

## **HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA**

In the matter of amendment of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Second Amendment) Regulations, 2019.

**CORAM**  
**Sh. S.K.B.S. Negi**  
**Chairman**

**Sh. Bhanu Pratap Singh**  
**Member**

### **ORDER**

The Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as “the Commission”) formulated the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 (hereinafter referred as “RE Tariff Regulations, 2017”), published in the Rajpatra, Himachal Pradesh, dated 23<sup>rd</sup> November, 2017;

2. The State Government vide Notification No.MPP(F)-2/2005-X dated 15.05.2018 has amended the Hydro Power Policy, 2006 and has advised the Commission under section 108 of Electricity Act, 2003 to modify the regulation 11 of the RE Tariff Regulations, 2017, to enable all small hydro project developers to be eligible for signing the Power Purchase Agreement(s) under the new regulations and to amend the RE Tariff Regulations, 2017 incorporating aforesaid policy amendments;
3. The Commission, after considering the provisions of amended Hydro Policy, 2006 and the advice given under section 108 of Electricity Act, 2003, found it appropriate to modify the provisions of the RE Tariff Regulations, 2017. Accordingly, the Commission proposed amendments in RE Tariff Regulations, 2017;
4. The Commission notified the draft amendment regulations i.e. HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Second Amendment) Regulations, 2018 on 1<sup>st</sup> August, 2018 and published the same in Rajpatra, Himachal Pradesh on 7<sup>th</sup> August, 2018 in exercise of the powers conferred under sub-section (1) of section 181 of the Electricity Act, 2003 (36 of 2003);
5. As required vide sub-section (3) of the section 181 of the Act, the Commission invited public objections and suggestions by way of insertions in two News papers i.e. “Danik Bhasker” and “The Tribune” on 8<sup>th</sup> August, 2018 under Rule (3) of Electricity (Procedure of Previous Publication) Rules, 2005 and the full text of the draft amendment regulations was made available on the Commission’s website: [www.hperc.org](http://www.hperc.org).
6. The Commission, vide letter dated 09.08.2018, requested the major stakeholders, including Small Hydro Project Developers Associations, State Government, Directorate of Energy, HIMURJA and Distribution Licensee to send their objections/suggestions as per the aforesaid public notice.

7. The Commission received comments/suggestions on the draft amendment regulations from the following stakeholders:-

- (i) The Directorate of Energy, Shanti Bhawan, Phase-III, Sector-VI, New Shimla-171009 (HP).
- (ii) M/s Leond Hydro Power Pvt. Ltd. & Jaya Hydro Power Pvt. Ltd., Skipton Villa, The Ridge, Shimla- 171001 (HP).
- (iii) M/s Panchhor Hydro Power Pvt. Ltd., Gyamba House, South End, Lane-IV, Sector-1, New Shimla-171009 (HP).
- (iv) M/s DLI Power (India) Pvt. Ltd., House No.-16, HP Officers' Colony (West End), Panthaghati, Shimla-171009 (HP).
- (v) M/s R.K.C Hydro Power, Hid 299, Rakkar Colony, Una- 174307.
- (vi) M/s Vimal Hydro Power (p). Ltd., VPO Sarahan, Teh. Rampur, Shimla.
- (vii) M/s Friends Hydro, Village Chaithla, Teh. Kotkhai, Shimla-171202.
- (viii) M/s Shree Naina Hydro Power Inc, Vilage Katha, PO Baddi, Teh. Nalagarh, Distt. Solan (HP).
- (ix) M/s Jagdambey Hydro Project LLP, One 1<sup>st</sup> Floor Building, Village Guganh, PO Sach, Distt. Chamba- 176314 (HP).
- (x) M/s Chudeshwar Hydro Power,475, Sector-10, Panchkulla (Haryana)-134109.
- (xi) M/s Dev Bhumi Hydro Power, Village Katha, PO Baddi, Teh. Nalagarh, Distt. Solan (HP).
- (xii) M/s Swadeshi Distributors, One 1<sup>st</sup> Floor Building, Village Guganh, PO Sach, Distt. Chamba- 176314 (HP).
- (xiii) M/s Sai Shakti Solutions (Formerly known as Sai Shakti Solutions), Sharma Niwas, Nand Palace, New Shimla- 171009(HP).
- (xiv) M/s Sai Engineering Foundation, Sai Bhawan, Sector-4, New Shimla-171009 (HP).
- (xv) M/s Zaveri Energy LLT,
- (xvi) M/s Gee Cee Hydro Power (P) Ltd., VPO Sarahan, Teh. Rampur, Shimla.
- (xvii) The Bonafide Himachalies Hydro Power Developers Association, Sai Bhawan, Sector-4, New Shimla-171009 (HP).
- (xviii) M/s Saiurja Hydrel Projects Pvt. Ltd., Sai Bhawan, Sector-4, New Shimla-171009(HP).
- (xix) M/s Sandhya Hydro Power Projects Balargha Pvt. Ltd., House No. 24, Behind HPSEBL Bhunter substation, Bhunter Kullu-175125(HP).
- (xx) The Himachal Pradesh Power Corporation Ltd., Himfed Building, BCS, New Shimla-17109(HP).
- (xxi) The Himalaya Power Producers Association, B-7, Sector-1, New Shimla-171009 (HP).
- (xxii) M/s POM Hydro Energy Ltd., 131/06, Samkhetar Bazar, Mandi-175001 (HP).
- (xxiii) M/s Technology House (India) Pvt. Ltd., 23, Green Avenue Road, Vasant Kunj, South Delhi, New Delhi-110070.
- (xxiv) The Himachal Pradesh State Electricity Board Limited (HPSEBL), Vidyut Bhawan, Shimla-171004 (HP).

8. The public hearing on the aforesaid matter was fixed on 29<sup>th</sup> September, 2018 and the notice regarding the said hearing was published in the News papers i.e. "Amar Ujala" and "Times of India" on 21<sup>st</sup> September, 2018.

9. On the request of the Small Hydro Power Producers Association, the scheduled date of public hearing i.e. 29<sup>th</sup> September, 2018 was re-scheduled for 5<sup>th</sup> October, 2018 and public notice in this regard was published in the newspapers i.e. “The Tribune” and “Danik Bhaskar” on 28.09.2018.
10. On another request of Hydro Power Producer Association dated 27.09.2018 to postpone the public hearing for another one month, the Commission again re-scheduled the same for 3<sup>rd</sup> November, 2018 and the public notice on this account was published in the News papers i.e. “Amar Ujala” and “Hindustan Times” on 30.09.2018.
11. The list of participants who attended the public hearings on 03.11.2018 is annexed at Annexure-“A”.
12. **Objections and issues raised during the Public hearing:-**

During the public hearing, the stakeholders and their representatives presented their views. The issues and concerns voiced by them are briefly given as under:-

  - 12.1 The representative of Directorate of Energy (DoE) submitted that the construction period of 4 years proposed in the draft amendment should be as per actual, keeping in view that in the hard/snow bond area only 5to 6 months are available for construction activities. The extension of COD/SCOD should be dealt by the respective agencies appointed by the State Government instead by the Commission as proposed in the amendment.
  - 12.2 The representative of M/s DLI Power Ltd. submitted during the hearing that the CERC RE Regulations, 2017 may be made applicable in the State of Himachal Pradesh as the same has a legal backing provided in the Electricity Act, 2003. The higher CUF considered by the Commission in RE Regulations, 2017 may require further rationalisation as most of the commissioned projects are generating energy on lower CUF. The tariff should be worked out at base line of 45% CUF. Any corresponding higher/lower generation shall be linked with performance based regulations. The proposed restrictive provision of COD/ SCOD may be avoided and independent body should examine such issues. The provision related to deferment of royalty power may be as per the spirit of the amendment made by the State Government in the Hydro Power Policy, 2006.
  - 12.3 The representative of M/s Sandhya HEP suggested that the project commissioned in the control period of RE Tariff Regulations, 2017 may also be covered in the proposed amendment so that the project may be eligible for tariff determined by under RE Regulations, 2017.
  - 12.4 The representative of M/s Leond HEP suggested that the Commission may discharge its function under Section 86(1)(b) and CERC RE Regulations, 2017 may be adopted in the State. Further a written submission of arguments has been submitted in the hearing.
  - 12.5 The representative of the Bonafide Himachalies Hydro Power Developers Association stated that the submissions already made by them may be considered.
  - 12.6 The representative of HPSEBL expressed that their written submissions may be considered while finalizing the proposed amendment.
  - 12.7 The Consumer Representative stated the following during the public hearing:-
    - (i) The development of Hydro Sector results not only in inclusive growth but also economic upliftment of remote area of the State.

- (ii) The State Government make it mandatory for the HPSEBL(DISCOM) to purchase power from SHPs upto 10.00MW, which now stand enhanced to 25.00 MW. The State DISCOM may be under legal obligation to purchase power if Commission allows to buy such power. The cost plus approach in hydro generation may have financial impact on the DISCOM, if the said power is not sold at higher rates/utilized in judicious manner. Any loss on this account to the DISCOM shall result in demand for enhancement of retail tariff, to recoup such losses and the same shall bound to put additional financial burden on the consumers of the State.
- (iii) The State Hydro Policy mainly aims at maximizing hydel power generation and provide affordable and cheap power to the consumes of the State. Thus, the proposed amendments in RE Tariff Regulations, 2017; require to ensure that any adverse financial impact arising out of the implementation of amended provisions of Hydel Policy and RE Tariff Regulations, 2017 should not be passed over to the consumers at any costs and State Government may help the DISCOM by Viability Gap Funding (VGF).
- (iv) The HPSEBL is required to exercise prudence for such power purchase. It is suggested that suitable guidelines or norms may also be put in place to facilitate DISCOM to purchase power at competitive rates, to make it profitable proposition without passing any loss or additional financial burden on the consumers.
- (v) It is also pertinent to point out that the State Government is required to ensure that in the eventuality of cost escalation in power purchase from SHPs under its amended Policy as the comfort letter issued to the developers of PPA signed in the present period may have higher tariff on the date of COD; and subsequent low or negative returns accrued/earned on it by the HPSEBL in future, shall be compensated by it. Any loss on this account may not be allowed to shift on to the consumers of the State.
- (vi) The free power access allowed now by the amended provisions of the Policy *ibid*, to the SHPs to sell their power in open market at competitive rates, needs to be encouraged to make it more viable and effective in the interests of all the stakeholders. It will essentially reduce the mandatory power purchase obligation of the HPSEBL beyond its RPP0 targets fixed by the Commission.
- (vii) Since, the tariff is applicable from COD, the State Government and its concerned agency are required that the planning for evacuation of SHP power may be made in such a manner (with consultation of developers) that there should be no mismatch in the availability of evacuation arrangements vis-à-vis project commissioning. Any delay on this account has financial implication.
- (viii) As HPSEBL have surplus in the non-solar RPO, so it needs to carry out financial implication of capacity addition, on annual basis, taking into consideration the tentative date of commissioning of SHP projects vis-à-vis tentative tariff available in the commissioning year(s) by considering normal escalation.

