

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

**Review Petition No: 38 of 2022**  
Date of Institution: 24.06.2022  
Arguments Heard on: 27.10.2022  
**Decided on: 23.11.2022**

The HP State Electricity Board Ltd. through,  
Chief Engineer (Commercial)  
Vidyut Bhawan, Shimla-171004

..... **Petitioner**

Versus

1. M/s Prime Steel Industries Pvt. Ltd. through,  
Sh. Rakesh Bansal (Authorised Representative),  
Baddi-Badrotiwala Road,  
Baddi, Distt. Solan-174103.
2. M/s H.M Steel Ltd. through,  
Sh. Rakesh Bansal (Authorised Representative),  
Trilokpur Road, Village Johron,  
Kala Amb, Distt. Sirmour -173030.
3. M/s JB Rolling Mills Ltd., through,  
Sh. Rakesh Bansal (Authorised Representative),  
Trilokpur Road, Kala Amb,  
Distt. Sirmour -173030.
4. B.B.N. Industries Association, thro'  
Sh. Rajinder Guleria (Authorized Signatory)  
Jharmajri Road, EPIP Phase I, Jharmajri,  
Baddi, Distt. Solan-174103
5. M/s Ambuja Cements Ltd., Darlaghat thro'  
Sh. Tanuj Gupta, (General Manager E&A),  
Village Suli & Rauri, Teh. Arki,  
Distt. Solan-171102.
6. M/s Ambuja Cements Ltd., Nalagarh thro'  
Sh. Tanuj Gupta, (General Manager E&A),  
Village Navagraon, P.O. Jajhra,  
Teh. Nalagarh, Distt. Solan-174101.
7. Confederation of Indian Industries, thro'  
Sh. Rakesh Bansal (Authorised Representative),  
Block No. 3, Dakshin Marg, Sector 31-A,  
Chandigarh-160030.

8. Parwanoo Industries Association, thro'  
Sh. Rakesh Bansal (Authorised Representative),  
Plot No. 4-A, Sector-2, Parwanoo,  
Distt. Solan-173220.
9. Kundlas Loh Udyog, thro'  
Sh. Rakesh Bansal (Authorised Representative),  
Vilage Balyana, P.O. Barotiwala,  
Teh. Baddi, Distt. Solan-174103.
10. Aggarwal Steel Industries Pvt. Ltd. thro'  
Sh. Rakesh Bansal (Authorised Representative),  
Patch No. 1 and II, Phase-II,  
Industrial Area, Gwalthai,  
Distt. Bilaspur-174201.
11. Nalagarh Industries Association, thro'  
Sh. Sanjeev Aggarwal (Authorised Representative),  
S.W.C.A. Peersthan, Opp. Amtek Co., Nalagarh,  
Distt. Solan-174101.
12. IA Hydro Energy Pvt. Ltd. thro'  
Sh. S.K. Goyal (CEO),  
D-17, Sector-1, Lane-1, New Shimla  
Shimla-171009.
13. Indian Energy Exchange thro'  
Sh. Jogendra Behera (V.P-Market Design & Economics),  
Plot No. – C-001/A/1, 9th Floor, Max Towers, Sector 16B,  
Noida, U.P-201301.
14. Vardhman Textiles Ltd. thro'  
Sh. D.R. Sharma (V.P. Enengineering),  
Sai Road Baddi,  
Distt. Solan-173205.
15. M/s Malana Power Co. Ltd. thro'  
Sh. Sumit Garg (Senior General Manager),  
Viilage Chowki, Post Jari,  
Distt. Kullu-175101.
16. Himachal Pradesh Steel Industries Association thro'  
H.M. Steels Premises, Trilokpur Road,  
Kala Amb, Sirmour-173030,
17. Nagar Jal Kalyan Sabha, thro'  
Sh. R.D Panwar (President),  
Suni, Shimla-171301.

18. Kinnaur, Lahaul-Spiti, Bauddh Sewa Sangh,  
Sumra Gongma House, Near Shri Ram Hospital,  
Lane 4 End, Sector-1, New Shimla,  
Shimla-171009.

