

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

In the matter of formulation of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) (Second Amendment) Regulations, 2018.

CORAM
Sh. S.K.B.S. Negi
Chairman
Sh. Bhanu Pratap Singh
Member

Statement of Reasons

1.0 BACKGROUND:

- 1.1 The Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as “the Commission” or “the HPERC”) published the draft HPERC (Terms and Conditions for Determination of Transmission Tariff)(Second Amendment) Regulations, 2018 on 08.10.2018 in Rajpatra Himachal Pradesh in exercise of the power conferred under Section 61, sub-section (1) of Section 62, clauses (a),(b) and (e) of sub-section(1) of Section 86 and clause (zd) of sub-section(2) of section 181 of the Electricity Act, 2003 (hereinafter referred as “the Act”).
- 1.2 As required vide sub-section (3) of the Section 181 of the Electricity Act, 2003, read with sub-regulation (5) of regulation 16 of the HPERC (Conduct of Business) Regulations, 2005 and rule 3 of the Electricity (Procedure for Previous Publication) Rules, 2005, the Commission invited public objections and suggestions by way of insertions in two Newspapers i.e. “Divya Himachal” and “Hindustan Times” on 10th November, 2018 and the full text of the draft Transmission Regulations, 2018 was made available on the Commission’s website www.hperc.org. A time of 21 days was allowed for filing objections and suggestions in relation to the said draft Transmission Regulations, 2018.
- 1.3 Subsequently a public hearing was held on 17.11.2018, wherein stakeholders presented their views before the Commission.
- 1.4 The Commission received comments/suggestions on the draft Transmission Regulations, 2018 from the following stakeholders:-
 1. M/s Ambuja Cements Ltd.
 2. Himachal Pradesh Power Transmission Corporation Ltd.

2.0 **Objections and issues rose by the Stakeholders:-**

2.1 **Amendment of regulation 3**

The draft regulation states that:-

*“(22-a) **“force majeure event”** shall mean, with respect to any party, any event or circumstance or combination of events or circumstances including those stated below, which is not within the reasonable control of, and is not due to an act of omission or commission of that party and which, by the exercise of reasonable care and diligence, could not have been avoided, and without limiting the generality of the foregoing, would include the following events:*

- (i) acts of God including lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, geological surprises, or exceptionally adverse weather conditions, or*
- (ii) any act of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, or*
- (iii) industry-wide strikes and labour disturbances having a nationwide impact in India;*

*“(32-a) **“prudence check”** shall mean scrutiny of the reasonableness of expenditure incurred or proposed to be incurred, financing plan, use of efficient technology, cost and time over-run and such other factors as may be considered appropriate by the Commission for determination of tariff;””*

(a) Comments of M/s Ambuja Cements Ltd.

M/s Ambuja Cements Ltd has submitted that in clause (22-a), the term exceptionally adverse needs to be defined and in place of nationwide impact the industry wide impact should be considered. It further submitted that in clause (32-a) by use of Efficient technology many advantages would also accrue; effect of such gains should also find suitable mention and rewards.

(b) Commission’s View

Exceptional adversities cannot be defined in advance as these are subjective. The Commission shall take a view after doing prudence check and exercising due diligence. The Commission has modified the nationwide impact to wide impact. Commission feels that the definition of “prudence check” has been correctly elaborated. The advantages of efficient technology are not required to be spelled out in the definition of “prudence check”.

2.2 Preparation of Accounting Manual and Regulatory Accounts

The draft regulation states that:-

“5-A. Preparation of Accounting Manual and Regulatory Accounts.- *The licensee shall prepare Accounting Manual and Regulatory Accounts as per the Himachal Pradesh Electricity Regulatory Commission (Reporting System on Power Regulatory Accounting) Regulations, 2014. The Utility shall submit the Regulatory Audited Accounts every year within seven months of the end of the Financial Accounting Year to the Commission.”*

(a) Comments of M/s Ambuja Cements Ltd.

M/s Ambuja Cements Ltd. has made following submissions

What is regulatory accounts and how it differs from the other accounts and why Regulatory account is necessary?

(b) Comments of HPPTCL

The HPPTCL has submitted that the timeline to submit the regulatory account may be increased to one year as the Licensee may require more time to finalize the allocation statement between Intra-State, Inter-State and other businesses.