12.8 The representative of the M/s Panchhor Hydro Power Pvt. Ltd. stated that the State is already lagging behind in the year wise capacity addition of small hydro projects vis-à-vis targets. One of the reasons for slow development of this sector is non-attractive tariff in the State. It is suggested that control period of RE Tariff Regulations, 2017 should be upto March, 2019. Higher royalty (free) power slab over and above 13% should be allowed as pass through in the tariff.

12.9 The representative of the M/s Jagdambey Hydro Project stated in the hearing that as per the IA the project should be in healthy condition after 30, 35 and 40 years of its useful life. The depreciation may be considered as 100% instead of 90% as the project is to be handed over to the Government after its useful life in a proper working condition.

12.10 The representative of the M/s Swadeshi Distributors stated that open access charges include wheeling as well as transmission charges and nowhere in the country these charges are levied separately.

12.11 The representative of the M/s Technology House (India) Pvt. Ltd. stated that the tariff should be determined on commercial basis as per the Section 61(1) of the Electricity Act, 2003 by considering actual cost of construction. There should not be any reduction in the tariff on account of deferment of royalty power in the initial 12 years of useful life of the project.

**13. Consideration of written submissions and viewpoints expressed in the public hearing by the stakeholder(s) and Commission's analysis/view.-**

After having gone through all the written submission and the viewpoints expressed in the public hearing, we now proceed to give our views on the various suggestions which have been considered to be relevant to the amendments proposed in the draft regulations, as follows:-

**1. Amendment in Short title and commencement.-**

**(i) M/s Leond Hydro Power Pvt. Ltd. & Jaya Hydro Power Pvt. Ltd:-**

As per preliminary regulation (2) these Regulations shall come into force on 1st October 2017 but control period of Regulations 2012 ended on 31.3.2017 and regulations framed by CERC are applicable from 1.4.2017. Extension of regulations is an interim measure and is subject to adjustments as per new regulations. Regulations 2017 also specify year as financial year starting from the month of April. It is therefore, suggested that these Regulations 2017 should come into force from 1.4.2017 and word 'October' should be replaced by 'April' in Preliminary Article (2).

Article 9 specifies the control period but date of start is mentioned as 1<sup>st</sup> October whereas this should be 1<sup>st</sup> April as per guidelines issued by the CERC as well as norms adopted in the regulations are for the financial year and cannot be changed midway in the financial year. This is not consistent with the IEA 2003 and the word 'October' may be changed to 'April' in para 2 of the clause 9.

**(ii) Commission's view:-**

As regards this suggestion that the RE Tariff regulations, 2017 should be made applicable w.e.f. 01.04.2017 instead of 01.10.2017, we feel that the amendment in regulations cannot be made applicable retrospectively. As such we decline to accept the suggestion.

No other comments have been received in respect of this item and as such we decide to incorporate the proposed text under this item in the final amendment regulations without any change.

**2. Amendment of regulation 1.-**

The Commission in its draft regulations proposed that the RE Tariff Regulations, 2017 shall remain in force till the same are reviewed, amended and repealed by the Commission.

No specific comments have been received in respect of this proposal. As such we decide to finalize this regulation without any changes. However, the suggestions made

by certain stakeholders to the effect that the first control period should be restricted upto 31.03.2019 shall be discussed under an appropriate subsequent para of this order.

### **3. Amendment of regulation 2.-**

(i) Definition of the term Control Period:-

Even though various stakeholders have commented on the aspect of the duration of first control period, no specific comments have been received on the proposed definitions. As such, we decide to incorporate the definition of the said term, as proposed in the draft regulations, without any changes.

(ii) **Definition of the term ‘Government Designated Agency/Designated Agency’**

In the draft amendment regulations, the Commissions has proposed definition of the above cited term as follows:

“Government Designated Agency/Designated Agency’ means the agency designated by the State Government for certifying the zero date, based on the detailed guidelines to be issued by the State Government, for the Small Hydro Projects (SHP) allotted by the Government.”

The various stakeholders have commented as under:

**(a) M/s DLI Power:-**

Function of Government Designated Agency in not just limited to certifying the Zero Date. They are entrusted with complete implementation of the project. The suggested modified clause is as follows:

“Government Designated Agency/Designated Agency’ means the agency designated by the State Government for overall implementation of the Small Hydro Projects (SHP) allotted by the Government including certifying their respective Zero Date, Scheduled Commercial Operation Date (SCOD) and Commercial Operation Date (COD) as per the provisions of Implementation Agreement (IA) executed between the State Government and the Developer including amendment thereof.”

**(b) M/s Leond Hydro Power Pvt. Ltd. & Jaya Hydro Power Pvt. Ltd:-**

(i) Article (2) (hh) defines the Government designated Agency whereas State Government has already defined “HIMURJA” as agency for projects upto 5 MW capacity and beyond 5 MW to 25 MW capacity projects the 'Directorate of Energy' as its agency. This article in addition to defining designated agency also restricts its role to certifying the zero date whereas designated agency is approving not only zero date but also monitoring implementation of the small hydro projects as well as schedule commissioning date of the project. The role of agency in the definition needs to be deleted and a separate article is required to define the role of the designated agency.

It has been proposed that the term “Designated agency” be defined to mean the State Government agency designated for overall implementation of the Renewable Projects including certifying the zero date, Scheduled Commercial Operation Date, and the Commercial Operation Date as per provisions of the Implementation Agreement signed between the State Government and the Developer.

(ii) Article (2) (I) defines the 'HIMURJA' but its role is only for renewable projects upto 5.00 MW capacity and definition of Directorate of Energy also needs to be incorporated.

**Commission's view:-**

No comments have been received in this regard from the State Government. However, in view of the comments received from the other stakeholders we decide to amend the definition of the said term in the RE Tariff Regulations, 2017 as under:-

“(hh) ‘Government Designated Agency/Designated Agency’ means the agency designated by the State Government for certifying the zero date as well as for issuing certificates under regulation 13 of these regulations and for discharging such other functions relating to implementation of SHPs as may be assigned to it by the State Government:

Provided that the State Government may designate different agencies for different categories of SHPs;”;

**(iii) Definition of the term “Scheduled COD”:-**

**M/s Leond Hydro Power Pvt. Ltd. & Jaya Hydro Power Pvt. Ltd:-**

Article (2) (xx) defines “Scheduled COD” and specifies that it should be determined in accordance with the provisions of regulation 14-A. The construction schedule is prepared at the time of execution of the project after obtaining statutory clearances considering the ground conditions which are known after detailed investigations are carried out after obtaining the clearance under Forest Right Act because some of these investigations cannot be done without FRA clearance. Furthermore, geological surprises and natural conditions vary at the time of actual construction as compared to the conditions existing at time of preparation of the Detailed Project report (DPR). The construction schedule submitted by the Power Producer to the designated agency for approval may differ from the schedule proposed in the DPR.

Implementation Agreement (IA) governs the project. It is a contract between the Developer and the State Government. Contract that determines timelines viz. Zero Date, SCOD and COD including any extension thereof and are administrated through the Designated Agency equipped with the monitoring machinery and expertise. It is therefore suggested;

“Scheduled COD’ means the outer date by which the renewable energy generator is expected to synchronise its generating unit with the grid/ commence commercial operation of the project, after obtaining requisite approvals and such date shall be determined in accordance with the provisions of the Implementation Agreement including any such date subsequently amended or determined under provisions thereof by the Designated Agency”.

**Commission's view:-**

In view of above as well as the discussion under a separate paragraph of this order, we decide to drop the proposal for inclusion of definition of the term “Scheduled COD” in the RE Tariff Regulations, 2017.

**(iv) Definition of term “Zero Date”:-**

The Commission has, in the draft regulations proposed inclusion of the term “Zero Date” to read as under:

'Zero date' means the date as may be defined by the State Government in the State Hydro Policy'

(a) M/s DLI Power have commented that the Zero Date is to be recorded as per the Implementation Agreement. Modified clause has been suggested as under:

"Zero date' means the date as may be specified by the State Government in the Implementation Agreement including amendment thereof through Supplementary Agreement(s), if any."

(b) M/s Leond Hydro Power Pvt. Ltd. & Jaya Hydro Power Pvt. Ltd have commented that the Article (2) (ae) defines zero date as a date to be defined as per State Hydro Policy, the zero date is date of start of construction of the project and defining this activity may be as per provisions in the Implementation Agreement. Its definition is suggested as under;

*'Zero date' means the date as may be defined and incorporated in the Implementation Agreement including amendment thereof through approval for extended date by the designated agency.*

The Commission has proposed the definition of the said term "zero date" so as to ensure that there is uniform and standard definition of the said term. We are of the opinion that since the term zero date has been used in the amended State Hydro Policy dated 15.05.2018 and it may have a bearing on the applicability of tariff, the term zero date should be clearly defined by the State Government. Since no comments have been received from State Government in this regard we decide to include the definition of the term zero date in the final amendment regulations as under:-

"(ae) 'Zero date' means the date as may be defined by the State Government in the State Hydro Policy or as may be notified separately by the State Government pursuant to the same."

