja Hydel Projects(P) Ltd -**
M/S Saiurja Hydel Projects (P) Ltd. have, in addition to their forgoing suggestions, also made suggestions relating to operation of power plant in isolated modes. They have also suggested that the limits of monthly outage durations beyond which deemed generation shall be applicable, should be reduced based on improved performance trajectory laid down by HPERC. It has been suggested that these should not be frozen for 40 years and that separate lower limits should be applicable in case of isolated operation as the isolated load operation is detrimental to machine life. The Commission feels that these issues do not form the subject matter of the proposals which are presently under its consideration. The limits for deemed generation were originally fixed after due consideration.

33. Additional Modifications:

During the course of the discussions on the proposals of the HPSEBL, the Commission observes that some more Clauses of the Model PPA also need to be modified so as to rationalize such provisions. In this background, the Commission decides to make the changes on the following lines-

- (a) the existing Model PPA requires the developer to furnish -
- (i) bank guarantee for an amount of Rs.3.5 lakhs per MW at least 3 months before the Scheduled Date of Synchronization (Section 16.4); and
 - (ii) bank guarantee for an amount of 20 lakhs per MW on completion of debt servicing period or ten years from the Commercial Operation Date, whichever is earlier (sub-Section 9.1(k)).

The Commission does not find much justification in asking for such bank guarantees from the developer who in any case, has to invest considerable amount on the Project. Accordingly, the Commission decides to delete section 9.1(k) and to substitute Section 16.4 by making provisions for recovery of the liquidated damages by way of adjustment against the monthly bills as under:-

“16.4 CLAIMS FOR LIQUIDATED DAMAGES

The HPSEBL shall raise claim(s) for liquidated damages as per section 16.2 and 16.3 soon after Commercial Operation Date of the Project and shall, in the event of non-payment of the same by the Company within a period of 90 days from the date on which such claims are raised, recover the amount payable by the Company on this account by way of adjustment(s) against the amount of monthly bills received by it from the Company for the sale of Net Saleable Energy:

Provided that no such adjustment shall be commenced until the expiry of 120 days from the date on which such claims is raised;

Provided further that HPSEBL shall restrict the amount to be adjusted on this account against the energy bill for any Billing Month to 10% of the amount of such monthly bill and the balance dues, if any, shall be adjusted by HPSEBL against the monthly bills for the subsequent Billing Months;

Provided further that the Company shall not be liable to pay any interest/surcharge for late payment, so long as the adjustments are made within the above stated timelines.”

(b) In Article 10 –

(i) For clause (d) of section 10.6, the following shall be substituted-

“Following the delivery of a “Company Termination Notice” in respect of the HPSEBL default described in Section 10.4 (c), the Company shall have the right to enter into agreements, with the approval of the HPSEBL (which permission will not be unreasonably withheld), to sell any portion of the Net Saleable Energy (ensuring Govt. Supply to HPSEBL) to any person to the extent permitted by law and so long as the HPSEBL Event of Default continues.”

(ii) for Section 10.7.2 the following shall be substituted:-

“(a) If the Agreement is terminated in accordance with Section 10.6 on account of Company Event of Default as per Section 10.3, the Company shall, at the HPSEBL's option, sell the Project to the HPSEBL, subject to the fulfillment of undischarged liabilities for the past as well as balance period of the Agreement on mutually agreed basis and if the Parties are unable to arrive at a mutual agreement, the Dispute with respect of undischarged liabilities, shall be addressed as per Article 13.

(b) The HPSEBL may exercise such option (Buy-Out Option), subject to the lenders' rights under the Agreement, at any time within 120 days after the HPSEBL delivers the HPSEBL Termination Notice to the Company:

Provided that, if the Commission is satisfied that there is doubt with regard to the genuineness of the Company Event of Default, it may apply due diligence and prudence test or alternatively adjudicate upon the matter or refer the matter for arbitration, in order to arrive at just and fair conclusion with regard to the genuineness of the Event.”

(iii) Sub-Section 10.7.4 and Section 10.8 shall be omitted.

(c) Sub-Section 11.2(a) shall be substituted as under:

“ the HPSEBL is an entity duly licensed under the Electricity Act 2003 and validity existing under the Laws of India and has all requisite legal power and authority to execute the Agreement and to carry out the terms, conditions and provisions hereof;”

34. The Commission also finds it appropriate to work out a Composite Model PPA which will also take care of the situations specific to the tariff options under which the Parties may like to sell/purchase the Net Saleable Energy. The additional provisions/modifications in various Sections of the Model PPA, as set out in para 36 of this order and as applicable, can be incorporated in the PPA, depending upon the arrangements under which long term PPA is to be entered into.

35. The Commission, after carefully hearing and examining the suggestions/objections of stakeholders and replies filed by the HPSEBL and taking into the consideration the views expressed in the foregoing paras, hereby orders the following modifications in the Model Power Purchase Agreement for Small Hydel Projects upto and including 25 MW capacity in the State of Himachal Pradesh, -

(a) In the recital of Model PPA paras 2 and 4, shall be substituted as under.-

(i) “The Himachal Pradesh State Electricity HPSEBL Ltd., a company incorporated and registered under the Companies Act, 1956 (1 of 1956) having its registered office at Vidyut Bhawan, Shimla-171004 (hereinafter

referred to as “HPSEBL”, which expression shall, unless repugnant to the context or meaning thereof, also includes their successors, permitted assigns and legal representatives), through Chief Engineer (.....) , who is duly authorized by the HPSEBL vide their resolution/order dated (Annexure –II) to execute this Agreement, of the Second Part;”

- (ii) “Whereas the Government Supply, as defined hereinafter, in the shape of free power (energy) is deliverable, free of cost, at the Interconnection Point, by the Company, as per Implementation Agreement including subsequent Supplementary Implementation Agreements; and”
- (b) in the text of the Model PPA the expression “Board”, wherever it occurs shall be substituted with the expression “HPSEBL”, unless context otherwise requires;
- (c) In Article 2- “Definitions and Interpretation”-
 - (i) the existing Sections 2.2.9, 2.2.10 and 2.2.11 shall be omitted.
 - (ii) in the existing sub-Section 2.2.29 for the word, bracket and figure “thirty(30)”, the word, bracket and figure “sixty (60)” shall be substituted .
 - (iii) for sub-Section 2.2.40, the following shall be substituted-

