

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,
SHIMLA

Review Petition No. 180 of 2006

Government of Himachal Pradesh (in the
Irrigation and Public Health Department)
Through Sh. R.N. Sharma, Engineer-in-Chief (IPH)

..... Petitioner

V/s

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

..... Respondent

Counsel for the Petitioner

Sh. Karan Singh Kanwar
Adv.

Counsel for the Respondent

Sh. Bimal Gupta, Adv.

Consumer representative
(u/s 94 (3) of the Electricity Act, 2003)

Sh. P.N. Bhardwaj

ORDER

Review Petition No. 180 of 2006 filed on behalf of the Irrigation and Public & Health Department of the H.P. Govt. under section 94 (f) of the Electricity Act, 2003, (the Act) seeks to review the Tariff Order dated July, 3, 2006 made for the HPSEB (the Board) for the financial year 2006-2007 in relation to the WPS category. The facts leading to this review petition are that the Board, which is a deemed licensee under the first proviso to section 14 of Act for transmission, distribution, trading and supply of electricity in the State of Himachal Pradesh, filed, on 30th Nov, 2005, an application before the Himachal Pradesh Electricity Commission (the Commission) for the determination of its Annual Revenue Requirement, Distribution and Retail Supply Tariff, Transmission and Bulk Supply Tariff and Generation Tariffs for its electricity generation stations for the FY 06-07 under sections 62, 64 & 86 of the Act, read with the HPERC (Terms & Conditions for Determination of Tariff) Regulations, 2004 and the HPERC (Guidelines and Formats for Tariff Filing) Regulations, 2005, framed by the Commission.

2. The Commission, having heard the Board, interveners (including the I&PH Deptt., the present petitioner in this review petition) consumers, consumer representatives of various groups on May, 29 and 30, 2006 and having formal interactions with the Chairman, Members and Officers of the Board, and having considered the documents available on record, determined on July, 3, 2006 the Tariff and Annual Requirement of the Board for the FY 06-07, in accordance with the provisions of the Act and the regulations framed thereunder. The aforesaid tariff has been made applicable with effect from 8.7.2006.

3. The petitioner now submits that while passing the aforesaid Tariff Order, especially pertaining to WPS category, there is an error apparent on the face of the record. Even though during the course of hearings in the said tariff petition, the petitioner (IPH Deptt.) raised objections regarding steep increase in tariff, charging Agricultural Pump Supply Tariff for lift irrigation schemes, and pleaded for exemption from late payment surcharge and refund of Rs. 12 crores, being excess amount paid by the Department and separate tariffs for WPS at EHT. It is further asserted that the Commission has increased the tariff for L.T consumers under WPS

category to Rs. 2.80/KVA, though the proposal submitted by the Board for LT was not for any change from the existing rate i.e. Rs. 2.60/KVAh. For HT consumers the Board has suggested the increase from Rs. 1.95/KVAh (existing rate) to 240/KVAh and the Commission has approved the same to Rs. 2.20/KVAh.

4. The petitioner has approached this Commission, to review its Tariff Order dated 3.7.2006, on the following three grounds:-

- (a) Firstly that the projections of sales and revenue by the Board were not correct and the Commission did not examine this. In support of this it has been submitted that the Board proposed (as is evident from page 55 of the Tariff Order) estimate revenue at the existing tariff to the tune of Rs. 133.48 crores for the financial year 2005-06 on account of sale of 305.30MU of electricity consumed by the petitioner in the Water Pumping Schemes. However, while submitting the proposal for the financial year 2006-07, the Board has projected the revenue to the tune of Rs. 114.05 for the sale of 335.32 MU in the financial year 2006-07. If these two figures of energy sales are taken into consideration, there is no justification for projected revenue of Rs. 114.05 crores for the sale of 335.32 MU electricity to the petitioner department at the existing tariff for the year 2005-06 and on that basis the projected revenue should have been 146.60 crores for the financial year 2006-07.
- (b) Secondly that the increase in tariff for the FY 2006-07 is contrary to the provisions of the Electricity Act, 2003, in as much as neither it reflects the cost of the supply progressively nor there is attempt to reduce cross subsidies, which is a goal to be achieved under the provisions of section 62 of the Act. In fact actual energy sale to IPH Deptt. under "WPS" category during the FY 2004-05 was 270.519 MU which fetched the revenue of Rs. 103.51 crores to the Board and the realization cost per unit comes to be Rs. 3.82/KVAh against average cost of supply Rs. 3.26 per unit being average cost of supply, is much lower than the cost of realization for the FY 2005-06 for the IPH Deptt. under WPS category, which is estimated at Rs. 4.37/unit based upon energy sale and revenue estimation made by the Board. Thus the tariff pertaining to I&PH Deptt under "WPS" category should have been on the lower side instead of higher (enhanced) side.
- (c) Thirdly that the Commission, while fixing the schedule of Tariff differently for irrigation pumping supply for agricultural purposes in respect of I&PH Deptt. and other consumers, has acted contrary to the provisions of section 62(3) of the Act, as well as tariff philosophy and the National Policy, which prohibits the Commission to show undue preference to any consumers. The lift irrigation schemes of the Deptt. cater irrigation needs, which is for agricultural purposes. Almost 99% of the lift irrigation schemes are exclusively being used for agricultural purposes. The lift irrigation schemes should be charged at the agricultural pumping power supply rather than at the water pumping supply. This fact has escaped the notice of the Commission that when irrigation pumping load for agricultural purposes is being carried out by private individuals/ societies they have been given a different tariff. Whereas when the same thing is being carried out in various schemes by the petitioner for the same purpose still they are being charged under WPS category for which there is different & higher tariff provided under the Tariff Order.