#### **4. Amendment of regulation 3.-**

Certain changes have been proposed in the draft regulations to clarify the applicability of regulations particularly for the SHPs which have already been commissioned prior to commencement of RE Regulations, 2017. The comments received in this regard are as under:-

##### **(a) M/s Sandhya HEP:-**

The stakeholder suggested that the following changes may be carried out in the proposed sub-clause(iv) of sub-regulation (2) of Regulation 3:-

*"Where the renewable energy generator, implementing the small hydro project, has commenced the operation of its project, prior to the date of commencement of these Regulations except such Renewable Energy Generators who have commenced their commercial operation within the same control period or review period as defined under regulation 9."*

The Commission has always considered that commissioning date is a major milestone provided same fall under the control period defined under the regulations. However, by making this amendment Commission has kept all such power plants who have commissioned their plant even though it is commissioned validly within the control period. It is well known that the Central Regulatory Commission has always kept the Commercial operation date and control period as an important criterion so as to be eligible for the provisions available under the respective tariff



regulation. It has been suggested that the Commission may include all such generators who have commissioned their power plant within the control period as defined from 1<sup>st</sup> October, 2017 to 31<sup>st</sup> March, 2020.

**(b) M/s Leond HEP & Jaya Hydro:-**

Article 3 (2) 7(3) defines the non applicability of these amended regulations. It is submitted that State Government directive stipulates that tariff should be determined on basis of 'COD' and it does not debar the projects where PPA has already been signed but are to be commissioned after applicability of these regulations. It is suggested that in Article 3 line second after the word 'project' the words shall be added "to be commissioned after date of applicability of these regulations" and hence in regulation 3, sub regulation (2) (i), 3(b) therefore needs to be deleted.

**(c) M/s R.K.C Hydro Power, M/s Vimal Hydro Power (p). Ltd., M/s Friends Hydro, M/s Shree Naina Hydro Power M/s Jagdambey Hydro Project LLP, M/s Chudeshwar Hydro Power, M/s Dev Bhumi Hydro Power, M/s Sweadeshi Distributors LLP, M/s Sai Shakti Solutions LLP, M/s Sai Engineering Foundation, M/s Zaveri Energy LLP, M/s Gee Cee Hydro Power (P) Ltd., M/s Sai Urja Hydel Projects Pvt. Ltd.**

It is felt that proposed amendment to clause 3(2)(i) of the Regulations already covers such projects under the words "or otherwise" and hence, there is no requirement to add the clause 3(2)(iv) in RE Tariff Regulations, 2017.

**Commission's view:-**

Various stakeholders have suggested that RE Tariff Regulations, 2017 should be made applicable to all the projects commissioned after the commencement of the RE Tariff Regulations, 2017 even in cases where the SHP developers have already inked their agreements for sale of power from the projects by way of filing joint petitions for approval of PPAs or obtaining the approval of the Commission for the same or having signed PPAs or having otherwise commenced operation of the projects. It has been perceived that as per the amended hydro policy, the tariff should be determined on COD as the policy does not debar the projects where PPAs have been signed but are yet to be commissioned.

We observe that the amended hydro policy neither suggests that concluded PPAs are to be re-opened nor any comments have been received from the State Government in this regard. We otherwise also feel that acceptance of such a suggestion may breach the sanctity of the contracts. Accordingly, we decline to accept the suggestion and incorporate the provisions, as proposed in the draft regulations, in the amendment regulations without any conceptual changes.

**5. Amendment of regulation 8.-**

- (i)** As per the draft regulation it was proposed that the RE generator can file joint petition for approval of PPA only after achieving zero date. As discussed in a separate subsequent paragraph, now in normal case the tariff applicable for the control period in which the developer files joint petition for approval of PPA, is to be provided in the PPA. As such, we decide to do away with the proposed condition that PPA can be approved only after zero date and accordingly drop the proposed amendment in

respect of sub-regulation (2) of regulations 8, as distinct from that relating to the proviso thereto. In view of above, the RE generator shall be free to choose any timelines, but at least two months prior to seeking permission for synchronization of any unit of the project with the grid for the first time, in which he wants to file joint petition for approval of PPA and such joint petition shall be processed as per the regulations and policy prevalent at that time. It is legitimately expected the RE generator must finalise the arrangements for disposal of power for the project at least six months before the estimated date of achieving commencement of operation so as for enable the Discom to make necessary arrangements. We would however also like to clarify here that this shall not in any way be construed as relaxation to the mile stones, if any, provided by the State Government in the Implementation Agreement signed by it with developer which shall have to be taken care by the State Government. Similarly in all such cases, the generator shall have to apply for connectivity to the grid within the specified time limits and also comply with all the requirements within permitted time frame so as to enable the Discom/STU, as the case may be, to make arrangements for connectivity.

(ii) In relation to the changes proposed in the proviso of the sub-regulations (2), the following comments have been received-

**M/s POM Hydro Energy Ltd.:-**

- (a) The 'in principle' approval should be granted subject to the minimum levelled tariff prevailing for current control period ending 31.03.2020 i.e. the tariff as per HPERC Tariff Regulation 2017; and
- (b) If the lending institution does not agree to any term or conditions in the 'in principle' sanction, the generator should be given the liberty to approach the Commission for consideration of any such issues of the lending institutions in the in principle sanction.

**HPSEBL**

- (c) The distribution licensee has submitted that it should be authorized to issue the "in principle" approval for purchase of power from SHPs in view of must buy provisions of amended hydro policy.

(iii) Our views on these three issues are as follows:-

- (a) The rate as per the relevant regulations shall be applicable and no minimum rate can be mentioned in the "in principle" approval. We decline to include any minimum rate in the "in principle" approval. The developer can file joint petition for approval of PPA at any stage or can attach the certified copies of applicable regulations and the tariff orders alongwith their application to the lenders for their information.
- (b) Nothing stops the generator to approach the Commission with the request to consider the issues raised by the lenders and the Commission can consider facilitating the process within the framework of regulations only. We do not find any necessity to include a separate provision to the effect in RE regulations.
- (c) As regards item (c), we feel that the distribution licensee can be authorized to grant such approval in the first instance subject to certain conditions.

Accordingly, we decide that for the existing proviso, the following shall be substituted, namely:-

“Provided that if the parties have arrived at a mutual understanding on the various issues of the power purchase agreement, as aforesaid, and the renewable energy generator requires in principle approval for purchase of power by the distribution licensee to achieve the Zero Date or financial closure, the distribution licensee may, in first instance, grant such approval within the framework of State Hydro Policy of the State Government, subject to the following conditions, namely:-

- (a) such an approval shall also incorporate the outer date upto which it shall remain valid, which shall be fixed keeping in view the status and progress of the project towards achieving financial closure, but shall in no case, extend beyond the time line for achieving zero date/financial closure as stipulated in the first implementation agreement for that project;
- (b) the in principle approval so granted shall automatically lapse if the developer fails to file joint petition for approval of the PPA within such outer date, unless the Commission grants extension of the validity period in accordance with the succeeding clause(c); and
- (c) in case the renewable energy developer seeks any extension of the validity period of the in principle approval accorded to him as per the above provisions, he may, before the expiry of the validity period, file a petition before the Commission for such extension upto an outer date of his achieving zero date or financial closure:

Provided further that the distribution licensee shall expeditiously fix such outer dates in all such cases where any such in principle approvals for purchase of power from SHPs have already been issued under the State Hydro Policy on or before 11.02.2019 and shall also modify such approvals suitably.”

## **6. Amendment of regulation 9.-**

- (i) The amendment basically empowers the Commission to fix the duration of control period from time to time. The outer date for first control period for SHPs has been proposed as 31.03.2020.
- (ii) The following comments have been received on the above proposal:-
  - (a) **The Himalaya Power Producers, M/s R.K.C Hydro Power, M/s Vimal Hydro Power (p). Ltd., M/s Friends Hydro, M/s Shree Naina Hydro Power Inc, M/s Jagdambey Hydro Project, M/s Chudeshwar Hydro Power, M/s Dev Bhumi Hydro Power, M/s Sweadeshi Distributors, Sai Shakti Solutions, M/s Sai Engineering Foundation, M/s Zaveri Energy LLP, M/s Gee Cee Hydro Power (P) Ltd., M/s Sai Urja Hydel Projects Pvt. Ltd. and M/s Panchor HEP.**

The RE Tariff regulation 2017 provided the control period as up to 31.3.2020. Subsequently the control period was amended to 31.3.2019 vide Amendment No 1. Now the control period is again proposed to be amended to 31.03.2020 in the proposed 2<sup>nd</sup> amendment. On the one hand the GoHP is trying to take important policy initiatives to encourage the Hydro developers to set up SHPs in the state

while on the other hand the Commission by way of this extension of control period will negate the efforts of the HP Govt. for revival of this sector. The extension of control period would resultantly burden the developers as they will have to bear the escalations in costs for the extended period on their own. As such the control period needs to be kept up to 31.03.2019 and the HPERC should determine the tariff for every year as per the practice adopted by CERC.

**(b) The Himalaya Power Producers Association and M/s Panchor Hydro Power Pvt. Ltd:-**

The Clause 9 (2) of Second Amendment:-

The provisions of amended Hydro Power Policy of the Govt. clearly says that the tariff will be as per the year of COD. It clearly implies that HPERC will determine the tariff every year after incorporating the escalations in the Capital Cost, Op & Mtc charges and actual rate of interest on debt and working capital etc. The proposed amendment however stipulates determination of tariff under the regulations within 90 days of notification and the tariff so determined to remain valid for the control period i.e. up to 31.03.2020. This goes totally contrary to the Govt. Policy. The tariff therefore, needs to be worked out every year on the CERC pattern.

The proposal to determine tariff under the regulations within 90 days of notification and the tariff so determined to remain valid for the control period i.e. up to 31.03.2020 is against the provisions of Amended Hydro Policy, 2006 which clearly says that the tariff will be as per the year of COD. It clearly implies that HPERC will determine the tariff every year after incorporating the escalations in the Capital Cost, Op & Mtc charges and actual rate of interest on debt and working capital etc. Therefore, the tariff needs to be worked out every year on CERC pattern.