“**Government Supply/Govt. Supply**” means the quantum of electrical energy which will be supplied by the Company, free of cost, at the Interconnection Point to the HPSEBL, as per the Implementation Agreement and also includes the free power to be provided towards the Local Area Development Fund as per the instructions of the Government.”
 - (iv) after existing sub-Section 2.2.41 the following shall be inserted-

“**HPSEBL**” means Himachal Pradesh State Electricity Board Ltd., a company incorporated and registered under the Companies Act, 1956, having its Head Office at Vidyut Bhawan, Shimla-171004, which is also a successor entity of the erstwhile Himachal Pradesh State Electricity Board, as per sub-Section (2) of Section 131 of the Electricity Act, 2003, and shall, also include their successors, permitted assigns and legal representatives.

“**HPSEBL Event of Default**” means occurrence and continuation of any of the events listed in Section 10.4 unless any such event occurs as a result of Force Majeure event or breach by the Company of its obligations under this Agreement.

“**HPSEBL Termination Notice**” means a notice given by the HPSEBL to the Company pursuant to Section 10.6(a).”
 - (v) for existing sub-Section 2.2.42 the following shall be substituted-

“**Implementation Agreement**” means the agreement dated entered into between the Company and the Government for implementation of _____ Hydroelectric Project and also includes the Supplementary Implementation Agreement and subsequent modifications thereto.”
 - (vi) after the existing sub-Section 2.2.49 the following shall be inserted-

“**Net Saleable Deemed Generation**” means the saleable component of the Deemed Generation, as set out in Section 6.4, after deducting therefrom, on deemed basis, the corresponding quantum of the Govt. supply, auxiliary consumption, transformation losses, and the Project Line Losses. The Deemed Generation and the Net Saleable Deemed Generation shall be reconciled and signed by the designated officers of the Parties on monthly basis in accordance with Section 7.16. The determination of Energy quantum qualifying for payment(s) by the HPSEBL to the

Company on account of Net Saleable Deemed Generation shall be strictly done in accordance with the stipulations under Section 6.4.”

- (vii) after existing sub-Section 2.2.57 the following shall be added-
“**“Project Line Losses”** means the difference of the electrical energy measured at the sending end and receiving end of Project Line (i.e. the Station and the Interconnection Point) and these Losses shall be deemed to be 0.7% of the Deemed Generation for the purpose of computing the Net Saleable Deemed Generation.”
- (viii) the existing sub-Section 2.2.62 shall be omitted.
- (ix) For the existing sub-Section 2.2.65 and 2.2.68 the following shall be substituted-

“**“Scheduled Synchronization Date/Scheduled Date of Synchronization”** means the date by which the Company schedules to Synchronize and connect the Unit, for the first time, with the Grid System as per the provisions of the Implementation Agreement.

“**“Synchronization Date(s)/Date of Synchronization”** means with respect to each Unit, the date on which each such Unit is Synchronized and connected, for the first time, to the Grid System.”

- (ix) The existing sub-Section 2.2.72 shall be omitted.

(d) In Article 3-

- (i) for Section 3.1 the following shall be substituted -

“3.1 The Company shall design and construct the Project in accordance with the Prudent Utility Practices, relevant technical standards and specifications and also in line with the provisions of Approved DPR, after obtaining all requisite approvals. The Company shall achieve Commercial Operation of the Project within Scheduled Commercial Operation Date as per the approved construction schedule, attached with this Agreement, and ensure that the Project is capable of being Despatched, delivering Active and Reactive Power as per Despatch Instructions and of being operated in parallel with the Grid System as per Prudent Utility Practices. The Company shall also ensure delivery of power at the Interconnection Point in a safe and reliable manner so as to avoid fluctuations and disturbances to the Grid System due to parallel operation. In the event of revision of construction schedule by the Company and approval thereof by the Government through supplementary Implementation Agreement (SIA), the Company shall sign Supplementary Power Purchase Agreement with the HPSEBL to make such SIA a part of this Agreement. However, there shall be no direct or indirect increase in the tariff payable by the HPSEBL on account of any such revision in the construction schedule.”

- (ii) for Section 3.3 the following shall be substituted -

“The Company shall enter into a separate agreement with the HPSEBL and any other entities owning the System where connectivity is to be provided, within the timelines specified in the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determinations) Regulations, 2012 or in three (3) months from the Effective Date, whichever is earlier, for execution, operation and maintenance of the Interconnection Facilities. The agreement shall inter-alia lay down the details of the Interconnection Facilities and also the charges and other terms and conditions for the execution, operation and maintenance of the Interconnection Facilities, duly taking into account the principles, if any, laid down by the Commission.”

- (iii) the existing Section 3.6 shall be omitted.
- (iv) for the existing Section 3.7 the following shall be substituted:

“The HPSEBL shall, on receipt of application from the Company, expeditiously provide construction power to the Project at the cost of the Company in accordance with the provisions of the Electricity Act, 2003 and the Regulations made thereunder.”

- (v) the existing Section 3.8 shall be omitted.
- (e) In Article 4-
 - (i) for sub-Sections 4.1.1 and 4.1.2 the following shall be substituted-

“4.1.1 The Company shall give the HPSEBL at least sixty (60) days advance written notice of the date on which it intends to Synchronize a Unit to the Grid System. In case the Company intends to Synchronize a Unit earlier than the Scheduled Synchronization Date for the first Unit, such notice shall be given at least 180 days in advance. If power cannot be evacuated smoothly under the regular arrangement envisaged in the Agreement, the Parties may mutually agree to an interim arrangement as per the provisions of Section 4.4.