5. Despite repeated directions given on 16.9.2006, 26.9.2006 and 17.10.2006, the respondent Board filed its evasive response on 28.10.2006, simply stating that the Commission has approved a sum of Rs. 1314 crore against the respondent Board's proposal

of Rs. 2026.76 crores in its ARR for the FY 2006.07 and as such the deficiency pointed out by the petitioner IPH Deptt regarding projections made in the tariff petition is irrelevant and may not be considered, otherwise it will further result in reduction of approved ARR and it will further jeopardize the interest of the Board

6. During the course of hearing of this review petition, for the sake of better and deep understanding the issues involved, the petitioner, was asked to indicate arguments based on the following issues:-

- (a) Whether the Commission in keeping with broad social objectives should draw a nexus between the efficiency gains and reduction of electricity losses in command area coverage in the public domain vis-a-vis private irrigation system taking into account the much higher efficiency in the private irrigation schemes?
- (b) Is there a need to set up an incentive linked tariff so as to set up efficiency gains in the public irrigation structure?
- (c) It was clarified to the petitioner department that whereas differentials between a public sector run irrigation system tariff and private irrigation tariff did vitiate the same class of consumer's concept, still larger social objectives could be achieved by using tariff as a mechanism for shifting irrigation into private hands by forming cooperative and users societies. The Department may consider whether it would like to push Government to simultaneously undertake an exercise by which the farmers may increasingly pay user fees for irrigation now paid for by the Government.

7. Sh, Karan Singh Kanwar, Advocate representing the IPH Department , in reply to the issues raised by the Commission, as stated in the proceeding para, tried to draw nexus between the efficiency gains and reduction of electricity losses in the electrical installations, in command area coverage in the public domain vis-à-vis private irrigation system. He asserts that the public sector installations have the best and maximum operating efficiency, as these are selected, after proper examination, suiting to the site specific schemes. These installations are more efficient and need the lowest power to handle a unit as against the private installation. In view of the fact that both public sector and a private installations are carrying out the same work to achieve the same objective, the efficiency gains should be linked with the incentives by way of tariff structure. The learned counsel further states that although the involvement of consumers/community and transfer of irrigation system, to the user groups for the operating and maintenance is the endeavour of the department, but the low electricity tariff of community managed systems as compared to departmently managed system, is not a contributing factor for the easy and acceptable transfer of system to the user groups. Moreover, the higher tariff for departmently run schemes is a discouraging factor to plan more and more irrigation system by the Govt. and is counter productive to the social objective of poverty elimination through minor irrigation system in rural areas.

8. Sh. M.S. Kanwar, SE, (IPH) while quoting the example of Nalagarh division, expressed the difficulties being encountered in the process of transfer of irrigation schemes to the users groups i.e. Krishi Vikas Sanghs as these schemes are better maintained by the Govt. Thus according to him there is an apparent need to incentivise it.

9. In the opinion of the Commission the reduction of tariff, as requested for by the IPH Department, would ultimately affect the domestic consumers (as the ARR of the Board will remain constant). In case of domestic consumers, the Govt. is already sharing the tariff burden by providing subsidy to the domestic consumers. The whole issue of reduction in tariff for irrigation

schemes is required to be considered from this angle too. Keeping in view the broad social objectives and the electricity reforms, the Commission liked to interact with the high ranking officers of the State Govt. During the course of interaction with the Principal Secretary (IPH) H.P, on 24.2.2007 it is stated that State Cabinet has, in principle, taken a decision :-

- (a) to convert irrigation slabs having between 20-50 farmers into 'water users associations' over the period 2007-08;
- (b) necessary ICI activities with regard to providing movement towards a self-regulating process and a self-paying process would be initiated with these entities; and
- (c) there would be a need to set up an incentive-linked tariff to improve public efficiency gains within the irrigation infrastructure.