**(iii) Commission's view-**

The Commission had in its RE Tariff Regulations, 2017 specified the norms and parameters for the control period extending upto 31.03.2020. However, subsequently on receipt of a communication from HP Government that changes in Hydro Policy have been contemplated, the Commission vide its draft regulations proposed the control period upto 31.03.2019 so as to set a milestone, in anticipation of the amendments in State Hydro Policy, for itself upto which the Commission shall align its RE Tariff Regulations, 2017 with the changes in Hydro Policy. Subsequently, the HP Govt. amended the Hydro Policy on 15.05.2018 and accordingly the draft amendment regulations were published. However, since the new policy changes did not envisage any mandatory changes in the norms/parameters, the Commission proposed restoration of the control period to the earlier period i.e. upto 31.03.2020. The need based changes in the RE Tariff Regulations, 2017 to facilitate the implementation of the changes in the hydro power policy are however being carried out through these amendments regulations well within the targeted date of 31.03.2019, fixed by the Commission for itself. In the above background and also keeping in view the fact that current control period under CERC RE Regulations extends upto 31.03.2020, the Commission had proposed that the duration of the first control period be enlarged upto 31.03.2020. However, in view of the concerns expressed by most of the stakeholders, we decide to enlarge the first control period upto 30.09.2019 instead of the proposed date of

31.03.2019. In view of above, the proposal contained in the draft regulations shall be finalised subject to the change in the outer date as discussed above.

## **7. Omission of regulation 11.-**

- (i) The omission of the Regulation 11, which provides for linkage of the tariff with the date of signing of IA, was proposed in view of the direction received from the State Government.
- (ii) Himachal Pradesh State Electricity Board Limited has proposed as under:
  - (a) By deletion of Regulation 11 of RE Tariff Regulations, 2017 relating to special provision for Small Hydro Projects, now Tariff for all the cases where the first Implementation Agreement of a small hydro project was executed on or before 31<sup>st</sup> December, 2014 and neither any joint petition for approval of the Power Purchase Agreement has been filed before; nor any power purchase agreement, whether under REC Mechanism or otherwise, has been approved by the Commission shall be determined under these revised regulations instead of the HPERC( Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination), 2012.
  - (b) The Tariff determined under new regulations is on higher side. The earlier tariff was in the range of Rs.3.04/unit to Rs. 3.20/unit and now it has been notified in the range of Rs. 3.44/unit to Rs. 3.79/Unit. This issue is related to past period and delay in completion of project is not attributable to HPSEBL. Therefore, the clause No. 11 should not be deleted at the most it can be made prospective.
  - (c) Further it would be discriminatory with all the other those IPPs who executed first Implementation Agreement of a small hydro project on or before 31<sup>st</sup> December, 2014 and signed PPA with HPSEBL before commencement of new regulations as for them tariff was determined under HPERC(Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination), 2012 which will be less than the tariff to be determined under new regulations. Therefore inefficiency of the IPPs for delaying the completion of their project should not be incentivized. If the said clause is omitted then all the financial implication due to this power purchase will form a part of the ARR of HPSEBL and that shall have direct implication on increase in tariff of consumers of the State as well. Further if the energy so purchased is required to be disposed of by selling in IEX the loss borne due to such transaction should be passed in the ARR of HPSEBL.

### **Commission's view:-**

The deletion of regulation 11 of the existing RE Regulations, 2017 relating to special provision for small hydro projects has been proposed keeping in view of the policy changes made by the State Government in the Hydro Policy and the direction issued by the State Government in this regard as also brought out in para 2 and 3 of this order. As such, the suggestion made by distribution licensee cannot be accepted at this stage.

As regards the suggestion that this change should be enforced only prospectively, it is to mention that the amendment in regulations shall be applicable prospectively only.

We would also like to mention here that in case the Distribution Licensee feels aggrieved with the Policy directives of the State Government, it may take up the matter suitably with the State Government.

#### **8. Amendment of regulation 13.-**

This item has been dealt alongwith item relating to insertion of Regulation 14-A in a separate subsequent paragraph of this order.

#### **9. Substitution of regulation 14.-**

- (i) The Commission, in its draft regulations proposed need based changes in regulation 14 to have enabling provision under which the Commission may fix the financial/technologically specific parameters from time to time in line with the relevant the control periods for various technologies. It has also been proposed that the norms and tariffs already fixed for the first control period in respect of the SHPs shall continue upto 31.03.2020 in this regulation. The following comments have been received in relation to regulation 14:-

#### **Determination of Tariff on yearly basis.-**

##### **(a) M/s Panchor HEP and Himalayan Power Producers Association commented as under :-**

- (i) The Clause 9 (2) of Second Amendment:-

The provisions of amended Hydro Power Policy of the Govt. clearly says that the tariff will be as per the year of COD. It clearly implies that HPERC will determine the tariff every year after incorporating the escalations in the Capital Cost, Op & Mtc charges and actual rate of interest on debt and working capital etc. The proposed amendment however stipulates determination of tariff under the regulations within 90 days of notification and the tariff so determined to remain valid for the control period i.e. up to 31.3.2020. This goes totally contrary to the Govt. Policy. The tariff therefore, needs to be worked out every year on the CERC pattern.

- (ii) The proposal to determine tariff under the regulations within 90 days of notification and the tariff so determined to remain valid for the control period i.e. up to 31.03.2020 is against the provisions of Amended Hydro Policy, 2006 which clearly says that the tariff will be as per the year of COD. It clearly implies that HPERC will determine the tariff every year after incorporating the escalations in the Capital Cost, Op & Mtc charges and actual rate of interest on debt and working capital etc. Therefore, the tariff needs to be worked out every year and amendment must include the yearly determination of tariff accordingly.

#### **Commission's view:-**

We observe that the stakeholders have claimed that since as per the amended hydro policy the tariff as per the year of COD is to be made applicable, the Commission should determine the tariff every year. In this connection we refer to

above policy provision which provides for determination of tariff with respect to the date (and not the year) of achieving COD under certain conditions. Obviously the contention of the stakeholders in this regard is totally misplaced. On perusal of the amended hydro policy, we find that this policy provision does not in any way impact the statutory powers of the Commission to determine the tariff based on the norms and parameters specified by it for the relevant control period. In view of above, we decline to accept the suggestion of the stakeholders. We would also like to mention here that the control period shall in any case expire on 30.09.2019 and accordingly such a comment in this regard is otherwise also not relevant at this stage.

We decide to finalize the substitution of regulation 14 as proposed in the draft amendment regulations without any changes except those necessitated due to amendment of regulations 13 and typing errors. However, in view of the discussion under the preceding paragraph the duration of the first control period in respect of the SHPs shall now be incorporated as 30.09.2019 instead of 31.03.2020.

#### **10. Amendment of regulation 13 and insertion of regulation 14-A.-**

- (i) The Commission in its draft regulations proposed amendments in regulation 13 and insertion of a new regulation 14-A in the existing RE Regulation so as to align the RE Regulations with the provisions of the amended hydro policy and the direction received from the State Government with regard to applicability of the tariff of SHP. Following comments have been received in this regard:-

**(a) M/s R.K.C Hydro Power, M/s Vimal Hydro Power (p). Ltd., M/s Friends Hydro, M/s Shree Naina Hydro Power Inc, M/s Jagdambey Hydro Project, M/s Chudeshwar Hydro Power, M/s Dev Bhumi Hydro Power, M/s Sweadeshi Distributors, Sai Shakti Solutions, Bonafied Himachalies Hydro Power Developers, M/s Sai Engineering Foundation, M/s Zaveri Energy LLP, M/s Gee Cee Hydro Power (P) Ltd., M/s Saiurja Hydel Projects Pvt. Ltd.**

The proposed clause 13(1)(a) to the Regulations is not in consonance to the amended Hydro Policy, 2006 dated 15.05.2018 which provides in para (B)(1) that SHP will be granted tariff as applicable at the time of scheduled COD to be determined with respect to ZERO Date. The proposed amendment in the clause needs to be in conformity with the amended Hydro Policy to allow all the projects yet to be commissioned to get their zero date and scheduled COD to be re-determined by the designated agency as per guidelines to be issued by GOHP and allow tariff as per the date so determined.

We are unable to understand the conditions being incorporated in this Regulation. While Zero Date and Scheduled COD are to be determined by the designated agency, the power to grant extension in COD on Force Majeure conditions or reasons not attributable to Developer are being taken over by the HPERC. We strongly feel that this function should rest with the state designated agency and HPERC shall only adjudicate on the disputes/issues in this regard.

Further, while there are no ifs and buts in the policy for extension, the proposed Regulation 14(A) incorporates many conditions for grant of such extension. The

developers are bound to fail to get any extension in view of these complex conditions. Grant of extension for only 50% of the accepted Force majeure period under certain conditions is contrary to the Amended Hydro Policy and violation of the Govt. directives.

**(b) The Himalaya Power Producers Association:-**

The amendment at serial No. 8 (Clause 13 of Regulations 2017):-

The proposed clause (a) goes contrary to the provisions of the Hydro Policy Amendment dated 15.5.2018. As per this amendment the IPPs are to be allowed the tariff as applicable at the time of scheduled COD to be determined with respect to Zero Date to be determined by the designated agency i.e. HP Govt. This clause therefore needs to be revisited to be in conformity with the amended policy to allow their zero date and scheduled COD to be re-determined by the designated agency as per guidelines to be issued by GOHP and allow Tariff as per the Date so determined.

**(c) M/s Panchhor Hydro Power Pvt. Ltd.:-**

Amendment at Sr. No. 8 (Clause 13 of Regulations 2017):-

As per Hydro Policy Amendment dated 15.05.2018, the IPPs are to be allowed the tariff as applicable at the time of scheduled COD to be determined with respect to ZERO Date to be determined by the designated agency i.e. HP Govt. The proposed amendment is in contravention to the Policy provisions. This clause therefore needs to be revisited to be in conformity with the amended policy to allow their zero date and scheduled COD to be re determined by the designated agency as per guidelines to be issued by GOHP and allow Tariff as per the Date so determined.

**(d) M/s POM Hydro**

In our view, the tariff available to the generator should be as per the generic levelled tariff prevailing at the time of actual COD of the project, instead of scheduled COD of the project.

**(e) Directorate of Energy:-**

It is suggested that the condition of allowing construction period of maximum 4 years may not be imposed as some of the projects are to be constructed in remote areas and at high altitudes where snowfall occurs and only 7-8 months are available for construction in a year. Therefore, it is suggested that the construction period may not be restricted to 4 years.

**(f) HPSEBL:-**

The schedule COD should be firm and any extension if allowed by the Commission should not exceed more than 12 months in any case since the power purchase planning is done on yearly basis. Further it should be ensured that multiple agencies for giving extension in COD may be avoided.