4.1.2 Subject to Section 4.1.1, the Company shall declare a Unit to be ready for Synchronization with the Grid System when:-

- (i) it has been installed in accordance with the required technical specifications and Prudent Utility Practices;
 - (ii) it meets all related conditions prescribed in applicable Indian Standard(s)/Code(s) then in effect and otherwise meets the provisions of the Electricity Act, 2003 and the Rules or Regulations framed thereunder, or any other requirements for Synchronization to the Grid System;
 - (iii) it is capable of being operated safely and the Company has obtained the approval of the Chief Electrical Inspector of the Government for energisation; and
 - (iv) the Company has entered into a separate agreement for execution, operation and maintenance of the Interconnection Facilities as per Section 3.3.”
- (ii) for Sections 4.1.6 , 4.1.7 and 4.1.8, the following shall be substituted :-

“4.2 COMMISSIONING TESTS:

4.2.1 After a Unit has been successfully Synchronized with the Grid System, the Company shall further give atleast seven (7) days notice by fax followed by registered mail to the HPSEBL of the exact date(s) on which Commissioning Test(s) will commence. The HPSEBL shall designate its authorized representative to observe these test(s).

4.2.2 The Company shall conduct Commissioning Tests within fifteen (15) days from the Synchronization Date, in the presence of an Independent Engineer appointed by both the Parties and the authorized representative of HPSEBL. The Independent Engineer and the authorized representative of the HPSEBL shall submit a certificate of the Tested Capacity and necessary performance tests of the plant to the Chief

Engineer (Commercial) HPSEBL, or to any other authority as may be designated by the HPSEBL. After successful completion of the Commissioning Tests, trial operation of the Unit(s) shall be carried out by the Company for a period of 15 days to establish the reliability and stability of the Generating Unit(s). The Company shall also furnish a copy of the Test results and the report regarding trial operation to the HPSEBL.

4.3 COMMERCIAL OPERATION

4.3.1 The Commercial Operation of a Unit shall have occurred as on the date such Unit successfully completes, after having passed Commissioning Test(s) as per Section 4.1.7, the fifteen days' trial operation as certified by the Superintendent Engineer (Design) Power House (Electrical), HPSEBL (or any officer as may be designated by HPSEBL) and accepted by the Chief Engineer (Commercial) HPSEBL, or any other Chief Engineer designated by HPSEBL for the purpose, under intimation to the Company.”

- (iii) the following Section 4.4 shall be inserted:

“INTERIM ARRANGEMENT FOR EVACUATION OF POWER

In case power cannot be evacuated from the Project at the Interconnection Point due to non commissioning of the Project Line, non availability of evacuation system beyond the Interconnection Point or any other technical constraints, the Parties may mutually agree to an interim arrangement, alongwith the terms and conditions thereof, for evacuation of power from the Project till such time the same can be evacuated under the regular arrangement envisaged in the Agreement. However, the Deemed Generation benefit under Section 6.4 or any other provisions of the Agreement shall not be available to the Company for the period during which power is evacuated under such interim arrangement.”

- (f) In Article 5 the following new Section shall be added in lieu of deletion of Section 3.6-

“For proper and prompt co-ordination and efficient load management, the Company shall provide and maintain adequate and reliable speech and online data communication systems between the Station andkV sub-station of the HPSEBL at _____ and also between the Station and the Control Centre.”

- (g) In Article 6 –

(i) for the existing Section 6.2 the following shall be substituted depending upon the tariff option under which PPA is to be signed. In this connection, para 36 of this order be also referred to-

“6.2 TARIFF FOR NET SALEABLE ENERGY

The HPSEBL shall pay for the Net Saleable delivered and sold to it by the Company at the Interconnection Point at a fixed rate of Rs..... per kWh. This rate also accounts for-

- (i) the Government Supply including Free Power/Energy/(for Home State) @-----% for years and% for next years in addition to % free power towards the Local Area Development Fund;
- (ii) capital subsidy @ Rs.....;

- (iii) accelerated depreciation benefit @ paise per kWh based on accelerated depreciation @ %. (i.e. rate without adjustment of accelerated benefit less rate with accelerated benefits); and
- (iv) mandatory water discharge downstream from the diversion structure of the Project based on the instructions of the State Government which presently provide that for the purpose of determination minimum discharge, the threshold value not less than of the minimum inflow observed in the lean season shall be considered.

This rate of Rs.... per kWh is firm and fixed and shall not be subject to any indexation, escalation, adjustment or review due to any reason whatsoever except for specific provisions under Section 8.8.

(Complete details with regard to items (i) to (iv) above to be given).

- (ii) for the last para of Section 6.4 the following shall be substituted-
“The HPSEBL shall pay for the Net Saleable Deemed Generation, worked out on the basis of Deemed Generation on above lines, at a rate payable for Net Saleable Energy as per Section 6.2 above, on monthly basis.

Explanation: The provisions of this Section 6.4 shall not be applicable in respect of the period in which power from the Project is evacuated under an interim arrangement in accordance with Section 4.4.”

(h) In Article 7 –

- (i) for the existing Section 7.2 the following shall be substituted -
“Main and Check Meters as per Section 7.1 shall be capable of measuring and recording the parameters for various time/frequency blocks as per Prudent Utility Practices and shall conform to the specifications and requirements based on the latest available technology as may be adopted by the HPSEBL from time to time. This shall, without limitations, include the following:-

- (i) Active Energy (kWh) and Reactive Energy (kVarh);
- (ii) instantaneous voltage, current and power factor;
- (iii) frequency;
- (iv) maximum demand in kVA/kW for each Demand Period and for the total period since last reset;
- (v) kWh/kVAh since last reading;
- (vi) real time and time of day metering; and
- (vii) number of resets;
- (viii) features of ABT/Smart meters with interface for Advance Metering Infrastructure (AMI) as may be stipulated by HPSEBL; and
- (ix) any other requirements as per Central Electricity Authority (Installation and Operation of Meters)Regulations, 2006.

Meters will have facilities for reset. The metering system shall be independent of phase sequence reversal, C.T. polarity reversal and shall also give an indication in case of missing P.T. potential. The metering system shall also be capable to record export and import data separately. Accuracy class for Active Energy measurement shall be 0.2 as defined in applicable IEC/ Indian standards. For all other values, the accuracy class shall be as per Prudent Utility Practices.

