

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

Vidyut Aayog Bhawan, Block No. 37, SDA Complex, Kasumpti, Shimla- 171009

CORAM: Sh. Devendra Kumar Sharma, Chairman
Sh. Yashwant Singh Chogal, Member (Law)
Sh. Shashi Kant Joshi, Member

In the matter of:

In the matter of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2024.

ORDER

The Himachal Pradesh Electricity Regulatory Commission (hereinafter to be referred as “the Commission”), in exercise of powers under Section 61, Sub-section(1) of Section 62, Clauses (a) and (e) of Sub-section (1) of Section 86 and Clauses (zd), (ze) and (zf) of Sub-section (2) of Section 181 of the Electricity Act, 2003 (36 of 2003), read with Section 21 of the General Clauses Act, 1897 (10 of 1897), and all other powers enabling it in this behalf, has notified the draft Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2024, on 17th February, 2024 and as required under Sub-section (3) of the Section 181 of the Act, the same were published in the Rajpatra, Himachal Pradesh on 23rd February, 2024.

2. The Commission invited public objections and suggestions by way of insertions in two News papers i.e. “The Tribune” and “Dainik Bhasker” on 28.02.2024 under Rule (3) of Electricity (Procedure of Previous Publication) Rules, 2005 and the full text of the draft Regulations was made available on the Commission’s website: www.hperc.org. The last date for filing objections/suggestions was 26.03.2024.
3. The Commission, vide letter dated 29.02.2024, also requested the major stakeholders, including the Government of Himachal Pradesh, Himachal Pradesh State Electricity Board Limited (HPSEBL), Himachal Pradesh Power Transmission Corporation Limited (HPPTCL), Himachal Pradesh Power Corporation Limited (HPPCL), Small Hydro Project Developers Associations, Directorate of Energy, HIMURJA, Jal Shakti Vibhag, Industries and Hoteliers Associations to send their objections/ suggestions in the matter.
4. The Commission received comments/suggestions on the draft Regulations from Himachal Pradesh State Electricity Board Limited (HPSEBL) and Himachal Pradesh Power Transmission Corporation Limited (HPPTCL).
5. Public hearing in the matter was scheduled for 28-03-2024 to be held at the office of Commission at Shimla. The notice thereof was also published. The public hearing, as scheduled, was held on 28th March, 2024. The list of participants who attended the said public hearing is annexed as **Annexure-“A”**.
6. During the public hearing, the representative from HPSEBL and HPPTCL almost reiterated the Suggestions / Objections submitted by them through their written submissions. Sh.

Kameshwer Dhaulta, Consumers Representative also expressed his views during the hearing. No other Stakeholder(s) attended the public hearing.

7. **Consideration of written/oral submissions made by the stakeholders and Commission's views.-**

After having carefully gone through all the written and oral submissions, the Commission now proceeds to consider the same and finalize its views on the subject, as follows:-

(a) **General Comments:**

Sh. Kameshwer Dhaulta, Consumers Representative has submitted that the generating Companies must ensure generation during peak hours so that HPSEBL does not have to purchase costly power from other sources to meet Consumers demand during the peak hours. He has further added that the liability of DSM Charges is passed on to the DISCOM whereas the same should be borne by the Generating Company, in case it deviates from its schedule. He has requested for appropriate technological interventions to arrest losses.

Commission's View:-

Though the suggestion of Sh. Kameshwer Dhaulta are indeed good but the Commission finds that the comments are generic in nature having no bearing to the Regulations under finalization. Thus, no change is warranted in the proposed Regulations.

(b) **Comments on the limit regarding Capital Spares in Regulations 3.1.16, 3.1.66, 27.2, 28.2 and 35.7:**

The HPSEBL has submitted that in Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2024 ("CERC Tariff Regulations, 2024" for short), the limit of Capital Spares has already been reduced by the Central Electricity Regulatory Commission (CERC) to Rs. 10 lakh in case of the Generating company over and above the initial spares. Based on the above, the HPSEBL has submitted that keeping in view the small size of the generating units within the State, this limit may be kept between Rs. 5 lakh to Rs. 10 lakh based on the installed capacity.