..... Respondents

**Review Petition against Order dated 29.03.2022 in Petition No. 02 of 2022 for Mid Term Performance Review (MTPR) for HP State Electricity Board Limited for the 4<sup>th</sup> Control Period (FY 2019-20 to 2023-24) and True-up of uncontrollable parameters of FY 19, FY 20 and FY 21 and True-up of Controllable Parameters of 3<sup>rd</sup> Control Period.**

## **CORAM**

**DEVENDRA KUMAR SHARMA  
CHAIRMAN**

**YASHWANT SINGH CHOGAL  
MEMBER (Law)**

**SHASHI KANT JOSHI  
MEMBER**

Present:-

For the Petitioner: Sh. Kamlesh Saklani, Authorised Representative.

For the Respondent: None

## **ORDER**

This Review Petition has been filed under Section 94 of the Electricity Act, 2003 (Act for short) for reviewing the Order dated 29.03.2022 in Petition No. 02 of 2022 for Mid Term Performance Review for the 4<sup>th</sup> Control Period (FY 2019-20 to 2023-24) and True-up of controllable parameters for FY 19, FY 20 and FY 21. The Petition has been filed under below mentioned Six heads 'A to F'.

### **(A) Holding Carrying Cost**

2. The case of the Petitioner is that the Commission has allowed holding cost on surplus for Truing Up of controllable parameters of the 3<sup>rd</sup> Control Period in

Table 245 “Approved Surplus/(Gap) from truing-up of Controllable parameters for 3<sup>rd</sup> Control Period alongwith carrying cost reproduced as under:-

		(in Rs. Cr.)							
		FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22
Opening	A (=F)	0	31.94	70.16	121.41	223.72	351.95	391.22	430.62
Surplus /(Gap)	B	29.92	31.97	39.74	82.11	94.55			
Closing	C=A+B	29.92	63.91	109.90	203.52	318.27	351.95	391.22	430.62
Rate of Holding Cost	D	13.50%	13.04%	12.79%	12.43%	12.43%	11.16%	10.07%	10.00%
Holding Cost	E= D x (A+C)/2	2.02	6.25	11.51	20.19	33.68	39.28	39.41	43.06
Closing (with Holding Cost)	F=C+E	31.94	70.16	121.41	223.72	351.95	391.22	430.62	473.68

3. It is averred that the methodology of computing the holding cost by paying compound interest as adopted by the Commission seems to be incorrect as the Commission has already allowed the interest in accordance with HPERC MYT Regulations 2011. It is averred that normally the carrying cost/holding cost is worked out by applying the principles of simple interest and if the concept of allowing interest on interest i.e. compound interest is applied, the same would be a never-ending exercise. Also averred that Regulations 11 of HPERC MYT Regulations 2011 ( 3<sup>rd</sup> amendment) do not specify as to whether simple interest or compound interest is to be applied while computing the interest on carrying cost/holding cost. Further averred that the Hon’ble APTEL in appeal No. 250 of 2015 in the matter of **Jaigad Power Transco Ltd. (JPTL) V/s Maharashtra Electricity Regulatory Commission (MERC)** has dealt with the issue of allowing compound interest on carrying cost and has observed as under:-

*“We tend to agree with the State Commission’s view that there is no concept of compound interest in dealing with various provisions related to interest calculations in the tariff Regulations, 2011. Thus, the principle applied by the State Commission in absence of specific provisions of interest rate of carrying cost is equitable and just and there is no need of interference by us on the same. Hence this issue is also decided against the Appellant .”*

4. Also averred that Clause 3 (3) (c) of the interest Act, 1978 also provides that it is not in the purview of the court to allow interest on interest and that the Commission needs to make and endeavor to balance the interest of consumers licensees and protection of interest of Consumers and rationalization of Electricals Tariff and the main objects of the Electricity Act, 2003. Further averred that the Commission has erred in the computation of the rate of holding cost for the years FY 2017-18 and FY 2018-19 in the order dated 29.03.2022 as the Commission has considered interest rate of 12.43% for calculation of holding cost. However, as per Regulations 11(2) of 3<sup>rd</sup> Amendment of HPERC MYT Regulations, 2011, the applicable rate for carrying cost or holding cost is average SBI MCLR (1Year) of the relevant year plus 300 basis points.

5. The detailed computation for deriving the carrying cost of 11% for FY 2017-18 and 11.39% for FY 2018-19 alongwith relevant source (SBI Website) is annexure as **Annexure-A (not Annexed)**.