**(g) The consolidated and individual comments of the stakeholders i.e. M/s Leond Hydro Power Pvt. Ltd. & Jaya Hydro Power Pvt. Ltd., M/s Panchhor Hydro Power Pvt. Ltd., M/s DLI Power (India) Pvt. Ltd., The Himalaya Power Producers Association, and M/s POM Hydro Energy Ltd., on Scheduled COD are as under:-**

- (i) The Implementation Agreement (IA) for the implementation of the Project is signed between the Government & the developer and the milestones of the Project are monitored by HIMURJA for projects upto 5 MW capacity and Directorate of Energy



for projects above 5 MW capacity. As per the provisions of the Hydro Power Policy of the State, the Scheduled Commercial Operation Date of the Project can be extended by the Government provided the delays are either not attributable to the project developer or fall under force majeure conditions. Therefore, it is suggested that the extension of SCOD is the sole prerogative of the Govt. and the decision of the Govt. may be considered as final in this regard.

Regulation 13 specifies tariff options but as submitted earlier, the determination including extension of SCOD and consequently COD is governed by the Implementation Agreement and its amendment. Accordingly, the Commission is not involved in this exercise and the proposed Regulation 14-A for this purpose is not required. Also the word 'earlier' at the end of para makes redundant the extended SCOD. The suggested modified clause is as under:

“To be governed by the generic levelled tariff to be determined by the Commission, in accordance with the regulation 14, in relation to the control period in which the Scheduled COD of the project (as approved by the designated agency and incorporated in the Power Purchase Agreement) or as extended by the Designated Agency of the State Government under the provision of Implementation Agreement, whichever is later, falls;

- (ii) That the project implementation is governed by Implementation Agreement (IA) and the Commission has no role in its determination. It is a contract between the Developer and the State Government. IA has provisions on the allowable time for achieving project completion including the authority with State Government to extend the SCOD/COD on account of delays not attributable to the Developer and reasons of force majeure. This authority cannot be interfered with. There is no parallel position in Section 86 or any other provision in the EA 2003 which will enable the Commission to analyze through PERT charts and critical path etc. and micromanage the project completion time lines.

Historically, all hydro projects suffer time overrun including Government owned projects. Magnitude of time overrun varies from project to project as there are various reasons including natural calamities, interference by local community and environmentalists and more particularly the State controlled clearance system. The complex mechanism proposed in 14-A starting with filing of petition by the Generator for determination of extension, calculating the overrun and allowing 50% thereof, adjustment through insurance proceeds which themselves are uncertain and limiting the extension to 18 months etc. etc. will only add to the difficulties of the Developer and also open avenues for litigation. This defeats the very objective of the State Government to facilitate project development and the Commission's efforts to support this cause.

HPERC regulates power purchase u/s. 86 (1) (b) and determines tariff u/s. 86(1)(a). PPA is approved in the initial stage of a project with COD time line of 5 to 6 years including extensions. PPA approved say in December 2019 i.e. towards end of this control period will attract a tariff of next to next control period, for which the tariff is neither known today nor it can be ascertained. As such, the very meaning and purpose of regulating tariff in such unknown situation is defeated. Such an approval of PPA without knowing the tariff is by no means a

regulation. This function will only come into picture once the tariff for that applicable time is in place. As such incorporating the conditions relating to extension in time lines and taking over such functions is not required and may be removed from the regulations.

Therefore this entire 14-A provisions proposing SCOD, COD, extension etc. is to be deleted from the draft regulations.

- (iii) The proposed amendment virtually aims to take over the functions of the HP Govt. by the Commission. The IE Act 2003 has mandated the Commission to determine the tariff for the SHPs while the allotment and implementation of the SHPs is entirely under the control of the State Govt. and as such the signing of the Implementation Agreement, defining of Zero Date and the Scheduled Commercial Operation Date and Grant of Extensions therefore, do not fall in the jurisdiction of the Commission. The tariff to be determined by the Commission shall be applicable to the IPPs relevant to the date of SCOD. We are therefore, unable to understand the logic of incorporating the conditions in this Amendment of the Regulations. We strongly urge that this function should rest with the state designated agency and HPERC should only adjudicate on the disputes in this regard.

**DLI Power (India) Pvt. Ltd.:-**

- (i) The determination including extension of SCOD and consequently COD is governed by the Implementation Agreement and its amendment. The Commission is entrusted with the function of “determination of tariff” and specifying “terms and conditions for determination of tariff”. Section 61, 62, 64, and 181 (2) (zd) and other clauses do not contemplate any exercise of power by the State Commissions for determination of SCOD and COD. Hence, if the Commission is to decide the SCOD and COD, such an exercise of power would clearly be in excess of jurisdiction under the statute, and consequently, the subject Regulations would be ultra vires the 2003 Act. Accordingly, the Commission is not to be involved in this exercise and the proposed Regulation 14-A for this purpose is not required.

The suggested modified clause is as under:

*“To be governed by the generic levellised tariff to be determined by the Commission, in accordance with the regulation 14, in relation to the control period in which the Scheduled COD of the project (as mentioned in the Power Purchase Agreement, or as extended by the Designated Agency or the State Government under the provision of Implementation Agreement) or the date of actual COD; whichever is later, falls;*

- (ii) HPERC proposed Clause (xx) reads as follows:

‘Scheduled COD’ means the outer date by which the renewable energy generator is expected to commence operation of the project, after obtaining requisite approvals and such date shall be determined in accordance with the provisions of regulation 14-A;”

Comments: Implementation Agreement (IA) governs the project. It is a contract between the Developer and the Government that determines timelines viz. Zero Date, SCOD and COD including any extension thereof and is administrated through the Designated Agency equipped with the monitoring machinery and expertise. Interfering and taking over the functions and responsibility of the

Designated Agency amounts to micro-management of project implementation by the Commission as proposed in Clause 14-A.

- (iii) It is submitted that the provisions of Clause 14-A of the draft Regulations are ultra vires the Electricity Act, 2003. The EA 2003 has a clear demarcation between the subjects on which the Commission is to frame Regulations. Under the Scheme of the Act the Commission is bound to frame Regulations only on the “Terms and Conditions” for the determination of tariff. A bare reading of Clause 14-A of the draft Regulations will clearly show that what the Commission proposes to do by framing of a Regulation is to, in fact, determine the SCOD and COD.

The Commission has by clause 14-A of the draft Regulations given to itself a power to decide the SCOD/COD which it does not have under the Act.

The provisions now proposed in the draft regulation 14-A is a field already occupied by the Implementation Agreement. Hence, regulation 14-A as proposed would (i) conflict with the IA; (ii) usurp the functions of the State Government, under the IA.

- Project implementation is governed by Implementation Agreement. It is a contract between the Developer and the State Government.
- IA has specific provisions on timelines for achieving project completion including the authority with State Government to extend the SCOD/COD on account of delays not attributable to the Developer and reasons of force majeure etc.
- IA provides for a dispute resolution mechanism in all scenarios between the parties.
- State Government machinery has requisite technical expertise to analyze various aspects contributing towards delay in the project and to conclusively resolve it.
- By means of the clause 14-A of the draft regulations, the Commission is now seeking to deprive the valuable rights of determination of SCOD/COD which inheres in the project stakeholders under the IA.
- Historically, all hydro projects including Government owned suffer time overrun. Magnitude of time overrun varies from project to project as there are various reasons including natural calamities, interference by local community and environmentalists and more particularly the state controlled clearance system. Complex mechanism proposed in 14-A starting with filing of petition etc. for extension, calculating the overrun and allowing 50% thereof, adjustment through insurance proceeds which themselves are uncertain and limiting the extension to 18 months etc. etc. will only add to the difficulties of the generator and also open avenues for litigation. This defeats the very objective of the State Government to facilitate and simplify SHP development and the Commission’s efforts to support this cause.
- Four (4) years limitation with extension provisions for in the PPA is a matter between the buyer and seller. The Commission determines the tariff as and when COD occurs and then only the Commission exercises its authority to conduct prudency check and considers it in the ARR of buyer Utility. Therefore, such provisions relating to the time period should be left entirely to the Utility and the Developer and in the event of any dispute amongst them, the Commission can be approached u/s. 86(1)(f) for resolution.
- It is submitted that Regulation 14-A apart from being unlawful, causes great prejudice to the Project Holders.

- Accordingly, regulation 14-A provisions proposing SCOD, COD, extension etc. may kindly be deleted.

**M/s POM Hydro Energy Ltd.:-**

(i) It is practically difficult to ascertain the amount from the insurance company or from the contractors against liquidated damages because of the uncertainties involved in the recovery of the amount pertaining to claims from insurance company and liquidated damages from the contractors, we pray this proviso may be suitably modified to avoid any ambiguity, leading to undue hardship to the generator.

(ii) In our view, when the delay is not on account of the factors, attributable to the generator, as determined by the Hon'ble Commission, there is no rationale to restrict the time over run to the extent of 50%.

(iii) The extension of SCOD beyond 18 month should be granted for further period on account of genuine reasons, circumstances/situations beyond the control of the generator on case to case basis.

**M/s Panchor HEP and Himalaya Power Producer Association:-**

The proposed Regulation 14(A) incorporates many conditions for grant of such extension. The developers are bound to fail to get any extension in case these complex conditions are incorporated in the Regulations. Grant of extension for only 50% of the accepted Force majeure period under certain conditions is also contrary to the amended hydro policy and violation of the Govt directive. It may be pertinent to mention here that the reasons for delays in commissioning of IPP projects is delays in granting NOCs especially FRA certificate, final clearance under FCA 1980 and lease of land. Other reason are local problems, interconnection facilities, problems in getting finance from the banks/ financial institutions, non-availability of labour and contractual problems. Most of these problems are not due to IPPs and time taken for obtaining various NOCs itself are consuming three to five years or even more. No single window for clearance has been set up by GOHP. However, no cognizance of such delays is being taken by Himurja/Deptt. of Energy and no extension is granted in the commissioning period. HPSEBL also levies Liquidated damages for delay and GOHP starts claiming free energy from the deemed date of commissioning subjecting the Developer to double penalty. These difficulties need to be factored in appropriately by The Commission while finalising RE Tariff Regulations as well.