Commission's View:-

The Commission finds merit in the suggestions of the HPSEBL and decides to finalize the proposed Regulations by considering the spares costing above Rs. 10 lakh, maintained by the generating company over and above the initial spares, as Capital Spares. The referred Regulations are accordingly modified at appropriate places.

(c) **Comments regarding True-up of Control Period in Regulations 3.1.62, 4.3, 15.1, 16.1(a)(ii) and 56.3:**

The HPSEBL has requested that the true up of the Control Period may be considered every year for (n-2) year in order to avoid burden on carrying/holding cost to the consumers/generation companies.

Commission's View:-

The Commission observes that the HPSEBL has not been able to file the true up Petitions during the present control period as per the timelines provided. Therefore, the Commission finds no logic in carrying out the true up exercise on annual basis. No other suggestions have been received. Accordingly, the Commission decides to finalize these Regulations without any change in this regard.

(d) Comments on Regulations 3.1.12 and 39.2:

The HPSEBL has submitted that there is mention of Bank rate in Section 47(4) of the Electricity Act, 2003 for payment of interest on security. Further, Sub-regulation (1) of Regulation 7 of the Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2005 also define the Bank Rate as notified by Reserve Bank of India whereas the present draft Regulations define the Bank Rate as 1 year MCLR plus 350 basis points which will result in contradiction between the two Regulations. In view of above, the HPSEBL has requested that the definition may be amended, accordingly.

Commission's View:-

The Commission observes that the Bank Rate is being used for calculation of Interest on Working Capital. The definition of "Bank Rate" appearing in the draft Regulations is strictly applicable to the proposed Regulations and has no relation and bearing to any other Regulations as claimed. Accordingly, the Commission decides to finalize the proposed draft Regulations without any change in this regard.

(e) Comments on Regulation 3.1.14:

The HPSEBL has submitted that the terms and conditions of energy available through HPEMC to DISCOM may be defined.

Commission's View:-

The Commission observes that HPEMC is a new entity having been created recently by the GoHP recently but its functioning and the impact on the HPSEBL is not known to the Commission. Further, the HPEMC has not been created with the concurrence of the Commission. As such, it may be advisable to wait for the HPEMC to start functioning and at this stage, no terms and conditions may be proposed. As such, no change is warranted in the proposed draft Regulations.

(f) Comments on Regulation 3.1.39:

The HPSEBL has submitted that the three (3) events namely, Pandemic, Cyber Attacks and Change in course of water source, may also be included under force majeure events.

Commission's View:-

The Commission observes that the definition of the Force Majeure proposed in the draft Regulations is in line with Himachal Pradesh Electricity Regulatory Commission (Multi Year Wheeling Tariff & Retail Supply Tariff) Regulations, 2023 ("MYT Distribution Regulations" for short) and Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2023. COVID-19 was an unfortunate event and it is not possible to predict recurrence of such event. Similarly, Cyber Attacks may be tackled with appropriate security mechanism. The Change in water course too would not fall within the purview of Force Majeure. Each such event will have its own consequences and can not be generalised. As such, the Commission feels that inclusion of the above events, as proposed by HPSEBL, is not warranted.

Accordingly, the Commission decides to finalize the proposed Regulation without any change.

(g) Comments on Regulation 3.1.42:

The HPSEBL has submitted that it has been involved in generating, transmitting & distributing Hydro energy since 1971 predating the establishment of Regulatory regime and concept of segregation of Generation & Distribution businesses. In some of the power houses of HPSEBL, the distribution feeders are in the switchyard of power house and controlled from the same control room. As such, the segregation of the switchyard at this stage would be challenging for which the HPSEBL has requested that sufficient provision may be kept in order to include the cost of operation and maintenance of these substations in the power house AFC.