(c) Commission’s View

The Commission has already notified the Regulatory Accounts regulations in the year 2014. All the utilities are required to comply with it.

The Commission has finalized the Regulatory Accounts Regulations way back in the year 2014. Therefore, there is no point in giving any extension for implementing the same.

2.3 Segregation of Accounts

The draft regulation states that:-

“6-A. Segregation of Accounts.- *The licensee shall maintain separate accounts and sub balance sheets for each of the other businesses and also for inter and intra-state transmission systems:*

Provided that the licensee shall follow a reasonable basis for allocation of all joint and common costs between the transmission business including inter and intra-state transmission systems and the other business and shall submit the Accounting Statements, as approved by its board of directors, to the Commission alongwith his application for determination of tariff:

Provided further that where the sum total of the direct and indirect costs of such other business exceeds the revenues from such other business or for any other reason, no amount shall be allowed to be added to the aggregate revenue requirement of the licensee on account of such other business.”

(a) Comments of M/s Ambuja Cements Ltd.

M/s Ambuja Cements Ltd. has submitted that if there are surpluses then amount should be allowed to be adjusted in the next year ARR.

(b) Commission's View

The surpluses and deficits are adjusted during the "true up" exercise.

2.4 Carrying Cost

The draft regulation states that:-

"10-A. Carrying Cost.- The transmission licensee, for the approved true-up of any year over and above that approved in the Tariff Order for that year, shall be entitled to a carrying cost at one (1) Year State Bank of India (SBI) MCLR / any replacement thereof as notified by RBI for the time being in effect applicable for one (1) Year period, as may be applicable as on 1st April of the relevant Year plus 300 basis points and for any true-up resulting in less than that approved in the Tariff Order for that year, the carrying cost shall be recovered at the same rate."

(a) Comments of M/s Ambuja

M/s Ambuja Cements Ltd. has submitted that allowing Carrying cost is not in the interest of the consumers.

(b) Comments of HPPTCL

The HPPTCL has submitted that MCLR effectively reflect the monetary policy of RBI and is subject to reset during the year. Hence, the carrying cost may be allowed as the weighted average SBI MCLR applicable for the relevant year i.e. year for which Revenue gap or Revenue surplus is determined, plus applicable spread. Further, the carrying cost should be allowed in line with the cost borne by the utilities in borrowing working capital loan. Hence, carrying cost may be allowed as weighted average SBI MCLR applicable for the relevant year plus 350 basis points.

(c) Commission's View

Carrying cost is required to be given for taking into consideration the time value of money.

The Commission has considered the view point of HPPTCL for considering weighted average of SBI MCLR rate and has incorporated the same in the final regulations.

2.5 Initial Spares

The draft regulation states that:-

“15. Initial Spares.- The capital cost may include initial spares capitalised as a percentage of the original project cost, subject to the following ceiling norms:-

(a) Transmission Line 0.75%

(b) Transmission Sub-station (Green Field) 3.0%

(c) Transmission Sub-station (Brown Field) 4.5%

(d) Series Compensation devices and HVDC Station 3.5%

(e) Gas Insulated Sub-station (GIS) 4.0%

(f) Communication System 3%”

(a) Comments of M/s Ambuja Cements Ltd.

M/s Ambuja Cements Ltd. has submitted that with technological improvements we may think of one uniform percentage.

(b) Comments of HPPTCL

The HPPTCL has submitted that the definition of the original project cost may be provided by the Commission. The proposed definition of original project cost may be as follows:

“Original Project Cost shall mean the capital expenditure incurred by the transmission licensee within the original scope of the project upto the cut-off date as admitted by the Commission.” Tools and tackles are integral part of the project and should be allowed. 11% departmental charges covers the breakup as:- Establishment Charges 7%, T&P charges 0, 5%, Audit and Account Charges .25%, Maintenance during construction .5%, Loss on stock .25% design charges .5% and H.O. Pro-rata Share 2.00% should be considered.

(c) Commission’s View

Commission feels that there cannot be any one uniform percentage for initial spares. The definition of Original Project Cost as suggested by the HPPTCL has already been there in the HPERC Transmission Tariff Regulations, 2011.

The commission has not denied for tools and tackles.