**M/s R.K.C Hydro Power, M/s Vimal Hydro Power (p). Ltd., M/s Friends Hydro, M/s Shree Naina Hydro Power Inc, M/s Jagdambey Hydro Project, M/s Chudeshwar Hydro Power, M/s Dev Bhumi Hydro Power, M/s Sweadeshi Distributors, Sai Shakti Solutions, Bonafied Himachalies Hydro Power Developers, M/s Sai Engineering Foundation, M/s Zaveri Energy LLP, M/s Gee Cee Hydro Power (P) Ltd., M/s Saiurja Hydel Projects Pvt. Ltd. and The Himalaya Power Producers Association.**

The proposed clause 13(1)(a) to the regulations is not in consonance to the Amended Hydro Policy, 2006 dated 15.05.2018 vide para (B)(1) which provides that

SHP will be granted tariff as applicable at the time of scheduled COD to be determined with respect to ZERO Date. The proposed amendment in the clause needs to be in conformity with the Amended Hydro Policy to allow all the projects, yet to be commissioned, to get their zero date and scheduled COD to be re-determined by the designated agency as per guidelines to be issued by GOHP and allow tariff as per the date so determined.

The mandate as per the Amended Hydro Policy, 2006 is to grant tariff as per the scheduled COD. As such irrespective of signing of PPA, the tariff will be applicable as per COD and this clause needs to be appropriately worded.

**(ii) Commission's view-**

The Commission, after taking due cognizance of the provisions of the amended Policy and the direction received from the Government to delink the applicability of tariff from the date of signing the IA proposed a balanced proposal which provided for allowing tariff based on scheduled COD to be computed by adding the construction period provided in the Technical Concurrence beyond the date of achieving the zero date. Fair and transparent procedures based on the guidelines of APTEL were also proposed for determining the extension of scheduled COD incorporated in the PPA. Moreover a provision was made to cap the total extension period to eighteen months which in fact was higher than the maximum time limit already existing in the State Hydro Policy as per Government notification dated 04.03.2014. The proposal thus, by and large, envisaged benefits in a rational way. Whereas HPSEBL has suggested that the capping should be done at twelve months instead of eighteen months, all other stakeholders, including the Directorate of Energy, have emphatically stressed that the extension of scheduled COD is the sole prerogative of the Government and the decision of the Government may be considered as final in this regard. It has also been stressed that there should be no capping. It has also been suggested that the entire 14-A provisions proposing SCOD, COD, extension etc. is to be deleted from the draft regulations. However, neither State Government nor HIMURJA has given any comment on this issue.

After going through the comments received from the various stakeholders, we find that many of them have referred to the amendment dated 15.05.2018 of State Hydro Policy and have also claimed that as per the amendment the IPPs are to be allowed the tariff as applicable at the time of scheduled COD to be determined with respect to zero date to be determined by the designated agency and also that as per the provisions of Hydro Power Policy of the State the scheduled Commercial Operation Date of the project can be extended by the Government only.

In view of the concerns expressed by almost all stakeholders including Directorate of Energy, other than HPSEBL, we decide to drop the proposed provisions relating to determination and extension of scheduled COD by the Commission. However, we also decide to go by the amended Hydro Policy instead of relying upon on the interpretation made by the various stakeholders. In this background, we reproduce the text of the amended Hydro Policy on this issue as under:-

“Tariff Determination

A new provision is incorporated under Chapter-IV at Sr. No. 3.1 (xi) and Chapter-V at Sr. No. (xL) of the Hydro Power Policy, 2006 that the tariff shall be

determined by HPERC with respect to date of achieving COD of the project instead of the date of signing of IA. However, this condition shall be applicable only if Project is completed within the stipulated time period as approved in Technical Concurrence (TC) after achieving the zero date except force majeure conditions or reasons not attributable to the developers.”

A perusal of the above clearly reveals that the condition regarding determination of tariff that with respect to date of achieving COD of the project shall be applicable only if the project is completed within the stipulated time period in the Technical Concurrence except force majeure conditions or reasons not attributable to the developers.

In order to implement this theme of the amended policy as well as of as the other existing provisions of the State Hydro Policy, we decide to incorporate these provisions with the following need based changes.

- (i) The above reproduced provisions of the amendment 15/05/2018 take cognizance that tariff linked with the Implementation Agreement(IA) in normal situation with a further provision for tariff linked with COD subject to certain conditions. The State Government has however separately also directed the Commission to allow the same tariff, as applicable for the control period in which the PPA is finalised, irrespective of date of signing IA and as such to effectively do away/modify the provision which provides for the tariff as per RE Regulation, 2012 in certain cases when IA was executed long back but no PPA was finalised. In view of above we decide that the generic tariff determined for the control period in which the developer files joint petition for approval of PPA shall be applicable irrespective of date of signing IA. This shall take care of the grievance expressed by IPPs on the provision for applicability of RE Regulations, 2012 in certain cases where IPPs had entered into IA long back but had not finalised PPA.
- (ii) We observe that as per the amendment dated 15.05.2018 to the State Hydro Policy, the tariff is to be linked with the date of achieving COD subject to certain conditions. On going through the model Implementation Agreement (IAs) forming part of the Hydro Policy for the SHPs (upto 5MW) and those above 5MW, we find that this term has been defined differently for the two categories of SHPs. The meanings assigned to this term in the IAs for these two categories are as under:-

For project(s) upto 5.00 MW, the definition as per IA-

**“Commercial Operation Date”(COD)** shall mean the date on which Company synchronizes the First unit of the Project with the grid;

For project(s) above 5.00 MW and upto 25.00 MW, the definition as per IA-

**“Commercial Operation Date (COD)** means the date on which the Commercial Operation of Unit/Project as the case may be is achieved by the Second party”.

This difference in the two definitions of the same term is obviously bound to create complications/anomalies at implementation stage. We would not have been averse to using this term “COD” in the regulations if a single uniform definition for all the categories of SHPs have been defined in the policy and the model IAs. In absence of

availability of any such uniform definition, we decide to define the term “COD of the project” in the RE Regulations at par with “Date of commencement of operation of the project” and also to decide to use the term “Date of commencement of operation of project” in the regulation 13 instead of commercial operation date used in the Policy.

In order to avoid any misinterpretation of this term at a later stage, we also decide that for the words **“Date of commencement of operation of the project”** appearing in item (g) sub-regulation (i) of regulation 2 the words **“Date of commencement of operation of the project/ commercial operation date of the project/COD of the project”** shall be substituted.

We would, however, like to mention here that if the state Govt. provides a uniform definition of the term COD of the project which can be made uniformly applicable to all categories of the SHPs, the Commission would be inclined to incorporate the same with prospective effect as and when such uniform common definition is communicated.

- (iii) We observe that the “stipulated time period as approved in the “Technical Concurrence (TC)” is to be taken into account for the purpose of implementation of the above reproduced provision of the State hydro Policy. In this connection we observe that in accordance with item 8 of the State Government notification dated 4<sup>th</sup> March, 2014 and 17<sup>th</sup> August, 2016, it may not always be mandatory for the State Government to approve such time period in the “Technical Concurrence” for all categories of SHPs. In view of above, we feel that it shall be appropriate if the time period is allowed as per the Technical Concurrence (TC) or Techno Economic Clearance (TEC) or in the first Implementation Agreement signed by the developer with the State Government, whichever is lesser or least.

We will like to clarify that the changes as per item (i) to (iii) above are being made purely in order to avoid anomalies and the Commission shall not be averse to rationalise the same prospectively if the State Government provides a solution taking care of these anomalies. This will facilitate whole hearted implementation of the amended Hydro Policy in regard to applicability of tariff. We, however, also feel that in order to facilitate smooth implementation, the State Designated Agency shall need to follow uniform guidelines to be got approved by it from the State Government and as well as various provisions of State Hydro Policy applicable from time to time.

In view of the above reproduced provisions of the Hydro Power Policy read with the direction issued by the State Government in relation to Regulation 11 of the existing Regulations and also the claim of the Directorate of Energy that extension of scheduled COD is a sole prerogative of the State Government, we decide to include the following changes in the existing Regulations in lieu of the provisions proposed in respect of Regulation 13 and to drop the proposal to insert a new Regulation 14-A in the draft regulations.

“Amendment of regulation 13.- In sub-regulation (1) of regulation 13 of the said regulations the existing clause (i) shall be omitted; and in clause (ii) the words, brackets and figures “(ii) for the small hydro projects not covered under preceding clause (i):” shall be omitted; and for clause (a) the following shall be substituted, namely:-

(a) to be governed by the generic levelled tariff to be determined by the Commission, in accordance with regulation 14, in relation to the control period in which the RE Generator and Distribution Licensee file the joint petition for approval of PPA:

Provided that if a SHP achieves the date of commencement of operation of the project within the stipulated time period, as approved in the Technical Concurrence (TC) or Techno Economic Clearance (TEC) or in the first implementation agreement signed by RE generator with the State Government whichever is lesser or least, after achieving the zero date except force majeure conditions or reasons not attributable to the developer and a certificate to this effect is issued by the Government designated agency, the Commission, on receipt of such a certificate alongwith other details as it may require, may, on a petition from the concerned SHP developer, allow the tariff applicable for the control period in which the date of commencement of operation of the project falls:

Provided further that the Government designated agency shall, for the purposes of certifying the zero date and issuing the certificate as per the proceeding proviso to this regulation, follow uniform and transparent procedures, including extra checks in cases where tariff is likely to be impacted, to be framed by it with the approval of the State Government and shall also duly take into account the various provisions of State Hydro Policy as applicable from time to time.”

11. **Amendments of regulation 15 & 16.-**

- (i) The Commission has proposed minor changes necessitated due to omission of regulation 11 of the RE Tariff Regulations, 2017. However, the stakeholders have given the suggestions/comments as these regulations as follows:-

**Project specific levelled tariff:-**

**(a) M/s DLI Power:-**

**Regulation 15 – Project specific levelled tariff:**

**Comments:** The parameters proposed in the Regulations by HPERC are in total variance to the standards and norms followed for project specific tariff determination. HPERC proposing to take into account the normative capital cost under these Regulations, cost approved in DPR, design energy in excess of 75% dependable year, financial parameters as considered in Chapter V, limitation of allowing 50% of certain and ceilings etc. proposed by the Commission are all inconsistent with the process adopted for project specific tariff.