In case HPSEBL, at any later stage, decides to install Advanced Metering Infrastructure (AMI) for online reading of the both the meters through Automatic

Meter Reading (AMR), and further connectivity to the SAP System at Data Center, Shimla for automatic billing and payment, the Company shall have no objection to the same.”

(ii) at the end of the existing Section 7.3, the following sub-para shall be added -

“The Main Meter and Check Meter shall be interchanged after every six months i.e. Main Meter shall become Check Meter and vice versa.”

(iii) at the end, following Section 7.18 shall be added-

“7.18 In case the meters are read remotely after installation of Automatic Meter Reading/ Advanced Metering Infrastructure, the Parties shall enter into a supplementary Agreement to provide for modalities to be followed for recording/reconciling the joint meter readings/meter readings.”

(i) In Article 8 –

(i) in second para of Section 8.1 for the figure and word “30 days”, the figure and word “60 days” shall be substituted.

(ii) for the existing Sections 8.2 and 8.3 the following shall be substituted -

“8.2 REBATE

If the payment of bill is made before the Due Date of Payment, the HPSEBL shall be entitled for rebate on the amount paid before the Due Date of Payment at the following rate-

i) where payment is made through letter of credit within 7 days of the Date of Presentation of Bill by the Company, rebate of 2% shall be applicable. For this purpose, the Parties may also mutually agree to a mechanism for payment of the Bill through letter of credit without waiting for expiry of the Due Date of Payment.

ii) where the conditions as per (i) above are not met and payment is made within 30 days from the Date of Presentation of the Bill by the Company, rebate of 1% shall be applicable.

8.3 LATE PAYMENTS

In case the payment of any bill for charges payable under this Agreement is delayed beyond a period of 60 days from the Date of Presentation of the Bill, a late payment surcharge at the simple interest rate of 1.25% per month shall be charged by the Company for the actual number of days by which the payment is delayed.”

(iii) for the existing Section 8.8, the following shall be substituted:-

“8.8 LEVIES, TAXES, DUTIES, CESS ETC.

(1) Save as provided in Sub-Sections (2) and (3) of this Section, the per kWh rate mentioned in Section 6.2 shall be firm and shall not be subject to any review.

(2) In the event of any change in the structure of free power (Govt. Supply) for the Project from that considered in the per kWh rate under Section 6.2, the HPSEBL shall adjust the said rate, but only to the extent of permissible limits as per the formula and other terms and conditions contained in Regulation 35 of the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determinations) Regulations, 2012.”

(3) If after the Effective Date:-

- i) a water cess or tax on generation is levied which impacts all or any of the projects, and /or
- ii) the limit of 13% for the pass through of the Government Supply (free power) in the tariff, as per the National Hydro Policy/Tariff Policy is revised, and/or
- iii) the mechanism or the quantum of the capital subsidy or budgetary grant mentioned in Section 6.2 and regulation 21 of HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determinations) Regulations, 2012 is changed as a matter of policy, and/or
- iv) the State Government revises its instructions with regard to the minimum flow of water downstream of diversion structure of the Small Hydro Projects and implements the same;

and, taking into consideration these factors, the Commission reviews the tariff by a general order for a group of projects covering the Project also or by a specific order for the Project for any period in accordance with sub-Regulation 3 of Regulation 19 of the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determinations) Regulations, 2012, such revised rate, along with the terms and conditions, as ordered by the Commission shall be applicable for the period for which it is so ordered by the Commission.”

(j) In Article 9 –

- (i) for Clause (g) of Section 9.1 the following shall be substituted:
“enter into a separate agreement for the implementation of Interconnection Facilities, within the timelines given in Section 3.3;”
- (ii) the clause (k) of Section 9.1 shall be omitted.
- (iii) at the end of Section 9.1 the following new Clause shall be inserted-
“provide and maintain adequate and reliable speech and online data communication systems between the Station andkV sub-station of the HPSEBL at _____ and also between the Station and the Control Centre, for proper and prompt co-ordination and efficient load management.”
- (iii) for Clause (a) of Section 9.2 the following shall be substituted-
“expeditiously provide, on receipt of application from the Company, construction power to the Project at the cost of the Company in accordance with the provisions of the Electricity Act, 2003 and the Regulations made thereunder ;”

(k) In Article 10-

- (i) For clause (d) of section 10.6, the following shall be substituted-

“Following the delivery of a “Company Termination Notice” in respect of the HPSEBL default described in Section 10.4 (c), the Company shall have the right to enter into agreements, with the approval of the HPSEBL (which permission will not be unreasonably withheld), to sell any portion of the Net Saleable Energy (ensuring Govt. Supply to HPSEBL) to any person to the extent permitted by law and so long as the HPSEBL Event of Default continues.”

- (ii) for Section 10.7.2 the following shall be substituted:-

“10.7.2 TERMINATION ON ACCOUNT OF COMPANY EVENT OF DEFAULT -

- (a) If the Agreement is terminated in accordance with Section 10.6 on account of Company Event of Default as per Section 10.3, the Company shall, at the HPSEBL's option, sell the Project to the HPSEBL, subject to the fulfillment of undischarged liabilities for the past as well as balance period of the Agreement on mutually agreed basis and if the Parties are unable to arrive at a mutual agreement, the Dispute with respect to the undischarged liabilities, shall be addressed as per Article 13.
- (b) The HPSEBL may exercise such option (Buy-Out Option), subject to the lenders' rights under the Agreement, at any time within 120 days after the HPSEBL delivers the HPSEBL Termination Notice to the Company:

Provided that, if the Commission is satisfied that there is doubt with regard to the genuineness of the Company Event of Default, it may apply due diligence and prudence test or alternatively adjudicate upon the matter or refer the matter for arbitration, in order to arrive at just and fair conclusion with regard to the genuineness of the Event.”

(iii) sub-Section 10.7.4 and Section 10.8 shall be omitted.