Regarding Departmental charges, no comments as the same are out of context.

2.6 Additional Capitalization

The draft regulation states that:-

“(2) The capital expenditure incurred on the following counts after the cut off date may, in its discretion, be admitted by the Commission, subject to prudence check:-

(a) Liabilities to meet award of arbitration or for compliance of the order or decree of a court;

(b) Change in law or compliance of any existing law;

(c) Any expenses to be incurred on account of need for higher security and safety of the capital asset as advised or directed by appropriate Government agencies or statutory authorities responsible for national security/internal security;

(d) Any liability for works executed prior to the Cut-off Date, after prudence check of the details of such undischarged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.;

(e) Any liability for works admitted by the Commission after the Cut-off Date to the extent of discharge of such liabilities by actual payments;

(f) Any additional capital expenditure, which has become necessary for efficient operation of the transmission system. The claim shall be substantiated with the technical justification duly supported by the documentary evidence like test results carried out by an independent agency in case of deterioration of assets, report of an independent agency in case of damage caused by natural calamities, obsolescence of technology, up-gradation of capacity for the technical reason such as increase in fault level; and

(g) Any additional expenditure on items such as relays, control and instrumentation, computer system, power line carrier communication, DC batteries, replacement due to obsolescence of technology, replacement of switchyard equipment due to increase of fault level, tower strengthening, communication equipment, emergency restoration system, insulators cleaning infrastructure, replacement of porcelain insulator with polymer insulators, replacement of damaged equipment not covered by insurance and any other expenditure which has become necessary for successful and efficient operation of transmission system:

Provided that any expenditure on acquiring the minor items or the assets including tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, computers, fans, washing machines, heat convectors, mattresses, carpets, etc., bought after the Cut-off Date shall not be considered for additional capitalization for determination of tariff:

Provided further that if any expenditure has been claimed under Renovation and Modernisation (R&M) or repairs and maintenance under O&M Expenses, the same expenditure cannot be claimed under this Regulation. ”

(a) Comments of M/s Ambuja Cements Ltd.

M/s Ambuja Cements Ltd. has submitted that such investments may be allowed by the Commission after public hearing.

(b) Commission’s View

It is neither advisable and nor desirable to conduct public hearing for getting approval for every capital expenditures being incurred by the utilities.

2.7 Consumer Contribution, Deposit Work, Grant and Capital Subsidy

The draft regulation states that:-

“17-A. Consumer Contribution, Deposit Work, Grant and Capital Subsidy.-

(1) The works carried out by the Transmission Licensee after obtaining the estimated cost from the users shall be classified as Deposit Works.

(2) Capital works undertaken by the Transmission Licensee utilising grants received from the State and Central Governments, including funds under various schemes shall be classified under the category of Grants.

(3) The works carried out with any other grant of similar nature or such amount received without any obligation to return the same and with no interest costs attached to such subvention shall also be classified as works performed through consumer contribution, deposit work, capital subsidy or grant.

(4) The expenses on such capital expenditure shall be treated as follows:-

(a) normative O&M expenses as specified in these regulations shall be allowed. However, any departmental charges taken by the licensee against deposit works and which are executed departmentally shall be adjusted in the employee cost;

(b) the debt to equity ratio shall be considered in accordance with regulation 18, after deducting the amount of financial support provided through consumer contribution, deposit work, capital subsidy or grant;

(c) depreciation to the extent of works performed through consumer contribution, deposit work, capital subsidy or grant shall not be allowed as specified in regulation 23;

(d) provisions related to return on equity, as specified in regulation 19, shall not be applicable to the extent of financial support provided through consumer contribution, deposit work, capital subsidy or grant;

(e) provisions related to interest and finance charges, as specified in regulation 20, shall not be applicable to the extent of financial support provided through consumer contribution, deposit work, capital subsidy or grant.”

(a) Comments of M/s Ambuja Cements Ltd.

M/s Ambuja has submitted that the deposit work shall be classified as such only after getting the consent of the consumer and that RoE of 15.5 % is too high for electricity industry.

(b) Comments of HPPTCL

Depositor will bear the cost of replacement of equipments which is necessitated for meeting his demand.