The capital cost has to be the actual expenditure incurred on the project till completion, which can be subject to prudence check by the Commission in respect of any unreasonable cost claimed incurred by the Developer and accordingly, the Regulation 15 provisions as well as other connected provisions in the Regulations should be modified.



**(b) M/s POM Hydro:-**

**Regulation 15-Projects specific levellised tariff**

The Sub Regulation 2 of Regulation 15

“(2) Where the project specific levellised tariff, as determined under sub regulation (1)-

- (i) exceeds 105% of the corresponding generic levellised tariff, duly adjusted for permissible rate of free power if any, determined by the Commission in relation to the control period or other provisions under which the power purchase agreement was approved by the Commission, the distribution licensee shall have the option to exit from the power purchase agreement, provided that this option shall not be available to the distribution licensee if the renewable energy generator agrees to keep the tariff within the aforesaid limit;
- (ii) is less than 95% of the corresponding generic levellised tariff, duly adjusted for permissible rate of free power if any, determined by the Commission in relation to the control period or other provisions under which the power purchase agreement was approved by the Commission, the renewable energy generator shall have the option to exit from the power purchase agreement, provided that this option shall not be available to the renewable energy generator if the distribution licensee agrees to keep the tariff within the aforesaid limit.”

**Suggestion:-**

In out humble view, as this Regulation pertains to project specific tariff determination, so, the limits 95% or 105% defeat the objective of true spirit of the concept of project specific tariff. Hence, we pray to delete these limits. Even the norms of project specific tariff being adopted by the Hon’ble Commission for tariff determination are harsh to the generator and may be suitably modified.

**(c) M/s Leond HEP & Jaya Hydro:**

That regulation 16 as proposed is not in line with the advisory of the State Government and the Regulations 2017 should be applicable to the projects which have COD after 1st April 2017. The Regulation 16 sub clause (a) needs to be deleted and this article 16 needs to be redrafted so as to make it applicable to all such projects under construction or in various stages of clearances irrespective their approval or signing of PPA before the notification.

**Commission’s view:-**

The Commission has, in the draft regulations proposed only such changes in these regulations as are necessitated due to omission of regulation 11 of the existing regulations. The regulation 15 deals with the project specific levellised tariff in cases where the developer at the time of finalising PPA opts for project specific determination. Similarly regulation 16 deals with the situations where the developer, after selling power under REC mechanism, sells power to the distribution licensee under a long term PPA for the balance period.

The contention that the tariff determined under RE Regulations, 2017 should be allowed to all the SHPs, which are under construction, irrespective of their having already signed PPAs is totally misplaced and is neither mandated by the State

Hydro Policy nor acceptable, as also discussed in a separate paragraph of this order.

In view of above, we decline to accept the suggestions made by the stakeholders and decide to finalise these regulation 15 and 16 after incorporating only those changes as have been proposed in the draft regulations.

12. **Amendment of regulation 17.-**

In the draft regulation certain changes were proposed in the regulation 17 of the existing RE Tariff Regulations, 2017 relating to capacity enhancement so as to align these provisions with the changes proposed in the other parts of the draft regulations. The following comments have been received from the stakeholder in this regard.

**(a) The Directorate of Energy:-**

As regards to Control Period, it is to submit that greater clarity is still needed in the regulation with respect to the following:

1. Applicability of tariff in case of projects where it is partially commissioned in one Control Period (One Unit) and other units are commissioned in next Control Period.
2. Also, in case if any additional unit is installed in the existing project after the one Control Period is over, which tariff will be applicable?

**(b) M/s DLI Power:-**

The State Government Policy states that all projects under construction and at various stages of clearances will get covered under these Regulations 2018. It does not discriminate between projects on the basis of original capacity or enhanced capacity for getting covered under these Regulations. Hence, it is the approved final capacity of the project which matters. There is thus, no such concept of original capacity and enhanced or incremental capacity, split tariff or composite tariff etc as proposed.

The draft Regulations contemplate that a separate dispensation would be applicable based on original capacity or enhanced capacity and the date of signing of the PPAs.

The suggested modification to Clause 17:

This entire Clause 17 is to be suitably redrafted so as to make it applicable to all such projects under construction or in various stages of clearances irrespective their approval or signing of PPA before the notification.

**(iii) Commission's view:-**

As regards the comment of Directorate of Energy we observe that in case of SHPs, a single generic levellised tariff is determined for all the units of the project and separate unit wise tariffs are not determined. In this connection, it is also pointed out that even in the implementation agreements for the SHPs, at least upto 5.00 MW, the term "Commercial Operation Date" has been defined to mean the date on which the generator synchronises the first unit of the project with the Grid. In view of above and also the discussion in a separate paragraph of this order in relation to amendment of regulation 13, the observation made by Directorate of Energy is not relevant in this case.

In this connection we would like to clarify that existing RE Regulations, 2017 already specify the manner in which the tariff(s) are to be determined for the

original capacity and additional capacity under different scenarios in cases where, after allotment of a SHP for a particular capacity (original capacity), the capacity is enhanced with the approval of HP Government (additional/enhanced capacity). Certain minor changes in these provisions have however also been proposed under the draft amendment regulations so as to align these provisions with the changes proposed in other parts of regulations under the amendment regulations. The suggestion that the same tariff should be applicable to entire capacity of the project even in the cases where, after allotment of a SHP for a particular capacity, present capacity is enhanced through a supplementary agreement is not acceptable as such a situation will not only create a lot of anomalies but will otherwise also be not be fair for the parties to the PPAs. As per the principle already enshrined in the previous regulations the generic tariffs prevalent at the time of the signing of the PPA of the respective capacities (i.e. original capacity and the additional capacity) and a composite rate is worked out taking into account the expected generation/ additional generation as per DPRs. In order to provide more clarity in this regard, we decide to reword the existing sub-regulations (2), (3) and (4) of the regulation 17 of the existing RE Regulations, 2017. Accordingly without any major shifting in the principles already followed in the RE Tariff Regulations of 2012 and 2017, we decide that for the said sub-regulations the following shall be substituted, namely:-

“(2) Where, prior to commencement of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017,-

- (a) any part of the original capacity as well as that of the additional capacity has been synchronized with the grid at least once; or
- (b) joint petition(s) for the approval, whether under the REC mechanism or on long term basis, of PPA(s) in relation to the original capacity as well as of the supplementary PPA in relation to additional/ enhanced capacity, has/have been filed before the Commission; or
- (c) PPA(s), or the supplementary PPA, whether under the REC mechanism or on long term basis, for purchase of net saleable energy from the original capacity and the additional capacity or the enhanced capacity has/have been signed by the concerned developer with Distribution Licensee;  
the tariff(s) for the original capacity and the additional capacity, or the composite rate for the enhanced capacity as the case may be, and the associated conditions for each of such tariffs, shall be regulated as per the provisions of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012.

3) Where, prior to commencement of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017,-

- (a) in relation to the original capacity of the project or a part thereof,-
  - (i) either synchronization of the same with the Grid has taken

place at least once, or (ii) a joint petition for the approval of PPA for purchase/sale of net saleable energy has been filed before the Commission, or (iii) the PPA for the sale/purchase of net saleable energy from the same, whether under REC mechanism or on long term basis, has been signed by the developer of the concerned project with the Distribution Licensee; and

- (b) in relation to the additional capacity of the project or a part thereof,- (i) neither any synchronization of the same, with the Grid has taken place even once, nor (ii) any joint petition for approval of any PPA (or supplementary PPA), in relation for such additional/enhanced capacity, whether under REC mechanism or long term basis, has been filed before the Commission, nor (iii) any PPA, or supplementary PPA, for such additional/enhanced capacity has been signed by the developer of the concerned project with the distribution licensee for such additional/enhanced capacity;

the tariff for the net saleable energy in relation to the original capacity shall be determined as per the provisions of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012 and the same for the additional capacity shall be determined as per the provisions of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 as applicable on the date on which the joint petition for approval of PPA in relation to the additional capacity/enhanced capacity is filed before the Commission or on the date on which such additional capacity, or a part thereof, is synchronized with the grid for the first time, whichever is earlier.

- (4) Where, prior to commencement of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017,-
- (a) no part of the original or enhanced capacity has been synchronized with the grid even once; and
  - (b) no joint petition for the approval of PPA(s), whether under REC mechanism or long term basis, in relation to any part of the enhanced capacity of the project, i.e. the original capacity and/or for the additional capacity and/or for the enhanced capacity, has been filed before the Commission; and
  - (c) no PPA, whether under the REC mechanism or on long term basis, for the original capacity or for the additional capacity or for the enhanced capacity or any part thereof has/have been signed

- by the developer of the concerned project developer with the Distribution Licensee; and
- (d) the joint petition(s) for approval of PPA(s) or for the supplementary PPA, in relation to of the original capacity as well as for the additional capacity or for the enhanced capacity is filed before the Commission for the first time only after the commencement of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017;

the tariff for the net saleable energy for the relevant capacity/ capacities for which PPA, or supplementary PPA, is sought to be approved shall be fixed in accordance with the norms and Generic Levellised rate and other conditions as per the provisions of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 as applicable on the date(s) of filing such petition(s) or on the corresponding date(s) of synchronization of any such part capacity(ies) with the Grid for the first time, whichever is/are earlier:

Provided that if separate joint petitions are filed on or after the commencement of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017, for approval of PPAs, or the supplementary PPA, before the Commission in relation to the original capacity and the additional capacity, the provisions of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017, as applicable on the respective dates of filing such petitions, or the respective dates of synchronization of the corresponding capacities, whichever are earlier, shall apply.