6. It is averred that the Commission had considered the rate of the 11.00% in True up of 2017-18 in “Table 27: Petitioner Submission- Carrying Cost for FY

18 (Rs. Cr.)” of the tariff Order dated 06.06.2021 and rate of 11.39% in provisional true-up of FY 2018-19 in “Table 129: Approved Carrying Cost for Revenue Surplus/(Gap)(Rs. Cr.)” of Tariff Order dated 31.05.2021. Thus, rates of holding cost considered as 12.43% is required to be corrected and considered to be 11.00% for FY 2017-18 and 11.39% for FY 2018-19. Therefore, the total holding cost alongwith surplus on True-Up of 3<sup>rd</sup> Control Period would be 425.68 Crore as against Rs. 473.68 Crore as allowed by the Commission.

7. It is averred that the Commission has allowed holding cost on surplus for Truing-Up of FY 2021 in Table 224 as under:-(*in Rs. Cr.*)

		<b>FY 21</b>	<b>FY 22</b>
Opening	A (=F)	0.00	479.07
Surplus/(Gap) for FY 21 True Up	B	456.10	0.00
Closing	C=A+B	456.10	479.07
Interest rate of holding cost	D	10.07%	10.00%
Holding cost	E= D x (A+C)/2	22.96	47.91
<b>Total surplus including holding cost</b>	<b>F=C+E</b>	<b>479.07</b>	<b>526.98</b>

8. It is averred that the Petitioner has computed the holding to the Petitioner, the revised holding cost for surplus for the True-Up of FY 2021 as under:-

<b>(in Rs. Cr.)</b>				
		<b>FY 21</b>	<b>FY 22</b>	<b>Total</b>
Opening	A (=C)	0.00	456.10	
Surplus/(Gap) for FY 21 True Up	B	456.10	0.00	456.10
Closing	C=A+B	456.10	456.10	
Interest rate of holding cost	D	10.07%	10.00%	
Holding cost	E= D x (A+C)/2	22.96	45.61	68.57
<b>Total surplus including holding cost</b>	<b>F=C+E</b>	<b>479.07</b>	<b>501.71</b>	<b>524.67</b>

Therefore, the total holding cost alongwith surplus for True-Up of FY 2021 is Rs. 524.67 Crore as against Rs. 526.98 Crore as allowed by the Commission.

**(B) Disallowance of transmission charges pertaining to 02 Nos. 220kV Line Bays (HPSEBL Future Bays at Hamirpur-PGCIL Substation in NR.**

9. It is also averred that the Commission has Disallowed the transmission charges pertaining to 02 Nos. 220kV Line Bays (HPSEBL Future Bays) at Hamirpur-PGCIL 400/200kV Sub-station in the Tariff Order dated 29.03.2022 in Para 14.09.2017 to 14.09.2018. It is averred that the Petitioner is required to pay pro-rata charges for 02 Nos. 220kV bays at Hamirpur-PGCIL 400/200kV as determined by the Central Electricity Regulatory Commission in various Orders from time to time and the non-payment of such charges by the Petitioner will result in the regulation of power supply to HPSEBL through PGCIL owned Grid in the form of curtailment of short term open access as per the earlier experience. Also averred that the matter of levy of bilateral transmission charges by PGCIL on the Petitioner, due to non-construction/non availability of downstream network by HPSEBL/STU had been challenged by the Petitioner before the Hon'ble APTEL in Appeal No. 343/2018 the Order dated 18.9.2018 passed by CERC in Petition No.104/MP/2018 which was allowed vide judgment dated 09.05.2022 setting aside the CERC order and a direction was issued to the CERC for passing a fresh and reasonable orders expeditiously but not later than 3 months from the date of the Judgment and till the issue is decided by the CERC, the Petitioner is required to pay bilateral charges for PKATL assets for 220kV bays at Hamirpur in order to avoid the regulation of power supply and late payment surcharge. It is averred that the Commission in a similar case

relating to PKATL (Power Grid Kala Amb Transmission Line) has allowed the bilateral charges for FY 2022-23 in para 14.9.18. Further in case 02 Nos. 220kV bays (HPSEBL future bays) at Hamirpur-PGCIL 400/220kV Sub-station are connected with the downstream transmission system, Petitioner is required to pay the ICT charges & Bays charges under Transformer Component in line with CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020.