- (l) For sub-Section 11.2(a) the following shall be substituted :
- “ the HPSEBL is an entity duly licensed under the Electricity Act 2003 and validity existing under the Laws of India and has all requisite legal power and authority to execute the Agreement and to carry out the terms, conditions and provisions hereof;”
- (m) In Article 13-
- (i) For the existing Article 13 the following shall be substituted:-

**“ARTICLE 13
RESOLUTION OF DISPUTES”**

13.1 GOOD FAITH NEGOTIATIONS

In the event of a dispute, disagreement or difference (a "Dispute"), arising out of or relating to the Agreement between the Parties, in respect of which a procedure for the resolution of the Dispute is not otherwise provided for in this Agreement, the following provisions shall apply:

- (a) either Party shall give to the other a written notice setting out the material particulars of the Dispute and requiring nomination of an authorized senior executive officer each from the HPSEBL and the Company, to meet personally at Shimla, Himachal Pradesh, India or at any other mutually agreed place, to attempt, in good faith negotiations and using their best endeavors at all times, to arrive at mutually acceptable recommendations to facilitate resolution of the Dispute;
- (b) the Parties shall nominate their Senior Executive (s) within 7 days from the date of delivery of the notice, as per (a) above and the Senior Executive(s) so nominated shall meet personally within 15 days thereafter at Shimla, or any other mutually agreed place for carrying out such good faith negotiation;

- (c) if the Senior Executives succeed in arriving at a mutually acceptable recommendations to facilitate resolution of the Dispute, they shall jointly reduce such recommendations in writing and shall submit the same to their respective Chief Executive Officers for acceptance thereof;
- (d) the provisions of the succeeding clause (e) shall apply–
 - (i) if the Party receiving notice under clause (a) fails to nominate its Senior Executive Officer for good faith negotiation within a period of 30 days after the receipt of such notice from the other Party; or
 - (ii) if the Senior Executive Officers nominated under clause (b) fail to arrive at any mutually acceptable recommendations to facilitate resolution of the Dispute, as evidenced by the terms of the settlement being reduced to writing and signed by them within 30 (Thirty) working days after the date of receipt of the notice mentioned in clause (a); or
 - (iii) if the recommendations jointly signed by the Senior Executives of both the Parties under clause (c) above are not accepted by the respective Chief Executive Officers within 30 working days from the date on which such recommendations are so made; or
 - (iv) if the Senior Executive Officers, after having been nominated under clause (b), fail to meet personally for good faith negotiations within 30 working days from such nomination:

Provided that in case where the relevant time limit(s) mentioned in sub-clauses (i) to (iv) of clause (d), is mutually extended, the provisions of clause (e) shall apply after expiry of such extended time limits;

- (e) after the expiry of the relevant time limits mentioned in clause (d), either Party may give notice to the other requiring, the Chief Executive Officers of both the Parties to meet at Shimla or at any other mutually agreed place within thirty (30) working days to attempt, in good faith, negotiations and using their best endeavor at all times to resolve the Dispute within a further period of 60 (sixty) days and if the Dispute is still not resolved as evidenced by the terms of the settlement being reduced to writing and signed by both the Chief Executive Officers, then the provisions of Section 13.2 shall apply, unless the said period is mutually extended.

13.2 **ARBITRATION**

- (a) Except as otherwise provided in the Agreement, or in the Electricity Act, 2003, all Disputes arising out of or relating to the Agreement, as are not resolved during the period as per Section 13.1, shall be adjudicated upon or referred to arbitration by the Commission as per Section 86 (1) (f) of the Electricity Act, 2003 read with section 158 thereof.
- (b) The arbitration shall be initiated/conducted at Shimla, India. The Laws of India shall govern the validity, interpretation, provisions contained in the Agreement.
- (c) Judgement upon the award rendered in such arbitration and/or for any interim relief or direction or otherwise, during the pendency of arbitration proceedings and upto the date of making of the award in such arbitration, may be entered in any court of competent jurisdiction, at Shimla, having jurisdiction in respect of any application made for the filing of the arbitration agreement.

13.3 **JURISDICTION**

All legal proceedings arising and in connection with this Agreement shall be subject to the jurisdiction of the Himachal Pradesh High Court and its subordinate courts in the state of Himachal Pradesh, irrespective of the place of

performance/execution of the Agreement. In respect of the matters falling in the purview of State Commissions under the Electricity Act, 2003, the Commission shall be the Appropriate Commission.”

- (n) The existing Section 15.19 shall be omitted.
- (o) For Sections 16.4 and 16.5 the following shall be substituted :-

“16.4 CLAIMS FOR LIQUIDATED DAMAGES

The HPSEBL shall raise claim(s) for liquidated damages as per section 16.2 and 16.3 soon after Commercial Operation Date of the Project and shall, in the event of non-payment of the same by the Company within a period of 90 days from the date on which such claims are raised, recover the amount payable by the Company on this account by way of adjustment(s) against the amount of monthly bills received by it from the Company for the sale of Net Saleable Energy:

Provided that no such adjustment shall be commenced until the expiry of 120 days from the date on which such claims is raised;

Provided further that HPSEBL shall restrict the amount to be adjusted on this account against the energy bill for any Billing Month to 10% of the amount of such monthly bill and the balance dues, if any, shall be adjusted by HPSEBL against the monthly bills for the subsequent Billing Months;

Provided further that the Company shall not be liable to pay any interest/surcharge for late payment, so long as the adjustments are made within the above stated timelines.

16.5 MIS – DECLARATION OF AVAILABILITY

In the case of mis-declaration of Available Capacity, the Company shall be liable to pay Liquidated Damages for double of the difference between declared availability and the actual availability for the entire period with effect from the time of declaration of the present availability at the rate as mentioned in the Section 6.2 of this Agreement.”