Commission's View:-

The Commission has carefully considered the submissions but is of the view that HPSEBL should allocate adequate costs between Generation and Distribution by ensuring that the costs are not claimed twice under Generation and Distribution business by the HPSEBL.

Accordingly, the Commission is not inclined to accept the suggestion and decides to finalize the proposed draft Regulation without any change in this regard.

(h) Comments on Regulation 3.1.94:

The HPSEBL has submitted that the words "40 years" may be substituted with the words "40 years from the Date of Commercial Operation" in order to have clarity on the age.

Commission's View:-

The Commission feels that it is very much implied that the useful life of the Hydro generating Station is from COD only. However, taking note of the submission made by the HPSEBL, the Commission decides to modify the proposed definition accordingly.

(i) **Comments on Regulation 5.2:**

The HPSEBL has submitted that the 3rd proviso to the Regulation may be suitably amended in view of the existing Regulations wherein, the true-up of the previous Control Period shall be done during the Mid-term review of the next Control Period. The HPSEBL has requested that the condition of true up of FY2022-23 and previous years, as provided in the Regulations, may kindly be aligned with the existing Regulations.

Commission's View:-

The Commission finds no ambiguity in the 3rd proviso of the proposed Regulations. The provision is in line with the provisions provided in the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2023 ("Transmission Regulations" for short) as well. HPSEBL should have no problem in doing the True up of the previous Control period including that of FY 2022-23 at the time of the Mid-term review of the next Control period.

Accordingly, the Commission decides to finalize the proposed draft Regulation without any change in this regard.

(j) **Comments on Regulation 8.6:**

The HPSEBL has submitted that the words "Board of Directors" may be substituted with the words "Board of Directors or Competent Authority as per Delegation of Powers of the Company".

Commission's View:-

The HPSEBL should not have any issue in seeking the approval of the "Board of Directors". Moreover, this provision is in line with that provided in the Transmission Regulations as well.

Accordingly, the Commission decides to finalize the proposed draft Regulation without any change in this regard.

(k) **Comments on Regulations 12.1(d) and 19.1:**

The HPSEBL has submitted that the parameters in respect of Hydro generating station eligible for sharing of the benefits/loss on account of actual achievement based on the Normative value, may also be mentioned so as to have clarity in computation of the gain or loss.

Commission's View:-

The Commission observes that Regulation 9 of the proposed Regulations list the parameters which are controllable in nature and also it has already been specified in the Regulation that the Commission shall stipulate a trajectory for certain variables. Further, this trajectory shall provide for sharing of gains and losses with the

beneficiaries against the targets specified. So, there is complete clarity and no confusion in this regard in the proposed Regulations.

Accordingly, the Commission decides to finalize the proposed draft Regulation without any change in this regard.

(l) Comments on Regulation 14.3:

The HPSEBL has submitted that the percentage of Interim Tariff may be considered as 90% in line with the provisions of CERC Tariff Regulations, 2024.

Commission's View:-

The Commission feels that the provision of granting interim tariff of up to seventy per cent (70%) of the tariff claimed in case of new Hydro generating station or unit thereof during the first hearing of the application is quite reasonable. The Commission feels that the Generating Company ought to file the Petition for the determination of tariff furnishing complete details as may be required by the Commission. This shall reduce the time for disposal of such Petition by the Commission.

Accordingly, the Commission decides to finalize the proposed draft Regulation without any change in this regard.

(m) Comments on Regulation 17.1:

The HPSEBL has submitted that the words "150 basis points" cost may be considered as "100 basis points with simple interest" in line with the CERC Tariff Regulations, 2024.

Commission's View:-

The Commission feels that the provision for allowing Carrying/Holding Cost at 150 basis points above the weighted average one-year Marginal Cost of Funds-based Lending Rate (MCLR) prevailing during the concerned Year as declared by the State Bank of India from time to time, is quite reasonable. Moreover, this provision is in line with the provisions provided in the Transmission Regulations as well.