**(C) Disallowance of Interest on UDAY bonds**

10. It is averred that the Commission in MYT Order dated 29.06.2019 has allowed UDAY Bonds amounting to Rs. 536.07 Crore pertaining to the CAPEX schemes and had directed the Petitioner to take up the matter of conversion of back to back agreement with Government of HP into a mix of equity and grants in future years as envisaged in original tripartite agreement in para 8.17.10. As per the Petitioner, the Commission has allowed interest on UDAY Bonds in MYT Tariff Order dated 29.06.2019 from FY 2019-20 to FY 2023-24 as follows:

	(in Rs Cr.)				
	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>
UDAY Bonds	42.24	42.24	42.24	40.13	35.91

11. It is averred that the Petitioner regularly pursued the matter with the GoHP to convert the UDAY (75%) loans into grant/equity in pursuance of the tripartite agreement at 08.12.2016 executed between Government of India, Government of HP and HPSEB and accordingly waived off the due interest



installments on 13.08.2021 and 13.02.2022 vide various letter (Annexure-C). However, the Government of HP has not agreed to the same and has reiterated its stand to honour the obligations as per the bipartite agreement signed on 24.01.2017.

12. It is averred that the as per the audited accounts of the Petitioner, the cumulative losses as on 31.03.2021 are Rs. 1700 Crore approximately and the Petitioner is reeling under severe financial distress and therefore the disallowing the interest on UDAY Bonds shall result into adding to the cumulative losses. Therefore, the interest amount to Rs. 40.13 Crore for FY 2022-23 and Rs. 35.91 Crore. for FY 2023-24 on UDAY bonds corresponding to CAPEX loans as approved by the Commission in its past tariff order is required to be considered.

**(D) Disallowance of one-time provision under A & G Expense**

13. It is averred that the Commission has allowed a one time provision of Rs. 5 Crore towards Public Interaction Programme and connectivity charges in MYT tariff order dated 29.06.2019, which is under:-

	(in Rs. Cr.)				
	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>
A&G Expense	44.91	45.58	46.26	46.95	47.65
One-time provision	5.00	5.00	5.00	5.00	5.00
Total	49.91	50.58	51.26	51.95	52.65

14. It is averred that the Petitioner has submitted the actual expenditure incurred against Public Interaction Programme (under the same head) and Connectivity Charges (under the head “IP VSAT Connectivity Charges”) under A&G expenses, along with True Up of FY 20 and FY 21. Also averred that

Accounting Heads (A/H) have been maintained separately for Public Interaction Programmes and Connectivity Charges and the amount booked against the same along with A/H are as follows:

(in Rs. Cr.)			
Particulars	A/H Code	FY 20	FY 21
Public Interaction Programme (PIP)	76.156	0.19	0.10
IP VSAT Connectivity Charges	76.198	2.70	3.83
<b>Total</b>		<b>2.89</b>	<b>3.93</b>

15. It is averred that the robust connectivity up to Sub-division levels is pre-requisite for effective implementation of the following software:-

- i) SAP ISU Billing and
- ii) SAP ERP.

16. Thus, expenditure on connectivity is likely to increase. Further, the proposal for increasing the aforesaid connectivity is under consideration. Thus, withdrawing the provision of these expenses is likely to adversely impact HPSEBL.

17. Also averred that A&G is a controllable parameter and thus, the Commission shall allow MYT approved figures in the True Up. Therefore, the Petitioner has prayed that Rs. 5 Core for 4<sup>th</sup> MYT Control Period towards Public Interaction Programmes and Connectivity charges and also approve the A &G expends of Rs. 47.80 Crore in True-up of FY 2019-20 and 49.51 Crore in FY 2020-21.

**(E) Wrong computation of Additional Surcharge**

18. It is averred that the Commission has erred while computing fixed cost of stranded generating stations of 102.53 paise per unit in Table 327 of the order dated 29.03.2022. It is averred that the expected Net Annual Generation for Tanda station (660 MW) shall be 4,472.07 MUs considering Normative PLF of 85%, instead of 4,855 MUs as considered and the summation of Power purchase in last 2 columns of Table 327“Fixed Cost relating to Generating Capacity (at Stranded Generating Stations)”is incorrect. The sum of power purchase cost and quantum is mentioned as Rs. 27.13 Cr. and 256.20 MUs respectively, which need to be corrected. The corrected overall annual fixed cost of stranded generating stations, as worked out by the Petitioner is as follows:

Name of Station	Capacity (MW)	Expected Net Annual Generation (MUs)	Annual Fixed Cost (Rs Cr.) for FY 21	Annual Fixed Charges (Paise/unit)	Power Purchase (MUs) during FY22	Total Fixed Cost of Power Purchase (Rs Cr.)
I	II	III	IV	$V = \{(IV \times 100 / III)\}$	VI	$VII = \{V \times VI / 1000\}$
Unchahar-I	420.00	2,846.00	326.00	115	40	4.58
Unchahar-II	420.00	2,846.00	302	106	71	7.51
Unchahar-III	210.00	1,423.00	203.00	143	46	6.60
Unchahar-IV	500.00	3,388.00	577.00	170	6	0.94
Anta (G)	419.33	3,029.00	228.00	75	15	1.14
Auriya (G)	663.36	4,791.00	324.00	68	15	0.99
Tanda TPS	660.00	4,472.07	788.00	176	6	1.05
Dadri (G)	829.78	5,993.00	368.00	61	50	3.07
Dadri-II TPS	980.00	6,640.00	1,048.00	158	8	1.25
<b>Total</b>	<b>5,102.47</b>	<b>35,428.07</b>	<b>4,164.00</b>	<b>118</b>	<b>256.20</b>	<b>27.13</b>
<b>Average rate of Fixed Cost at Injection Point (Paise/unit) (VII*1000/VI)</b>				<b>105.90</b>		

19. It is averred that the average rate of Fixed Cost at Injection Point works out as 105.90 paise per unit and accordingly, the rate of Additional Surcharge in Paise per unit is computed as follows:

S. No.	Description	Fixed Cost at Injection point in paise/kWh	Fixed Cost at Consumer end in paise/kWh
1	Generation Capacity	106	113
2	Transmission Capacity		
(i)	<i>Power Grid system</i>	44	47
(ii)	<i>HPPTCL system</i>	5	5
3	Total Fixed Cost payable to Generator (A+B)		165
4	Recovery of Fixed Charge as Demand Charge from EHT Consumers		86
5	<b>Balance payable in shape of Additional Surcharge in Paise/kWh (C-F)</b>		<b>79</b>

Therefore, the arithmetic and computational errors as determined by the Commission in its order dated on 29.03.2022 are required to be corrected.

**(F) Errata in Tariff Order**

20. It is averred that there is Errata in calculation of penalty in True Up of FY 2019-20 as mentioned in Para 10.4.2 in the Tariff Order dated 29.03.2022. According to the Petitioner, the Commission has revised the T&D loss target for FY 2019-20 to 11.30%, however, the calculations made under “*Table 183: Loss on account of Under-achievement of T&D loss for FY20*” and “*Table 184: Penalty for Under-achievement of T&D Loss for FY20*” have been made considering T&D loss target of 10.30% and the corresponding penalty for underachievement of T&D loss is Rs. 34.26 Cr. The revised calculation considering target of 11.30% has been worked out as under:-

S. No.	Particulars	Trued-up
A	Energy Sales within state (MU)	9,124.89
B	T&D Losses (%)	11.30%
C	<b>Power Purchase Requirement to meet state requirement (MU)</b>	<b>10,287.36</b>
D	<b>Inter – State Sale (MU) (i+ii)</b>	<b>3,545.56</b>
(i)	For Sale of Power (including UI, Bilateral & IEX/PXIL) (MU)	1,450.10
(ii)	For Banking arrangements (MU)	2,095.46

S. No.	Particulars	Trued-up
<b>E</b>	<b>Total Power Purchase Quantum Approved at State Periphery (MU) (C+D)</b>	<b>13,832.92</b>
F	Actual Power Purchase Quantum at State Periphery (MU)	13,924.42
<b>G</b>	<b>No. of units Lost (MU) (E-F)</b>	<b>91.50</b>

S. No.	Particulars	Unit	Amount
<b>A</b>	<b>No. of units</b>	<b>MU</b>	<b>91.50</b>
<b>B</b>	<b>Cost of Power for over-achievement</b>		
(i)	Cost of Power Purchase from Other than own sources	Rs. Cr.	2,700.28
(ii)	Power purchased from other than own sources	MU	10,057.12
(iii)	Less: PGCIL Losses	MU	307.91
(iv)	Net Power Purchase (ii-iii)	MU	9,749.21
<b>C</b>	<b>Cost of Power Purchase from Other than own sources (i*10 / iv)</b>	<b>Rs. /Kwh</b>	<b>2.77</b>
<b>D</b>	<b>Penalty on account of T&amp;D loss due to under-achievement (A X C X 60%/10)</b>	<b>Rs. Cr.</b>	<b>15.21</b>

It has been requested to consider the Penalty on account of under-achievement of T&D loss as Rs. 15.21 Cr.