(c) Commission’s View

The consumer contribution of course is after giving consent by the consumer. Regarding high rate of RoE, the Commission is of the view that the electricity industry is highly capital intensive and there are lot of risks associated with it. Therefore, to attract the investment in the sector, reasonable return on equity is allowed.

It is not necessary to bear the cost of replacement by the depositors. The same can be done by the utility through additional capital expenditure.

2.8 Interest and Finance Charges

The draft regulation states that:-

“(a) at the end of sub-regulation (2), the following proviso shall be added:-

“Provided further that if the Transmission Licensee as a whole does not have actual loan, then one (1) Year State Bank of India (SBI) MCLR / any replacement thereof as notified by RBI for the time being in effect applicable for one (1) Year period, as may be applicable as on 1st April of the relevant Year plus 200 basis points shall be considered as the rate of interest for the purpose of allowing the interest on the normative loan.”;

(b) for existing sub-regulation (5), the following sub-regulation (5) shall be substituted, namely:-

“(5) The transmission licensee shall make every effort to refinance the loan as long as it results in net benefit to the beneficiaries. The costs associated with such refinancing shall be borne by the transmission customers and any benefit on account of refinancing of loan and interest on loan shall be shared in the ratio of

2:1 between the transmission licensee and the transmission customers. Refinancing may also include restructuring of debt.”; and

(c) at the end, the following sub-regulation (7) shall be inserted, namely:-

“(7) The above interest computation shall exclude the interest on loan amount, normative or otherwise, to the extent of capital cost funded by consumer contribution, deposit work, capital subsidy or grant, carried out by transmission licensee.”

(a) Comments of HPPTCL

The HPPTCL has submitted that allowance of interest on normative loan should be in line with the cost of borrowing borne by the Licensee. Hence, in case when the Transmission Licensee does not have any actual loan, the interest on the normative loan may be allowed as one (1) Year State Bank of India (SBI) MCLR / any replacement thereof as notified by RBI for the time being in effect applicable for one (1) Year period, as may be applicable as on 1st April of the relevant Year plus **300 basis points**. This is in line with the provision of CERC Tariff Regulations 2014, wherein in case of no actual loan, last available weighted average rate of interest applicable for actual loan is considered.

(b) Commission’s View

The Commission does not find any merit to change this provision as suggested by HPPTCL.

2.9 Working Capital

The draft regulation states that:-

“21. Working Capital.- The Commission shall calculate the working capital requirement for the transmission licensee containing the following components:-

- (a) O&M expenses for one month;*
- (b) receivables for two months on the projected annual transmission charges;*
- and*
- (c) maintenance spares @ 15% of O&M Expenses for one month.”*

(a) Comments of HPPTCL

On the same analogy of PSERC, HPERC and UERC where maintenance spare @ 15% of the O&M expenses are allowed whereas in HPERC maintenance spare @ 40% of R&M expenses for one month are applicable. The same should be considered.

(b) Commission's View

The same has already been incorporated in the proposed amendment of the regulations.

2.10 Interest on Working Capital

The draft regulation states that:-

“22. Interest Charges on Working Capital.- Rate of interest on working capital to be computed as provided hereinafter in these regulations shall be on normative basis and shall be equal one (1) Year State Bank of India (SBI) MCLR / any replacement thereof as notified by RBI for the time being in effect applicable for one (1) Year period, as may be applicable as on 1st April of the Financial Year in which the Petition is filed plus 300 basis points. The interest on working capital shall be payable on normative basis notwithstanding that the licensee has not taken working capital loan from any outside agency or has exceeded the working capital loan based on the normative figures.”

(a) Comments of HPPTCL

The HPPTCL has submitted that the Interest on Working capital should be in line with the actual cost of the borrowing working capital loans as transmission utilities does not get working capital loan at such cheaper rates. Hence, Interest on Working Capital may be allowed as one (1) Year State Bank of India (SBI) MCLR / any replacement thereof as notified by RBI for the time being in effect applicable for one (1) Year period, as may be applicable as on 1st April of the Financial Year in which the Petition is filed plus 350 basis points. This is also in line with the CERC Tariff Regulations, 2014, wherein interest on working capital is allowed as SBI Base Rate plus 350 basis point.

(b) Commission's View

The Commission has finalized the rate for interest on working capital after considering all the factors. Therefore, the Commission does not find any merit to review the same for now.

