

**BEFORE THE HIMACHAL PRADESH ELECTRICITY
REGULATORY COMMISSION, SHIMLA-02**

M/s Usaka Hydro Powers (P)Limited,
having its Corporate Office at 240, Okhla Industrial Estate,
Phase-III, New Delhi-110 020 (through Sh. Dalip Singh
Son of Shri Than Singh its authorised signatory).

..... Petitioner

Versus

1. The State of Himachal Pradesh through
Principal Secretary (MPP & Power),
to the Govt. of Himachal Pradesh, Shimla-2.
2. The Himachal Pradesh State Electricity Board Ltd;
through its Executive Director, Kumar House,
Shimla-171 004.
3. The Himachal Pradesh Energy Development Agency (HIMURJA),
SDA Complex, Kasumpti, Shimla 171 009 (H.P).
(through its Director).

..... Respondents

Petition No. 20 of 2011 and 144 of 2014
(Decided on 05.07.2014)

COARM

**(Subhash C. Negi),
Chairman**

Present for:-

The petitioner	Shri Ajay Vaidya, Advocate
The H.P.Govt., Respondent No.1.	Sh. Shanti Swaroop Bhatti Legal Consultant
The H.P.State Electricity Board Ltd. Respondent No.2.	Sh. Ramesh Chauhan Authorised representative.
The H.P.Energy Development Agency/ (HIMURJA) Respondent No.3	Sh.Pardeep Bhanot, Sr. Project Officer.

ORDER

(Last heard on 30.06.2014 and orders reserved)

M/s Usaka Hydro Powers (P) Limited, which is a company incorporated under the Companies Act, 1956, having its Corporate Office at 240, Okhla Industrial Estate, Phase-III, New Delhi-110 020, is operating and maintaining the Suman-Sarwari Hydro Electric Power Project on Sarwari Khad in Distt. Kullu, with an installed capacity of 2.50 MW.

2. The petitioner has moved the petition No. 20 of 2011, seeking redetermination of the tariff due to various factors such as escalation of prices, tariff prevalent in the adjoining States, increase in the PLR rates, provisions for charging of royalty; 15% mandatory water release, levy of additional charges towards LADA, compensatory fisheries and forest charges, MAT and change in law and policy etc. The said petition is accompanied by an application for interim orders to allow the petitioner to claim the revised rate of Rs. 2.95 instead of Rs. 2.50 provided in the Power Purchase Agreement executed by it with the erstwhile Himachal Pradesh State Electricity Board; predecessor in interest of the H.P.State Electricity Board Ltd; (hereinafter referred as “the respondent No.2”)

3. During the pendency of the admission of this review petition and disposed of the application for interim relief, the Board moved, before the Hon’ble H.P. High Court, 8 writ petitions registered as petition Nos. 7649 of 2010; 8285 of 2010; 8426 of 2010; 8427 of 2010; 8472 of 2010; 8492 of 2010; 8531 of 2010 and 8532 of 2010; assailing the Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewal Sources and Co-Generation by Distribution Licensee) (First Amendment) Regulations, 2007 and order dated 18.12.2007 made thereunder and also other orders reviewing the orders passed, by this Commission, on different dates in favour of certain Independent Power Producers in each petition, fixing enhanced tariff for the tariff already mutually agreed in the respective PPAs. The Hon’ble High Court stayed the operation of the aforesaid Regulations and orders and further stayed the proceedings in relation to the aforesaid petitions specifically and also in general proceedings in relation to similar cases pending before this Commission. Ultimately the said writ petitions were disposed of by a common judgement dated 6th August 2013 delivered by the Hon’ble Division Bench of the H.P.High Court in **CWP No. 8426 of 2010 i.e. the Himachal Pradesh State Electricity Board Ltd. Vrs. the Himachal Pradesh Electricity Regulatory Commission and another**, upholding the validity of the Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewal Sources and Co-Generation by Distribution Licensee) (First Amendment) Regulations, 2007 and also of the reviewing orders passed, on different dates, by this Commission, enhancing tariff in

favour of the petitioners. The proceedings on the admission of this review petition and on the application for interim relief, therefore, remained stayed during the period in which related issues were under adjudication before the Hon'ble High Court.

4. Subsequently on the disposal of the writ petitions before the Hon'ble High Court, this petition along with application for interim relief was listed for admission hearing and the respondent No.2 filed its response opposing the maintainability of the said petition, preferred by the petitioner, reserving its right to file detailed para wise reply thereon.

5. During the admission hearing of petition No. 20 of 2011, held on 16.01.2014, the respondent No.2, i.e. HPSEBL opposed the admission of the petition in the present form, as it contains typographic mistakes e.g. the PPA date given in the petition is 30.07.2010, though it was actually signed on 23.12.2003 and the multipurpose reliefs have been claimed, for which different procedures and provisions stand provided for. Further the petitioner has not paid appropriate fees and has omitted to file the proper details/data in support of his claim for tariff redetermination at the revised rate of Rs. 2.95 p.u. The respondent Board pleads that the petition alongwith Interim Application for charging the higher rate during the pendency of this petition is not maintainable and deserves not to be entertained.

6. Keeping in view the above submissions of the respondent No.2, Shri Ajay Vaidya, Advocate, Learned Counsel representing the petitioner, undertook to recast his petition. Thereafter, he has been repeatedly seeking adjournments, for more time, to recast the petition, which opportunity has been granted to him on 16.1.2014, 4.3.2014, 3.4.2014 and 6.6.2014, ultimately the Commission vide its interim order dated 6.6.2014 deprecated the tendency to prolong the proceedings and gave the petitioner final opportunity to recast/amend his petition.

7. The petitioner has now, instead of recasting the petition, filed the rejoinder to the response of the petitioner, and has also moved the petition No. 144 of 2014 seeking re-determination of tariff and also processing some additional grounds to its petition No. 20 of 2011, without addressing the question of maintainability of the petitioner No.20 of 2011 raised by the

respondent No.2. The additional grounds relating to the execution of the Supplementary PPA for the sale of energy generated through under the REC mechanism under the provisions of the HPERC (Promotion of Generation from Renewal Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012, which are now sought to be added to the original petition No.2 of 2011, tend not only to make the petition more complex inviting different commercial concepts and totally different issues but would also prolong the proceedings unnecessarily.

8. The petitioner has moved the composite petition i.e. multipurpose application for review of the PPA, due to change of law and Policy and also the redetermination of tariff, resolution of dispute, the disposal of which involve distinct and different procedures and provisions of law. Without proper data needed for tariff determination, it is not possible to address these issues in one go. This Commission is convinced that the objections raised by the respondent Board have the substance and this petition in the present form cannot be maintained.

In the result, this Commission, taking note of the submissions made by the respondent No.2, declines to admit this petition No.20 of 2011 alongwith application for interim relief and disallows petition No.144 of 2014 seeking to add additional grounds for redetermination of tariff, with the liberty to claim the reliefs by filing the proper petitions with supporting adequate data and following the procedures and provisions of law.

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(Subhash C. Negi),
Chairman.