

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

In the matter of:-

Review of Order on Restating of Design Energy and Reconsideration of
Tariff for Small Hydro Power Plants of HPSEB Limited passed by
Hon'ble Commission in Petition No. 54 of 2013.

AND

Himachal Pradesh State Electricity Board Limited through its Chief
Engineer (Commercial), Vidyut Bhawan, Shimla-171004.

.....Petitioner

Review Petition No. 25/2014
(Decided on 6th June, 2014)

CORAM
SUBHASH C. NEGI,
CHAIRMAN

ORDER

This Petition is filed by the Himachal Pradesh State Electricity Board Limited (hereinafter referred to as "the HPSEBL" or "the Petitioner") seeking review of the Order dated 15.01.2014 passed in Petition no 54 of 2013 by the Commission in the matter of restating of design energy and reconsideration of tariff for Small Hydro Power Plants of the HPSEBL. The Petitioner has also prayed for condonation of delay in filing this review petition for the aforesaid HEPs.

2. The HPSEBL, in this Petition, has sought review of tariff for 5 numbers HEPs below 5 MW capacity viz., Thiroth (4.5MW), Gumma (3MW), Holi (3MW), Sal-II (2MW), and Killar (0.3MW) on the following grounds:-

- (i). that there is an error apparent on the face of record as the tariff of the small HEPs of the HPSEBL should be based on the Ministry of Non-Conventional Energy Sources (MNES) guidelines for Non-Conventional Energy Tariff in 1993 applicable to all Small HEPs upto 25MW capacity allotted / commissioned on or after 1994-95; and, in accordance with the Hydro Policy of the State Govt. notification no. STE(S&T) A(4) 1/94-dated 22.11.1994, further revised by the GoHP vide notification dated 06.05.2000 for private/joint sector participation in Micro Hydel Projects;
- (ii). that the MNES guidelines 1993 prescribed a tariff of Rs. 2.25 per unit for the base year 1994-95 with a provision of escalation @ 5% p.a. for the first 10 years and from end of the 10th year onwards, the price of power shall be equal to the purchase price in the 10th year;

As per Hydro policy of the Government of Himachal Pradesh (hereinafter referred to as "GoHP") the tariff for Small Hydro Projects upto 3MW capacity was Rs. 2.25 per unit which was further revised vide the GoHP notification dated 06.05.2000 for private/joint sector participation in the micro hydel project upto the 3MW (revised to 5MW in December, 2000). As per the revised policy the HPSEBL was required to purchase power for Small HEPs @ Rs.2.50 per unit;

In the Hydro Policy of the HP, 2006, the tariff for purchase of power by the HPSEBL was approved @ Rs. 2.50 per unit, which was further reviewed by the Commission vide Order dated 18.12.2007 at Rs. 2.87 per unit and subsequently at Rs. 2.95 per unit. The SHEP's of the HPSEBL are also governed by these guidelines and entitled to this tariff;

- (iii). that all IPPs who were allotted projects under 1994 Policy were eventually brought under the revised Policy of GoHP of May, 2000 and given a tariff of Rs. 2.50 per unit or more. In case of Chirchiend SHEP (5MW)- MOU was signed on 27.08.1996 based on Policy of 1994 & PPA signed on 30.06.2008 @ 2.87 per unit; and, in case of Ching SHEP (1MW) – MOU was signed on 12.01.1998 and PPA signed on 31.05.2000 at a fixed rate of Rs.2.50 per unit;

As the above said five SHEPs of the HPSEBL were also commissioned during 2000 or thereafter, these SHEPs are also entitled to tariff at least equivalent to other SHEPs to ensure equity and fair play.

Commission's view

3. This Review Petition has been filed on 28 February 2014 against the Commission Order dated 15 January 2014. The Petitioner has requested for condonation of delay in submission of the Review Petition; however, no formal application explaining the circumstances leading to delay, as per law, has been filed.

4. That the limitation period for filing of a Review against the Order of the Commission is governed by Article 124 of the Schedule to the Limitation Act, 1963, which provides that the review is to be filed within 30 days of the date of decree or Order sought to be reviewed. Hence there is a delay of only 12-13 days in submission of the Review Petition.

5. In the interest of justice and to clarify and settle the issues, the Commission condones the delay and entertains the Review Petition for consideration.