10. The Commission, therefore feels that if the Government did actually implement the in principle decision, the Commission would simultaneously be active in terms of its actions on a systematic basis to inculcate within the various tariff orders necessary down grades in tariffs. Thus it was found advisable to await decision of the Cabinet in this regard before the final disposal of this matter. In the subsequent hearing on 21.4.2007 Sh. Karan Singh, Advocate, appearing on behalf of the IPH Department, H.P. Govt. (i.e. the petitioner) submitted a photo copy of the H.P. Govt. letter No. PBW(PH) A(3)-9/96-III dated 4.4.2007 addressed to the Engineer-in-Chief (I&PH) conveying the decision taken by the Council of Ministers, in its meeting held on 29.3.2007, for transfer of operation and maintenance of irrigation schemes, on pilot basis, to KVS i.e. the water users association under the supervision of the Panchayats. The aforesaid decision and the guidelines are taken on record.

11. Now, with this background, the review petition moved by the petitioner (IPH Deptt.) is required to be considered and disposed of. A review is by no means an appeal or revision in disguise whereby any erroneous decision is reheard and corrected. The Commission has competence, authority and power to review its own decisions, directions or orders, subject to the parameters as envisaged under section 114 of the Code of Civil Procedure, extended by the provisions of section 94 of the Electricity Act, 2003. Generally the power to review is available to the Commission where orders have been made but not appealed by the party aggrieved despite a right available to it. All the more review can be resorted to rectify accidental clerical error on record. Section 114 and Order 47 of the C.P.C., read with regulation 63 of the HPERC (Conduct of Business) Regulations, 2005 framed under the Electricity Act, 2003, enlist the circumstances under which remedy for review can be availed of. The provisions relating to review constitutes an exception to the general rule that once the order/ judgement is signed and pronounced, by the Court, it has no jurisdiction to alter it. An application for review of judgement/order may be made, where:-

- (a) no appeal has been performed; or
- (b) from which no appeal is allowed;

on the grounds of:-

- (i) discovery of new and important matter of evidence;
- (ii) mistake or error apparent on the face of record;
- (iii) any other sufficient reason.

12. In the light of the circumstances and facts of the case and the legal provisions, as aforesaid, the Commission has considered all the issues raised by the petitioner IPH Deptt as detailed in para 4 of this judgement and concludes that-

- (a) the perusal of paras 6.5 and 6.17 of Chapter A-6 of the impugned Tariff Order, reveals that the Commission has made its own projections of the sales to all categories, including WPS, and details have been clearly given therein. In light of this the averment of the petitioner is wrong on the point as there was no wrong projections of sales to WPS category and the same has been elaborated in the Tariff Order. Review is not justifiable on this ground.
- (b) so far as the second contention that the increase in tariff for WPS category does not reflect the cost of supply and no attempt has been made to reduce the cross subsidy as per sections 61/62 of the Act, is concerned, the Commission has already mentioned in clause 9.79 (page 112) of the Tariff Order that the tariff for WPS-LT has been increased based on the tariff philosophy by reducing cross/subsidies in a phased manner. However, the increase in the tariff for WPS-HT was necessitated, as part of the tariff/revenue balancing exercise and the quantum of increase is only about 5%. Therefore, no review is justified on this ground too.
- (c) the third main contention of the IPH relates to the fact that, as per their version, the Lift Irrigation Schemes of the Department cater to irrigation needs, which is for agricultural purposes, the WPS should be covered under Agriculture and Allied Activities Supply (AAA) Tariff which is much lower than WPS Tariff. The intention of the Commission is to encourage greater private/coop sector participation, which the Govt. moves out gradually from irrigation related activities.
- (d) The Commission is pleased that Government have taken a decision to leverage on pilot basis, a system for irrigation of farmers from a purely governmental funded irrigation structure to one wherein farmers become stakeholders in the irrigation process. Surprisingly, while one Department of the Govt., viz the Agriculture Department has for long been following a system of transfers from the farming community, with concomitant societal benefits, it is only after the prodding from the Commission that the Govt. has seen it fit to move towards a reforming scenario.

Obviously, the movement by the irrigation department towards greater stakeholders participation is welcome and the tariff aspect would necessarily following the conversion modalities in terms of this order. There is, therefore, no need for us to review the order at this stage but to continue the reform process. As and when the WUA's are formed they will migrate to the mitigated tariffs. benefits. The review petition is, therefore, dismissed. It is hoped that the Department, will continue to speed up the reform process to reduce its irrigation bills.

The file be consigned, accordingly.

Dated: 26.05.2007

(Yogesh Khanna)
Chairman.