2.11 Depreciation

The draft regulation states that:-

“(2-a) The salvage value for IT equipment and software shall be considered as NIL and 100% value of the assets shall be considered depreciable.”

(a) Comments of M/s Ambuja Cements Ltd.

M/s Ambuja has submitted that Commission should retain the salvage value of IT equipment also at 10%.

(b) Commission's View

The IT equipments generally have nil residual value. That is why salvage value has been considered as NIL in the amended regulations.

2.12 Non-tariff income

The draft regulation states that:-

“24. Non-tariff income (1) All income being incidental to electricity business and derived by the licensee from sources, including but not limited to profit derived from disposal of assets, rents, income from investment and miscellaneous receipts from the transmission customers excluding income to licensed business from the other business of the transmission licensee shall constitute non-tariff income of the licensee

(2) The amount of non-tariff income relating to the transmission business as approved by the Commission shall be deducted from the Aggregate Revenue Requirement in determining annual transmission charges of the transmission licensee:

Provided that the transmission licensee shall submit full details of its forecast of non-tariff income to the Commission along with its application for determination of Aggregate Revenue Requirement. The non-tariff income shall inter-alia include:

- (a) Income from rent on land or buildings;*
- (b) Income from sale of scrap;*
- (c) Income from statutory investments;*
- (d) Interest on advances to suppliers/contractors;*
- (e) Rental from staff quarters;*
- (f) Rental from contractors;*
- (g) Income from hire charges from contractors and others;*
- (h) Income from advertisements, etc.;*
- (i) Miscellaneous receipts like parallel operation charges;*
- (j) Deferred Income from grant, subsidy, etc., as per Annual Accounts;*
- (k) Excess found on physical verification;*

- (l) Interest on investments, fixed and call deposits and bank balances;*
(m) Prior period income.”

(a) Comments of HPPTCL

The HPPTCL has submitted that following components may not be considered as Non-tariff income:

(b)Income from sale of scrap: The Commission allows depreciation upto 90% of the capital cost of the assets and remaining 10% of the capital cost is considered as salvage value. The remaining 10% of the capital cost is to be recovered by the Licensee by selling these scrap assets (i.e. salvage value of the assets). Hence consideration of this income from sale of scrap asset as non-tariff income will lead to serious financial implication to the transmission licensee.

(l) Interest on investments, fixed and call deposits and bank balances: Interest on investments, fixed and call deposits and bank balances may be considered as non-tariff income. However, the income generated through investment, deposits of income from income of Return on Equity may not be considered as non-tariff income.

(b) Commission’s View

The income from sale of scrap is not included in the Non-tariff income for now but the Commission feels that the same will be considered under Non-tariff income in case of sale of assets/ scraps funded through grant and/or consumer contribution after doing prudence check. It is to clarify that the Interest on investments, fixed and call deposits and bank balances will be considered as non-tariff income. However, any income generated from investing the RoE in any way will not be considered as non-tariff income

2.13 Allocation of Transmission Service Charge and Losses

The draft regulation states that:-

“(4) 10% of the charges collected from the short term open access customer shall be retained by the transmission licensee and the balance 90% shall be considered as non-tariff income and adjusted towards reduction in the transmission service charges payable by the long term and medium term users.”

(a) Comments of HPPTCL

The HPPTCL has submitted that retention of only 10% short term charges collected by STU instead of 25% as per current regulations adversely affects cash flow of STU. Hence current regulation of 25% should be retained.

(b) Commission's View

The transmission utility is recovering its entire Annual Revenue requirement (ARR) from Long Term/Medium Term Open access Customers. There are some transmission capacities available over and above the usage by LTA/MTOA customers and the same is allowed to be used by Short Term Open Access customers (STOA). Earlier, 25% of the STOA charges were allowed to be retained by the transmission utility. But, the same we feel is much higher considering the fact that out of total ARR of around Rs. 6 crore, HPPTCL revenue from STOA only is of the order of Rs. 3 crore which is quite high. Therefore, the Commission feels that 10% of the STOA charges are reasonable to be retained by the transmission utility.

-Sd/-
(Bhanu Partap Singh)
Member

-Sd/-
(S.K.B.S. Negi)
Chairman

Place: Shimla
Dated: - 22.11.2018