- (p) For the Schedule-II the following shall be substituted -

“Schedule-II

TECHNICAL LIMITS AND TECHNICAL PARAMETERS

- 1. Electrical System Characteristics:**
 - (i) Grid Voltage :
 - (ii) Grid Frequency :
 - (iii) Power Factor :
- 2. Capacity of Generating Equipment:**
 - i) Rated Output in KW :
 - ii) Continuous overload rating in KW :
 - iii) Rated Power factor (Lagging) :
 - iv) Rated Power factor (Leading) :
 - v) Maximum reactive load (Lagging) :
 - vi) Maximum reactive load (Leading) :

3. **Minimum Stable Load for a Unit** :
4. **Startup Time:**
 - (i) Maximum Time for Cold Start :
 - (ii) Maximum Start-up time :
 - (iii) Maximum Interval for restart of each time :
5. **Drawing and other documents**
 - (i) Single line diagram.
 - (ii) Control and Protection drawings of the generators, transformers and feeders.
 - (iii) Settings of the protection relays.
 - (iv) Guaranteed technical particulars of the following: -
 - Main Inlet Valve;
 - Turbine;
 - Generator;
 - Generator-transformer;
 - Governor;
 - AVR;
 - Generator Circuit breaker;
 - Outgoing feeder Circuit breaker; and
 - Outgoing Feeder; etc.

Notes: (1) The above details shall be submitted by the Company to HPSEBL within 15 months from the Effective Date or within any other date as may be mutually agreed between the Parties duly keeping in view the time period between the Effective Date and Scheduled Synchronization Date of the first Unit of the Project. The HPSEBL shall send its comments, if any, on such details, to the Company, within 3 month after receipt of the same, for necessary action by Company.

(2) The HPSEBL may require the Company to submit any other technical details or drawings etc. relating to Project, as it may consider necessary, at any stage during the term of the Agreement.

- (q) The changes in cross references and the numberings of various Section/sub-Section and clauses etc., as may be required in view of above amendments, shall be suitably incorporated.

36. As mentioned in para 34 also, the Commission also considers it appropriate to work out a Composite Model PPA for SHPs which can be used under various options available to the Parties. The Commission observes that RE Regulations, 2012 inter alia provide that “the following tariff options, subject to mutual acceptance of both the Parties, shall be available to the renewable energy generator and the distribution licensee, intending to sell/ purchase power from SHPs for the entire useful life of the Project ,-

- “(i) to be governed by the generic levellised tariff to be determined by the Commission, in accordance with the regulation 13, in relation to the control period in which the Power Purchase Agreement for the project is approved.
- (ii) to be governed by project specific levellised tariff to be determined by the Commission in accordance with the regulations 14 and 18, including the exit options available thereunder to the parties,
- (iii) to be governed by any other tariff, as may be mutually agreed by them with the prior approval of the Commission, in accordance with the regulation 41.
- (iv) to be governed by the process of competitive bidding in cases where the licensee resorts to competitive bidding.”

(2) The aforesaid Regulations also provide that “Where, after sale of net saleable energy to the licensee as per the Power Purchase Agreement(s) approved by the Commission under REC mechanism in the initial periods, the net saleable energy is to be sold to the distribution licensee for the residual period of the useful life of the project, the tariff for such sale for such residual period shall be regulated in accordance with the regulation 15.”

The Commission feels that the PPA based on tariff options under item (iii) and (iv) above may have to incorporate the tariff related Clauses specifically based on the mutual agreement/price discovered under the competitive bidding. However, the tariff related Clauses can be broadly generalised in case of the other three options viz -

- (a) where the Parties agree to be governed by the Generic levelled tariff (hereinafter referred to as case A).
- (b) where the Parties agree to be governed by the REC Mechanism in the initial years and by generic levelled rate for the balance term (hereinafter referred to as case B).
- (c) where the Parties agree to be governed by Project specific tariff including the exit option (hereinafter referred to as case C).

In order to meet the specific requirement under each of these three options, the Commission also orders the inclusion of the following specific modifications in the Model PPA. The specific Clauses relevant to the respective options shall however, only be inserted in the Model PPA.

- (i) the following shall be inserted as the third last para in the recital to be Model PPA:

***for Case ‘A’ (i.e. for PPA under Generic Levelled Tariff) :**

“Whereas the Parties have agreed that such sale/purchase of Energy shall be governed by the generic levelled tariff, including associated terms and conditions, determined by the Commission in accordance with Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012; and”

OR

***for Case ‘B’ (i.e. for PPA providing for sale under REC mechanism in the initial period of the total term and generic levelled tariff for the balance term):-**

“Whereas the Parties have agreed that such sale/purchase of Energy shall be governed by the Renewable Energy Certificate Mechanism (REC Mechanism) for the first Years, or any other mutually agreed period, from the Synchronisation Date of the first Unit of Project, and thereafter, for the balance term of the Agreement, by the generic levelled tariff, including associated terms and conditions, determined by the Commission in accordance with Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012; and”

OR

***for Case ‘C’ (i.e. for PPA under Project specific levelled tariff, including exit option to the Parties):-**

“Whereas the Parties have agreed that such sale/purchase of Energy shall be governed by the Project specific levelled tariff, including the associated terms and conditions, to be determined by the Commission in accordance with Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms

and Conditions for Tariff Determination) Regulations, 2012 and also by the exit option available to the Parties under the said Regulations; and

*(Note : Apply whichever is relevant and delete which are not applicable.)”

(ii) In Article (2), the following definition shall be added-
“**Pooled Cost of Purchase or Average Pooled Purchased Cost (APPC)**” means the weighted average pooled price, as determined by the Himachal Pradesh Electricity Regulatory Commission, at which the distribution licensee has purchased the electricity including the cost of self generation, if any, in the previous year from all the energy suppliers, long-term and short term, but excluding those based on renewable energy sources, as the case may be, or as specified from time to time.”

(iii) for the first para of Section 6.1 the following shall be substituted-

***for Case ‘A’ (i.e. for PPA under Generic Levellised Tariff) :**

“SUPPLY OF POWER

From the Date of Synchronization of the first Unit of the Project, the Company shall deliver the electrical Energy from the Project at the Interconnection Point. The Government Supply shall be delivered by the Company to the HPSEBL at the Interconnection Point free of cost. The Company shall sell and the HPSEBL shall purchase at the Interconnection Point, the Net Saleable Energy i.e. the Energy received from the Project at the Interconnection Point less the Government Supply.”