21. Also averred that Source Wise Power Purchase Cost for FY23 (Rs. Cr.) & Rate (Rs/ kWh) as given at Table 276 in 'NTPC stations' and Kahalgaon II cost figures are inter changed. The correct cost figures for Rihand 3 is Rs.76.34 Cr., for Singrauli Rs.5.27 Cr. and for Kahalgaon II is Rs. 52.57 Cr. Accordingly, the correct rates for Rihand 3 is Rs.3.04 per kWh, for Singrauli is Rs.2.22 per kWh & for Kahalgaon II is Rs. 3.59 per kWh.

In view of above, it is requested to correct the Source Wise Power Purchase Cost for FY23 (Rs. Cr.) & Rate (Rs /kWh), in table 276 of the Tariff Order.

**(iii) Nomenclature Correction in Table no. 278 under the head "Particulars"**

22. It is submitted that in the 'Table 278 Approved HPPTCL Charges for FY23 (Rs. Cr.), the nomenclature in case of Particulars', the Phojal - 220kV

Substation & ADHPL Transmission Line have been interchanged in the given table. Further the amount HPSEBL is required to pay to HPPTCL in FY 2022-23, in case of Phojal 220kV Substation is Rs.1.30 Cr. and in case of ADHPL Transmission Line is Rs. 4.00 Cr. are as per the Petitioner's submission in the petition. However, the Hon'ble Commission has considered only 80% of the HPSEBL submissions in petition for these assets of HPPTCL & ADHPL. The Hon'ble Commission at para 14.10.4 has observed that in case of transmission line and substation, where the tariff is still to be determined, the Commission has considered 80% of the overall cost proposed by the petitioner and any charges shall be considered at the time of truing-up.

In view of above, it is requested to correct the nomenclature as explained above, in table 278 of the Tariff Order.

**(iv) Correction required in Table 333 for IDC charges in Tariff Order**

23. In the second row of Table 333 "Approved IDC Charges", the "IDC for Applicants under single part tariff" may kindly be corrected to "IDC for Applicants under two part tariff".

**(v) Correction required in SCHEDULE-NON-DOMESTIC NON-COMMERCIAL SUPPLY (NDNCS)**

24. The tariff for Electric Vehicle charging station were earlier applicable under NDNCS category. From FY 23 onwards, the Electric Vehicle Charging Stations are covered under separate category in the Order dated 29.3.2022. Hence, in the same Order, the Hon'ble Commission has inadvertently left out to

remove the Electric Vehicle Charging Stations from the applicability of schedule of NDNCS category.

Now that separate tariff is allowed for Electric Vehicle charging stations, “*j) Electric Charging Stations for the Electric vehicles*” shall be removed from “SCHEDULE- NON-DOMESTIC NON-COMMERCIAL SUPPLY (NDNCS)”.

(vi) **Correction required in SCHEDULE-IRRIGATION AND DRINKING WATER PUMPING SUPPLY (IDWPS)**

25. Till FY 22, the subsidy from Government of Himachal Pradesh (GoHP) was applicable only to domestic and agriculture consumers (having contract demand upto 20 kVA). However, from FY 23 onwards, GoHP has committed to provide additional subsidy of 20 paise per unit for all categories of consumers. Now that additional GoHP subsidy of 20 paise per unit is applicable to all categories of consumers, the following shall be removed from the schedule of “Irrigation and Drinking Water Pumping Supply (IDWPD)”:

*“Notes:*

*a) Government of HP subsidy under this category would only be applicable to agricultural Consumers having contract demand of upto 20kVA only irrespective of the voltage levels at which they are connected.”*

26. Neither any Stakeholder has contested the Petition nor any reply has been filed.

27. We have heard Sh. Kamlesh Saklani, Authorised Representative for Petitioner in detail.

28. Sh. Kamlesh Saklani, Authorised Representative of the Petitioner has submitted that the Petitioner had placed on record all relevant details in the