6. The Commission noticed that scope and authority for reviewing its own decisions, directions and Orders in respect of the instant application, is derived from Section 941(f) of the Electricity Act, 2003.

7. While dealing with an application for review of an Order, it is very necessary to proceed with utmost caution as the powers of review are to be exercised in limited circumstances, since as a general rule, a judgment once signed and pronounced, cannot be altered. Therefore, the Orders are not generally interfered with unless there are circumstances as defined under the law, which makes it necessary for a Court to alter or modify or reverse its original Order.

8. The main ground for filing of the present Review Petition is an error apparent on the face of record in deciding the tariff of the 5 HEPs under the Review Petition. If there is a mistake or an error apparent on the face of the record, which has to be detected by process of reasoning and is not self-evident, then such an error can hardly be said to be an error apparent on the face of the record, justifying the Court to exercise its power of review. The error apparent on the face of the record cannot be defined precisely and exhaustively, and it is left to the Court to be determined judicially, on the basis of the facts of each case. An error, however, must be one which speaks of itself and it glares at the face, rendering it difficult to ignore. A Review Petition has a limited purpose that cannot be allowed to be an appeal in disguise.

9. While deciding the original Petition, the Commission has, after examining the relevant provisions of the Act, Rules and Regulations made thereunder, the documents submitted by the Petitioner reached to a conclusion at Para 38(3) of the impugned Order as follows:

---“38. **Conclusion:**

Gist of the decisions on various issues are as under:-

- (3) *In accordance with Govt. of HP notification dated 22.11.1994 and notification dated 13.08.1999 read with notification dated 29.12.2000,*

reference date for applicability of tariff with respect to projects in private sector is date of MOU or PPA signing and not the commissioning date. Principles applicable to private and joint sector projects shall be followed for Boards own projects also. Deemed date of signing MOU or PPA for all the projects of Board are before the year 1999, because they were allotted much before this date. Hence, all the projects commissioned after 1994, up to 5 MW, are eligible for levelised tariff of Rs. 2.25 per unit. Ghanvi and Khauli projects above 5 MW are eligible for levelised tariff of Rs.2.25 in line with Patikari project. Commission allows tariff of Rs. 2.25 per unit for all the projects, except Gaj and Baner (which are not micro hydro projects and hence are not covered under notification dated 22.11.1994) commissioned after 1994 and such tariff shall be applicable w.e.f. 01.04.2014 for the balance useful lives of these projects. All the other 9 projects i.e. Gaj, Baner and 7 pre-1990 SHPs will be subject to project specific tariff determinations, for which HPSEBL shall file petition for the MYT control period of FY15-FY19 in continual to tariff order for 2011-14.”

10. This has been astutely explained and reasoned at Paras 28, 29 and 31 of the impugned Order which are reiterated below:-

- “28. Purchase rate of Rs. 2.25 per unit by the HPSEBL was applicable for purchases from micro hydel projects as per notification of Department of Science and Technology dated 22.11.1994. By notification dated 13.08.1999, this rate was revised to Rs. 2.50 per unit prospectively for micro hydel projects of capacities up to 3 MW. This rate was made applicable for projects up to 5 MW by notification dated 29.12.2000. Both these notifications stipulated that rate to such capacities shall also apply to those private investors who applied in response to advertisement during phase-I, phase-II and Phase-III and with whom MOUs have been signed /are being signed as per previous incentive scheme.
29. From these policies, it is apparent that purchase rate of Rs.2.25 per unit was applicable only for micro hydel projects and purchase rate of Rs. 2.50 for micro hydel projects up to 3 MW, later revised up to 5 MW SHPs, was applicable after 13.08.1999 only i.e. prospectively and will also apply in cases where MOUs are signed/being signed for projects in response to advertisement against previous schemes. MOU is a stage prior to Implementation Agreement, wherein developer expresses interest to carry out preparatory activities for project execution. Signing of PPA between Board and IPP is a stage after Implementation Agreement and before financial closure i.e. before actual work starts. Therefore, deemed date of MOU or deemed date of PPA, which is the reference date for applicability of tariff for the project, has to be considered in situations where there is no incidence of MOU or PPA and not the date of commissioning.
31. While notification of 13.08.1999 and 29.12.2000 lays down stipulation for retrospective application of purchase rate of Rs. 2.50 per unit in certain cases, as discussed in paras 28 & 29 above, the notification of 22.11.1994 does not lay down any specific terms and stipulations. Therefore, the Commission is of the view that all the SHPs up to 5 MW commissioned after 1994 i.e. Killar, Thiro, Sal-II, Gumma, Holi and Bhaba Augmentation projects, do not meet the test of notifications dated 13.08.1999 and dated 29.12.2000 because these projects were allotted to Board for construction much before 1999 and therefore their deemed MOU or PPA dates were also much before advertisement for phase-I and phase-II projects. Hence, all these projects can be treated as eligible for a rate of Rs.2.25 per unit as per 22.11.1994 notification. HPSEBL now being a distribution company and the generating stations with it also need to be treated at par with any other generating station of similar nature having PPA with it. Therefore, Commission is of the view that all these six SHPs up to 5 MW capacities are eligible for generic levelised tariff of Rs. 2.25 per unit for the balance useful lives of these