OR

***for Case ‘B’ (i.e. for PPA under REC mechanism in the initial period of the total term and generic levellised period for the balance term):-**

“SUPPLY OF POWER

From the Date of Synchronization of the first Unit of the Project, the Company shall deliver the electrical Energy from the Project at the Interconnection Point. The Government Supply shall be delivered by the Company to the HPSEBL at the Interconnection Point free of cost. The Company shall sell and the HPSEBL shall purchase at the Interconnection Point, the Net Saleable Energy i.e. the Energy received from the Project at the Interconnection Point less the Government Supply. These provisions for sale and purchase of Energy shall be applicable for the entire term of the Agreement, as per Section 10.1, from the Synchronization Date of the first Unit of the Project. Out of the total duration, as aforesaid, for the first years, or upto any other mutually extended period, from the Synchronization Date of the first Unit of the Project, the Net Saleable Energy shall be sold and purchased by the respective Parties under REC Mechanism and thereafter, for balance term of the Agreement, under the other long term arrangements for sale and purchase of Energy as per this Agreement.”

OR

***for Case ‘C’ (i.e. for PPA under Project specific levellised tariff, including exit option to the Parties):-**

“SUPPLY OF POWER

From the Date of Synchronization of the first Unit of the Project, the Company shall deliver the electrical Energy from the Project at the

Interconnection Point. The Government Supply shall be delivered by the Company to the HPSEBL at the Interconnection Point free of cost. The Company shall sell and the HPSEBL shall purchase at the Interconnection Point, the Net Saleable Energy i.e. the Energy received from the Project at the Interconnection Point less the Government Supply.

*(Note : Apply whichever is relevant and delete which are not applicable.)”

(iv) For Section 6.2 the following shall be substituted:

***for Case ‘A’(i.e. for PPA under Generic Levellised Tariff) :**

“6.2 TARIFF FOR NET SALEABLE ENERGY

The HPSEBL shall pay for the Net Saleable delivered and sold to it by the Company at the Interconnection Point at a fixed rate of Rs..... per kWh. This rate also accounts for-

- (i) the Government Supply including Free Power/Energy/(for Home State) @-----% for years and% for next years in addition to % free power towards the Local Area Development Fund;
- (ii) capital subsidy @ Rs.....;
- (iii) accelerated depreciation benefit @ paise per kWh based on accelerated depreciation @ %. (i.e. rate without adjustment of accelerated benefit less rate with accelerated benefits); and
- (iv) mandatory water discharge downstream from the diversion structure of the Project based on the instructions of the State Government which presently provide that for the purpose of determination minimum discharge, the threshold value not less than of the minimum inflow observed in the lean season shall be considered.

This rate of Rs.... per kWh is firm and fixed and shall not be subject to any indexation, escalation, adjustment or review due to any reason whatsoever except for specific provisions under Section 8.8.

(Complete details with regard to items (i) to (iv) above to be given).

OR

***for Case ‘B’ (i.e. for PPA under REC mechanism in the initial period of the total term and generic levellised period for the balance term):-**

6.2 TARIFF FOR NET SALEABLE ENERGY

(a) The HPSEBL shall pay for the Net Saleable Energy (excluding the same sold by the Company and purchased by HPSEBL under REC Mechanism as per Section 6.1) delivered and sold to it by the Company at the Interconnection Point at a fixed rate of Rs..... per kWh. This rate also accounts for-

- (i) the Government Supply including Free Power/Energy/(for Home State) @-----% for years and% for next years in addition to % free power towards the Local Area Development Fund;
- (ii) capital subsidy @ Rs.....;
- (iii) accelerated depreciation benefit @ paise per kWh based on accelerated depreciation @ %. (i.e. rate without adjustment of accelerated benefit less rate with accelerated benefits); and
- (iv) mandatory water discharge downstream from the diversion structure of the Project based on the instructions of the State Government which presently provide that for the purpose of

determination minimum discharge, the threshold value not less than of the minimum inflow observed in the lean season shall be considered.

This rate of Rs.... per kWh is firm and fixed and shall not be subject to any indexation, escalation, adjustment or review due to any reason whatsoever except for specific provisions under Section 8.8.

Explanation: This rate and the provisions of Section 8.8 shall not be applicable for the energy sold by the Company to HPSEBL under REC Mechanism as per Section 6.1.

(Complete details with regard to items (i) to (iv) above to be given).

(b) The HPSEBL shall pay for the Net Saleable Energy delivered and sold to it, at the Interconnection Point, by the Company under REC Mechanism as per Section 6.1, at APPC, including the associated, terms and conditions, determined by the Commission from time to time or at any other rate as may be determined by the Commission from time to time for the purchase of energy by HPSEBL under REC Mechanism. These rates shall be firm and final and shall not be subject to any indexation, escalation, adjustment, review or true-up due to any reason whatsoever. The APPC rate for FY is Rs..... (Rupee) per kWh.

OR

***for Case ‘C’ (i.e. for PPA under Project specific levellised tariff, including exit option to the Parties):-**

“6.2 TARIFF FOR NET SALEABLE ENERGY

The HPSEBL shall pay for the Net Saleable Energy delivered and sold to it by the Company to the HPSEBL at the Interconnection Point at the Project specific levellised tariff to be determined by the Commission as per the provisions under Schedule IV to this Agreement.

(*Apply whichever is relevant and delete which are not applicable.)”

(v) **for Case ‘C’ only (i.e. for PPA under Project specific levellised tariff, including exit option to the Parties):-**

The following schedule shall be added in cases where PPA is to be executed under Case ‘C’ i.e. under Project specific levellised tariff alongwith exit option as per the said Regulations.