Petition but the vital detail has escaped the attention of the Commission while passing Order dated 29.03.2022 vide which some of the claims have been disallowed. He has also submitted that neither any appeal has been filed against the Order dated 29.03.2022 nor the Order dated 29.03.2022 is in question in any court of law. He has also submitted that there are errors apparent on the face of record in the Order dated 29.03.2022 and in case all the documents which had been furnished in the main Petition No. 02 of 2022 are reconsidered, there are sufficient reasons to review the Order dated 29.03.2022. He has also submitted that the delay, if any, in filing the Review Petition may kindly be condoned as the time period for filing Review Petition is neither prescribed under Section 94 of the Electricity Act, 2003 neither under Regulation 63 of the HPERC (Conduct of Business) Regulations, 2005 nor Section 114 and Order 47 Code of Civil Procedure, 1908 provide for any time for filing Review Petition, and therefore, the Petition is well within time and the Order dated 29.03.2022 is liable to be reviewed. He has relied upon the law laid down by Hon'ble Supreme Court in **Andhra Pradesh Power Co-ordination Committee & Others Vs. Lanco Kondapalli Power Ltd. & Others (2016) 3 SCC 468.**

29. We have carefully gone through the submissions and have also perused the record carefully. The following points arise for determination in the present Review Petition:-

1. Whether the Review Petition is within time?
2. Final order.



30. For the reasons to be recorded hereinafter in writing, our point wise findings are as under:-

Point No. 1: No.

Point No. 2: (Final Order) :- Review Petition dismissed per operative part of the Order.

### **REASONS FOR FINDINGS**

#### **Point No. 1**

31. It is none of the case of the Petitioner that the impugned order has been passed behind its back. On the contrary, Regulation 21(7) of the HPERC (Conduct of Business) Regulations 2005, as amended from time to time, provides that all the final Orders of the Commission shall be communicated within 7 days to the parties in the proceeding under the signature of the Secretary or an officer empowered in this behalf by the Chairperson or the Secretary. It is also none of the case of the Petitioner that it had not received the copy of the final Order dated 29.03.2022 within 7 days from the Commission.

32. The careful perusal of the record reveals that final Order in Petition No. 02 of 2022 was passed on 29.03.2022. The present Review Petition has been filed on 24.06.2022 i.e. after a delay of about 86 days. However, there is not even an iota in the Petition explaining the reasons for not filing the Review Petition immediately after receipt of the copy of order and for such a long time.

33. As per Section 94 (1) (f) of the Electricity Act, 2003, the Appropriate Commission shall have the same powers as are vested in a Civil Court under Code of Civil Procedure, 1908 for the purpose of any enquiry or proceedings

and for reviewing its decisions, directions or orders. Neither Section 114 nor Order 47 of Code of Civil procedure, 1908 specify any period of limitation for filing of Review Petition. Similarly, Regulation 63 of HPERC (Conduct of Business) Regulations, 2005, as amended from time to time and Section 94 of the Electricity Act, 2003 also do not specify any time limit within which the Petition for Review has to be filed.

34. Therefore, in the absence of any prescribed period of limitation for filing the Review Petition under Section 94 of the Electricity Act, 2003, Regulation 63 of the HPERC (Conduct of Business Regulations, 2005) and Section 114 and Order 47 of Code of Civil Procedure, 1908, the Petitioner was required to file the Review Petition within the time stipulated under the Limitation Act, 1963. Article 124 of the Schedule to the Limitation Act, 1963 provides that the limitation period for review of a judgment by the Court is 30 days from the date of the decree or the order. Here, it is relevant to refer to Sub-section (2) of Section 29 of the Limitation Act, 1963 which provides as under:

*“Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.”*

35. Coming to the law laid down by the Hon'ble Supreme Court in the **Andhra Pradesh Power Co-ordination Committee & Others Vs. Lanco Kondapalli Power Ltd. & Others (2016) 3 SCC 468**, wherein It has been held by Hon'ble SC that the limitation upon the Commission would be only in respect of its Judicial Powers under Clause (f) of Sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other Powers or functions which may be administrative or regulatory. Para 31 of the aforesaid law laid down by Hon'ble SC is reproduced as under:-

*“we have taken the aforesaid view to avoid injustice as well as the possibility of discrimination. We have already extracted a part of para 11 of the judgment in State of Kerala v. V.R. Kalliyankutty wherein the Court considered the matter also in the light of Article 14 of the Constitution. In that case the possibility of Article 14 being attracted against the statute was highlighted to justify a particular interpretation as already noted. It was also observed that it would be ironic if in the name of speedy recovery contemplated by the statute, a creditor is enabled to recover claims beyond the period of limitation. In this context, it would be fair to infer that the special adjudicatory role envisaged under Section 86(1)(f) also appears to be for speedy resolution so that a vital developmental factor-electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the civil court. Evidently, in the absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover*