Accordingly, the Commission decides to finalize the proposed draft Regulation without any change in this regard.

(n) Comments on Regulation 18.1(b):

The HPSEBL has submitted that the Auxiliary consumption has been categorized based on type of station in rotating and static excitation and capacity of the plant. The HPSEBL has suggested that type of turbine installed may also be categorized due to the fact that in case of the Francis turbines, the natural drainage is not there and significant energy is consumed in routine drainage and de-watering and is further dependent upon underground/surface type stations.

Commission's View:-

The Commission does not find merits in the submissions made by the HPSEBL. The proposed provision is in line with the provisions provided by the Central Commission in its Tariff Regulations and as per the provisions provided in the existing Regulations of the Commission as well.

Accordingly, the Commission decides to finalize the proposed draft Regulation without any change in this regard.

(o) Comments on Regulation 20.1:

The HPSEBL has submitted that one-third of the amount of gain may be passed as rebate in tariff to the Consumers and two-third be utilized at the discretion of the Hydro Generating Company in line with the proviso of Regulation 20.2 for losses wherein two-third of the loss is absorbed by the Generating Company & one-third loss is passed on to the consumers as additional charge in the tariff.

Commission's View:-

The Commission does not find merits in the submissions made by the HPSEBL. The Commission feels that inefficiencies on the part of the Generating Company should not be passed on to the Consumers and impact of the same should be indemnified by the Generating Company itself to a large extent, if not completely. Similar provisions have been provided by the Commission in the MYT Distribution Regulations and Transmission Regulations as well.

Accordingly, the Commission decides to finalize the proposed draft Regulation without any change in this regard.

(p) Comments on Regulation 24.6:

The HPSEBL has submitted that in the 1st proviso, the percentage of 90% may be considered either at 100% or may be restricted to 95% as per the provisions of CERC Tariff Regulations, 2024.

Commission's View:-

The Commission feels that inefficiencies on the part of the Generating Company should not be passed on to the Consumers and impact of the same should be indemnified by the Company itself to a large extent, if not completely. However, considering the submissions made by the HPSEBL and to align the Regulation with the CERC Tariff Regulations, 2024, the Commission decides to allow maximum condonation upto 95% of the delay. The proposed draft regulation has accordingly been modified.

(q) Comments on Regulation 30:

The HPPTCL has submitted that if the generating station is not commissioned on the SCOD or actual COD, whichever is later, of the associated transmission system, the generating company should reimburse 100% transmission charges irrespective of associated system or common transmission system. Further, the HPPTCL has requested the Commission to elaborate the methodology of applicable transmission charges in the case where both STU as well as Generating Company deviate from their scheduled COD dates.

Commission's View:-

The Commission observes that the comments made by the HPPTCL do not have any merit as the proposed Regulation already provides for the same. In fact, similar provision exists in the Transmission Regulations notified by the Commission on 14.03.2024 as well.

Accordingly, the Commission decides to finalize the proposed draft Regulation without any change in this regard.

(r) Comments on Regulation 36.2:

The HPSEBL has submitted that the base rate of RoE may be considered at 17% for storage type Hydro Generating Stations, pumped storage Hydro Generating Stations and run-of-river Generating Stations with pondage as per provisions of CERC Tariff Regulations, 2024.

Commission's View:-

The Commission does not find merit in the submissions made by the HPSEBL as the suggestion by the HPSEBL is without any reasoning and justification. Any provision cannot be made merely on the basis that the same is there in the CERC Regulations as the conditions in the State of Himachal Pradesh are entirely different.

Accordingly, the Commission decides to finalize the proposed draft Regulation without any change in this regard.

(s) Comments on Regulation 38.8:

The HPSEBL has submitted that the benefits on account of refinancing of loan and interest on loan may be considered in the ratio of 75:25 between Hydro Generating Company and users.