“Schedule IV

PROVISIONS RELATING TO PROJECT SPECIFIC LEVELLISED TARIFF AND EXIT OPTIONS TO THE PARTIES

- (1) The Parties hereby agree to be governed by the Project specific tariff to be determined by the Commission as per the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012(in brevity the “said Regulations”) and also by the associated terms and conditions as may be stipulated by the Commission while doing so.
- (2) For the purposes of determination of Project specific levellised tariff by the Commission, the Parties-

- i. agree to be governed by the norms, parameters and procedures etc., as may be followed by the Commission, in accordance with the said Regulations, for determining the Project specific levellised tariff except for the improved norms specifically agreed to by the Parties as per para (ii) below.
 - ii. have, pursuant to Regulation 31, of the said Regulations, not agreed to any improved norms.* / agreed to improved norms* as follows-
[Complete details to be given in case any improved norms have been agreed to]
*[delete whichever is not applicable].
- (3) The Company shall file the petition for the determination of Project specific levellised tariff in accordance with the time lines and the procedure laid down in Regulations 18 of the said Regulations.
 - (4) In case the Commission, during the pendency of the petition filed by the Company as per Clause (3), allows a provisional tariff not exceeding the corresponding generic levellised tariff, as described in Clause 8, the HPSEBL shall make provisional payments on the basis of such provisional tariff.
 - (5) The per kWh Project specific levellised rate determined by the Commission shall be firm and fixed and shall not be subject to any indexation, escalation, adjustment or review due to any reason whatsoever except for specific provisions under Section 8.8. For the purposes of adjustment/review as per Section 8.8, complete details indicating the quantum and rate at which the Govt. Supply, capital subsidy, accelerated depreciation and the mandatory downstream discharge have been accounted for in the Project specific levellised tariff shall be clearly identified.
 - (6) HPSEBL shall, save as provided in Clause 7, pay to the Company for the Net Saleable Energy delivered and sold to it by the Company at the Interconnection Point, at the per kWh Project specific levellised rate determined as per Clause 5.
 - (7) The following additional provisions with regard to exit from the Agreement shall be applicable:-
 - (a) The exit option shall be available to the HPSEBL and the Company as under:-
 - (i) if the Project specific levellised tariff, as determined under Clause (5), exceeds the corresponding generic levellised tariff, as described in Clause (8), the HPSEBL shall have the option to exit from the Agreement, provided that this option shall not be available to the HPSEBL if the Company agrees to the corresponding generic levellised tariff, as aforesaid;
 - (ii) if the Project specific levellised tariff, as determined under Clause (5), is less than 95% of the corresponding generic levellised tariff, as described in Clause (8), the Company shall have the option to exit from the Agreement, provided that this option shall not be available to the Company if the HPSEBL agrees to keep the tariff within the aforesaid limit.
 - (b) The Party intending to exercise the exit option, as aforesaid, shall, within a period of 60 days from the date on which the Project specific levellised tariff is determined by the Commission, give a written notice of 30 days to the other Party setting out the material particulars and giving option to such other Party either to agree to a rate conforming to the applicable permissible limit or to give its consent for exit from the Agreement:
Provided that if any of the Parties moves the higher Appellate Courts against the tariff so determined by the Commission, the aforesaid time limit of 60 days shall be counted from the final decision of such Court(s).
 - (c) If the Party receiving the notice as per Sub-Clause (b) gives its consent for exit from the Agreement, or does not give its consent for a tariff conforming to the permissible limit as applicable or does not respond at all, within 30 days

- of the receipt of such notice, the Party which had given such notice may move the Commission seeking the approval for exit from the Agreement.
- (d) The Party exercising exit option may, upon receipt of approval from the Commission, exit itself the Agreement with effect from the date so approved by the Commission by giving the exit notice to the other Party.
- (e) For the Net Saleable Energy delivered and sold by the Company to HPSEBL at the Interconnection Point during the period from the Synchronisation Date of the first Unit of the Project upto the date of exit from the Agreement as per Sub-Clause (d), the HPSEBL shall pay to the Company at the corresponding generic levellised tariff, as described in Clause (8).
- (f) Following the exit of either Party from the Agreement, with the approval of the Commission –
- i. the Company shall have the right to sell the Net Saleable Energy (ensuring Government Supply to HPSEBL) to any person as permitted by law.
 - ii. if the Interconnection Point for the Project falls under the control of the HPSEBL, it shall, on request from the Company, provide open access through its system to the Company as per the open access Regulations.
- (8) for the purposes of this Schedule, the corresponding generic levellised tariff shall mean the generic levellised tariff, as determined by the Commission for the category of the SHPs under which the Project falls, under the said Regulations, and adjusted as per the provisions of the said Regulations duly taking into account the permissible rate of Government Supply, capital subsidy, accelerated depreciation and mandatory downstream discharge accounted for by the Commission in the Project specific levellised tariff for the Project viz-a-viz the same accounted for in the generic levellised tariff .
- (9) For the purposes of Section 6.4 and 16.5, the per kWh rate payable as per the provisions under this Schedule shall be applicable as if the same has been mentioned under Section 6.2.
- (10) The Project specific details including the Approved DPR have been annexed to the Agreement, for reference by the Parties.

Note: The Parties may mutually agree to such other conditions as may be deemed appropriate and incorporate the same in the draft PPA while submitting the same to the Commission in shape of the joint petition for approval of PPA.”

37. The technical wing of the HPERC shall carry out the amendments/modifications accordingly in the Model PPA alongwith any changes required on administrative ground. The Model PPA for purchase of power under REC Mechanism shall also be modified accordingly.

It is, further ordered that the modifications/amendments in the Model PPA shall come-into-force with immediate effect.

It is so ordered accordingly.

Date: 1st, August, 2014

Sd/-
(Subhash C. Negi)
Chairman

The following were present in the hearing held at Shimla on the 25th April,2014

H.P. State Electricity Board Ltd.	i) Sh. Mahesh Sirkek, C.E. (Comm.) ii) Sh. Sunil Grover, C.E.(SO &P) iii) Sh. K.L. Gupta, SE (SERC) iv) Sh. Ramesh Chauhan, Dy. Secretary Law
Consumer Representative	Shri P.N. Bhardwaj Consumer Representative.
Directorate of Energy HIMURJA	Sh. Munish Mahajan, Sr. Xen Sh. K.L.Thakur, XEN
Other Stakeholders	i) Sh. Bhushan Chopra Bonafied Himachalies Hydro Power Developers Associations ii) Sh. Pushpinder Singh Himachal Small Hydro Power Association iii) Sh. Raj Kumar Verma, Sai Engineering Foundation. iv) Sh. S.N. Kapoor, Himalaya Power Producer Association.