*such delayed claims through the Commission. Hence we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court. But in an appropriate case, a specified period may be excluded on account of the principle underlying the salutary provisions like Section 5 or Section 14 of the Limitation Act. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory.”*

36. No doubt, the Petition No. 02 of 2022 was for approval of Mid Term Performance Review for the 4<sup>th</sup> Control Period (FY 2019-20 to 2023-24) and True- up of controllable parameters for FY 19, FY 20 and FY 21, which has been considered and disposed off, yet the Petitioner has come up before this Commission by way of Review Petition for reviewing the Order dated 29.03.2022, which is not a function of the administrative nature and rather, is a judicial function. Hence, there is no quarrel with the law laid down by the Hon’ble Supreme Court in **Andhra Pradesh Power Co-ordination Committee & Others Vs. Lanco Kondapalli Power Ltd. & Others (2016) 3 SCC 468** but the ratio laid down therein is not applicable in the facts and circumstances of the present case.

37. Section 3 of the Limitation Act, 1963 provides that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been setup as a defence. Though, none of the stakeholders have contested the Review Petition but said non-contest of the Petition on the part of Respondents/stakeholders is of no help to the Petitioner and if the Review Petition is not within time, the same can't be said to be maintainable.

38. Section 5 of the Limitation Act, 1963 provides for extension of the period of limitation that any appeal or any application may be admitted after the prescribed period, if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. However, in the present case, no such application for condonation of delay has been filed. Hence, the mere reference in the prayer clause is not sufficient for the maintainability of the Petition.

39. It is held in *Santosh Kumar Shivgonda Patil & Others Vs. Balasaheb Tukaram Shevale & Others* (2008) 9 SCC 352 as under:

*“It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be*

*exercised by the authority, suo motu or otherwise, it is plain the exercise of such power within reasonable time is inherent therein.”*

40. This judgment of the Hon’ble Supreme Court has been relied upon by the Hon’ble High Court of Himachal Pradesh in **Executive Engineer, CPWD Divison-1 Vs. Assessing Authority and Another 2022 SCC Online HP 1760**.

41. In this regard, it is also relevant to refer to the law laid down by Hon’ble Supreme Court in **Surjeet Singh Sahni V/s State of UP and others 2022 SCC Online SC 249** that a mere representation does not extend the period of limitation. Para 5 of the Judgement is being reproduced as under:-

*“As observed by this Court in catena of decisions, mere representation does not extend the period of limitation and the aggrieved person has to approach the Court expeditiously and within reasonable time. If it is found that the writ petitioner is guilty of delay and laches, the High Court should dismiss it at the threshold and ought not to dispose of the writ petition by relegating the writ Petitioner to file a representation and/or directing the authority to decide the representation, once it is found that the original writ Petitioner is guilty of delay and laches. Such order shall not give an opportunity to the Petitioner to thereafter contend that rejection of the representation subsequently has given a fresh cause of action.”*

42. As observed above, the order sought to be reviewed was passed in Petition No. 02 of 2022 dated 29.03.2022 but the Petition has been filed only on 24.06.2022, after about 86 days of passing of the said order. There is no

explanation for the delay except a reference in the prayer that the delay be condoned.

43. As provided under Article 124 of the Schedule to the Limitation Act, 1963, the Review Petition is required to be filed within a period of 30 days from the date of receipt of copy of Order and for not filing the same within stipulated period, the Petitioner was required to file an application under Section 5 of the Limitation Act, 1963 explaining delay of each and every day and for condoning such delay. Since no explanation for delay has been provided and no application for condoning the delay has been filed, the present Review Petition is hopelessly barred by time and not maintainable. Point No.1 is accordingly answered against the Review Petitioner.

Point No. 2 (Final Order)

44. In view of our aforesaid discussion and findings, the Review Petition is beyond the limitation period and, as such, the same is dismissed being hopelessly barred by time.

The file after needful be consigned to records.

Announced  
**23.11.2022**

-Sd-  
**(Shashi Kant Joshi)**  
Member

-Sd-  
**(Yashwant Singh Chogal)**  
Member (Law)

-Sd-  
**(Devendra Kumar Sharma)**  
Chairman