Commission's View:-

The Commission feels that the benefit of refinancing of the loan has to be shared with the beneficiaries by the Generating Company. Accordingly, the provision for the same

has been kept in the ratio of 50:50. The Commission further notes that the provision is in line with the provisions contained in the CERC tariff regulations, 2024 as well.

Accordingly, the Commission decides to finalize the proposed draft Regulation without any change in this regard.

(t) **Comments on Regulation 41:**

The HPSEBL has submitted that the provision related to decommissioning of the generating station may be incorporated in the tariff component.

Commission's View:-

The decommissioning of a power generating plant implies that it is not producing any power. Therefore, the justification as to why the Commission should provide provision in tariff for decommissioning of the generating station has not been given by the HPSEBL. Merely saying that the provision may be incorporated in the tariff component does not suffice the purpose. The Commission feels that inefficiencies on the part of the Generating Company should not be rewarded. Therefore, the Commission does not find any merit in the submissions made by the HPSEBL.

Accordingly, the Commission decides to finalize the proposed draft Regulation without any change in this regard.

(u) **Comments on Regulation 42.3:**

The HPSEBL has submitted that though Regulation 18.1(b) provides “Auxiliary Energy Consumption” but the Normative Auxiliary Consumption (AUX), in percentage, has not been defined in the Regulations. The HPSEBL has requested for clarification in this regard.

Commission's View:-

The Commission observes that “Auxiliary Energy Consumption” has been defined in the proposed Regulations under Regulation 3.1 (Definitions) at S. No. 11). Further, the values of the Auxiliary Energy Consumption provided in Regulation 18.1(b) are Normative values to be achieved. This is also evident from the Regulation 18.1 which says that “*The norms of operation for hydro generating stations shall be as under*”. Therefore, there is no confusion in this regard.

Accordingly, the Commission does not find merit in the submissions made by the HPSEBL and decides to finalize the proposed draft Regulation without any change in this regard.

(v) Addition of a new Regulation under 42.7

The Commission has noted that as per the proposed draft Hydro Generation Tariff Regulations, 2024, a Hydro Generating Station, may be compensated in case the actual total energy generated by it during a year is less than the design energy for reasons beyond the control of the Generating Company. In this regard, the Commission is of the view that there should also be a provision in these Regulations for revision of design energy of a Hydro Generating Station in case the actual total energy generated by it has been more than the design energy for atleast ten (10) years during the operation of the hydro plant after COD under long term PPA with a DISCOM. Accordingly, the Commission has incorporated the same in Regulation 42.7 of the Hydro Generation Tariff Regulations, 2024 as Regulation 42.7 (c).

In view of the above, the Commission, after taking into consideration the objections and suggestions received on the draft Regulations and the deliberations in the public hearing conducted thereon, decides to finalize the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2024 by incorporating certain other need based changes and also the changes on the above lines.

Ordered accordingly.

-Sd/-
(Shashi Kant Joshi)
Member

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

-Sd/-
(Devendra Kumar Sharma)
Chairman

Place: Shimla
Date: 05.06.2024

Annexure-A

Sr. No.	Participant
1.	Er. Anil Gautam, General manager (Projects), HPPTCL
2.	Er. Mandeep Singh, Chief Engineer (System Operation), HPSEBL
3.	Er. Virender Kumar, Deputy General Manager (C&M), HPPTCL
4.	Er. J. S. Upadhyay, Sr. Executive Engineer (SERC/T), HPSEBL
5.	Er. Abhinav, Assistant Engineer, HPPTCL
6.	Er. Sheetal, Assistant Engineer, HPPTCL
7.	Sh. K.S. Dhaulta, Consumers' Representative
8.	Sh. Sanjiv Kumar Singh, Vice President, ABPS Infra, Consultant, HPPTCL
9.	Sh. Tapan Kumar, Consultant, HPPTCL