projects and accordingly they are allowed a levelised tariff of Rs.2.25 per unit with effect from 01.04.2014 for the balance useful lives of these projects.”

11. The GoHP notification no. MPP- F (2) – 1/2000 dated 06.05.2000 was issued in supersession to the notification no. STE (S&T)A(4)1/94 dated 22.11.1994 and notification no. STE (S&T)A(4)1/99 13.08.1999 read with notification dated 29.09.1999. This notification was further partially modified vide the GoHP notification dated 29.12.2000, which has been taken into consideration by the Commission while deciding the impugned Order. The notification dated 29.12.2000 has been held not applicable to the Petitioners’ HEPs in the impugned Order, which is an extension of the notification dated 06.05.000, and hence the notification of 06.05.2000 is not applicable to the Petitioner.

12. Further, the Hydro Power Policy 2006 was notified vide no. MPP-F(1)-2/2005-III(13) dated 11.12.2006 with immediate effect to the prospective power producers and retrospectively to projects above 5 MW capacity for which the MOU/IA had already been signed. This Policy superseded all the policy guidelines/instructions issued in this behalf from time to time. This Policy is applicable to the MOUs executed w.e.f 11.12.2006 onwards. Since all the five SHEPs of the Petitioner have been under operation during this period, hence none of the five SHEPs come within the ambit of this notification of the GoHP.

13. In the impugned Order the date of MOU or the PPA has been decided as the reference date for applicability of the tariff of the Project. The Petitioner has, in its review petition, referred to the MOU signed for Chirchind SHEP on 27.08.1996 for 5 MW capacity based on a 1994 policy and PPA was signed on 30.06.2008 at a rate of Rs.2.87 per unit at the time when the Commission was in existence.

The Commission has, vide Order dated 18.12.2007, approved the levelized tariff for the SHPs at Rs 2.87 per Unit for 40 years of commercial operation, which was applicable to all such Power Purchase Agreements (not exceeding 5 MW) which have already been approved by the Commission with a specific clause that *“Tariff and other terms and conditions of the PPA shall be subject to the provisions of the Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewable Sources and Co-generation by Distribution Licensee) Regulations, 2007”* and also the Power Purchase Agreements to be approved by the Commission hereinafter.

Accordingly, based on the joint petition filed by the Board and M/s Chirchind Hydro Power Ltd., the Commission accorded its consent for enhancement in the tariff from Rs. 2.50 per unit to Rs. 2.87 per unit in the PPA.

14. The Petitioner has, also, in the review petition, referred to the MOU signed for Ching SHEP on 12.01.1998 for 1 MW capacity and the PPA was signed on 31.05.2000 at a fixed rate of Rs.2.50 per unit. In this case the PPA was executed on 31.05.2000, which squarely falls under the GoHP notification dated 06.05.2000, for which a rate of Rs.2.50 per unit for the HEPS upto 3 MW capacity has been notified by the GoHP.

15. The Commission, after considering the submissions made by the Petitioner concludes that the Petitioner has not been able to show that there is any error apparent on the face of the record which would require re-consideration of the impugned Order by the Commission. Since the Review Petition does not meet the basic criteria for entertaining such a review petition, it is dismissed.

The Commission orders accordingly.

Pronounced in the open Court on this 6th June, 2014.

(Subhash C. Negi)
Chairman