- (5) Where different sets of Commission's regulations as per sub- regulation 3 of this regulation, or different sets of provisions/ norms of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 as per the provisions under Sub-Regulations (4) of this regulation, are applicable for the net saleable energy corresponding to the original capacity and for the additional capacity, a composite rate shall be worked out, on normative basis, for the net saleable energy corresponding to the enhanced capacity, as follows, namely;-
- (i) the generic levellised tariff applicable for the net saleable energy in relation to the original capacity as per the sub regulation (3) or sub regulation (4) as applicable, shall be considered for the net saleable energy in relation to the annual energy generation corresponding to

75% dependable year as per the Detailed Project Report for the original capacity, irrespective of the date of signing of the power purchase agreement for the original capacity;

- (ii) for the net saleable energy in relation to the annual incremental energy generation due to enhancement of capacity i.e. the annual additional energy generation which is expected to take place in the 75% dependable year as per the detailed project report for the enhanced capacity, the generic levelled tariff applicable for the net saleable energy in relation to the additional capacity as per the provisions of sub-regulation (3) or sub-regulation (4), of this regulation, as applicable, shall be considered:

Provided that the tariffs considered for the respective energy quantum as per clauses (i) and (ii) of this sub-regulation shall be governed by the respective associated terms and conditions as per the respective power purchase agreements and the applicable provisions for respective capacities:

Provided further that in case the applicable provisions for the respective capacities provide for any adjustment of the corresponding tariff, such adjustment(s) shall also be made only for the respective energy quantum as per clauses (i) and (ii) of this sub-regulation under this regulation and the adjusted composite rate shall be calculated accordingly:

Provided further that while computing such composite rate, the free power (in percentage) shall, save as provided in sub-regulation (7), be accounted for as follows, namely:-

A	if no separate rates of free power (in percentage) are provided in supplementary IA for the original capacity and for the additional capacity and only composite rate is provided for the enhanced capacity;	composite rate of free power (in percentage) not exceeding the limit specified in regulation 36, for the entire capacity i.e. in relation to the original capacity as well as additional capacity;
B	if separate rates for original capacity and for the additional capacity are provided in the supplementary Implementation Agreement;	Separate adjustments in accordance with the limits specified in regulation 36 shall be made for the net saleable energy in relation to the two capacities i.e. original capacity and additional capacity at corresponding rates of free power (in percentage). In such cases the limits as per regulation 36 shall be applicable separately for the two capacities:

Provided further that the composite rate for the entire net saleable energy shall, in no case, be higher than the generic levelled rate applicable under Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 as on the date of approval of the PPA for the additional/enhanced capacity or the date on which any part of additional

capacity is synchronized, whichever is earlier, for the small hydro project category under which the enhanced capacity falls:

Provided further that in cases where the incremental capacity is commissioned in phases, the tariff(s) during such interim stages shall be computed based on such incremental energy generation corresponding to the additional capacity actually installed from time to time.”

Consequent to above, the references of various sub-regulations appearing in the existing sub-regulations (1),(5),(6),(7) and (8) of regulations 17 shall also be harmonized and further the said existing sub-regulation (5),(6),(7) and (8) shall be renumbered as (6),(7),(8) and (9) respectively.

### 13. **Amendment of regulation 20.-**

- (i) The Commission has, in the draft regulation, proposed relaxation of the maximum limit of 13% free power for pass through in tariff so far as it is necessitated due to deferment of the free power. The proposal was thus made to facilitate adjustment in tariff due to deferments of free power within the scope of RE Regulations, 2017. The following comments/suggestions have been received in this regard.

#### **(a) The Directorate of Energy**

The Government of HP has deferred the free power quantum to be received on account of free power share of the State for the critical period of initial 12 years vide notification dated 15.05.2018 in order to:-

- (a) Ease debt servicing by the developers.
- (b) Avoid the stalled projects becoming NPA.
- (c) Make the projects financially viable.
- (d) Give boost to the Hydro Power Sector in a dynamic market scenario especially in view of fast changing market and technological interventions in Solar and Wind Power.

Therefore, it is suggested that this relaxation being given in terms of deferment of free power royalty should not be taken into account for the adjustment in tariff, since it would nullify the relaxation being given by the State Government.

#### **(b) M/s Leond HEP & Jaya Hydro**

The Government requires that its free power share during the first 12 years of operation be deferred to subsequent 28 years on a uniform percentage recovery basis. The Government requires that the Developer should get the tariff calculated on the basis as if the free power was actually supplied by him in order to facilitate his debt servicing during the first 12 years critical period with the additional revenue. Accordingly, the proposed amendment in Regulation 20 (3) (ii) should be deleted and:

*Accordingly, the modified Clause 20(3)(ii) is suggested as follows:*

The limit of 13% for the pass through of free power in the tariff as per the national hydro policy/tariff policy is revised by the central government, or staggered by the Government;

*Provided that the tariff for the first twelve years of operation will be determined considering as if the free power was actually supplied to the State Government and a mechanism will be provided in the PPA towards recovery by the State Government of the deferred quantum of free power pertaining to such first twelve years, during the*

*subsequent twenty eight years commencing 13<sup>th</sup> year of operation on a uniform percentage basis as per following principle;*

*The applicable levelled tariff for full duration of 40 years shall be worked out on basis of 13% free power royalty. Year wise 12% free power royalty deferred during first 12 years will be aggregated. In other words, it is banked with the generator. This will be returned to the State during next twenty eight years on an equally distributed basis year wise.*

*Provided further that the generator shall receive payment for total saleable units supplied during the first twelve years at the levelled tariff and without any deduction or adjustment against the free power deferred.*

**(c) M/s Panchor Hydro Pvt. Ltd. and The Himalaya Power Producers:-**

The deferment of free power recently allowed by the State Govt. has been proposed to be factored in while determining the tariff. The Commission is totally aware of the intentions of the HP Govt. for allowing the deferment of free power for the first 12 years to the projects under construction. This has primarily been allowed to facilitate the project developers in debt servicing after the commissioning of the project and to ensure that these projects do not become NPAs due to stress of debt payments. The account of this benefit in the tariff would nullify the effort of the Govt. in providing the much needed support to the project developers in the initial years after commissioning as the deduction in tariff on account of account of the deferment of royalty would erode the revenue generation which in turn would lead to greater stress in debt servicing and increased risk for the projects heading towards the NPAs. You will appreciate that the higher cost per MW and lower tariff have already made this vital SHP Sector unviable. We therefore, plead that this provision be deleted from the Amendment to the Regulations in order that the already stalled projects may venture into commissioning the projects, which ultimately provide inclusive growth of the State.

It is therefore, prayed that the Commission may consider above suggestions so that development of small hydro sector in the state may not suffer. We would also like to present our case in Public Hearing.

**(d) M/s POM Hydro:-**

The deferment of free power should be from the date of actual COD instead of scheduled COD. Further, we understand that the deferment of free power during first 12 years shall not be factored into the levelled tariff determination.

**(e) M/s DLI Power:-**

The Government requires that its free power share during the first 12 years of operation be deferred to subsequent 28 years on a uniform percentage recovery basis. The Government requires that the Developer should get the tariff calculated on the basis as if the free power was actually supplied by him in order to facilitate his debt servicing during the first 12 years critical period with the additional revenue. Accordingly, the proposed amendment in Regulation 20 (3) (ii) should be



deleted and substituted by the following along with a simple methodology of recovery:

*Accordingly, the modified Clause 20 (3) (ii) is suggested as follows:*

The limit of 13% for the pass through of free power in the tariff as per the national hydro policy/tariff policy is revised by the central government, or staggered by the Government;

Provided that the tariff for the first twelve years of operation will be determined considering as if the free power was actually supplied to the State Government and a mechanism will be provided in the PPA towards recovery by the State Government of the deferred quantum of free power pertaining to such first twelve years, during the subsequent twenty eight years commencing 13<sup>th</sup> year of operation on a uniform percentage basis as per following principle;

The applicable levelled tariff for full duration of 40 years shall be worked out on basis of 13% free power royalty.

Year wise 12% free power royalty deferred during first 12 years will be aggregated. In other words, it is banked with the generator. This will be returned to the State during next twenty eight years *on an equally distributed basis year wise*.

The return to State could be either;

Prorated monthly reduction from saleable energy @ 1/12 of the annual returnable units; or,

Prorated monthly deduction from the generator's bill equivalent to the amount calculated as per the levelled tariff multiplied by 1/12 of the annual returnable units.

Provided further that the generator shall receive payment for total saleable units supplied during the first twelve years at the levelled tariff and without any deduction or *adjustment against the free power deferred*.

**(f) M/s Technology House (I) Pvt. Ltd.**

(i) Regarding the Quantum of Free Power to be passed through in Tariff:

It is well known to the Commission that the actual free power as per the GoHP's Hydro Policy, 2006 is much higher than the normative 13% considered by the Commission in tariff for all 40 years. In our case, the actual free power applicable, compared against the normative free power considered by the Commission is as follows:

Years	Actual free power applicable as per GoHP Hydro Policy, 2006 and IA as signed	Normative free power as considered by the Commission in the RE Tariff Regulations and SHP Tariff Order
First 12 years	15%	13%
Year 13-30	21%	13%
Thereafter	33%	13%

As per the Electricity Act, 2003 Section 61(b), the Commission shall "specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the principle that the generation, transmission, distribution, and supply of electricity are conducted on commercial principles."

CERC's 2017 the RE Tariff Regulations wrt capping of free power allowance to 13% are not the correct reference for the following two reasons:-

- CERC's jurisdiction applies to CGS (Central Generating Stations and hydro projects selling power to more than one state (composite scheme). For these projects, the applicable policy is the Govt. of India's Hydro Policy, 2008 which mandated free bound by the GoHP's Hydro Policy, 2006 and the Implementation Agreements signed with GoHP signed thereunder. Under the GoHP's Hydro Policy, 2006, the applicable free power rates are much higher (as outlined in the above table).
- Most other States requires free power around 12%-13% and since the CERC's regulations are expected to encompass the entire country, the CERC is expected to find a common ground. On the other hand, the HPERC is not constrained by such requirement, and may frame the regulations based on specific situation prevailing in Himachal Pradesh.

Therefore, we request the Commission to fully allow the actual free power in the tariff (as applicable under the GoHP's Hydro Policy, 2006 and signed Implementation Agreement), without capping it to 13%.

(ii) Regarding the proposal of passing through deferment of free power in the tariff: The tariff determined vide the RE Tariff Regulations, 2017 and March, 2018 tariff order thereunder, is already low, due to unrealistic parameters considered (low project cost, high PLF, restricted pass-through of free power in tariff, less than adequate RoE). The proposal to reduce the tariff even further during the first 12 years will render the projects unviable. This proposal of the Commission will completely defeat the purpose of the facility given by the GoHP, so that the SHPs developers may repay their project debts without defaulting. If the Commission is inclined to reduce tariff during initial 12 years due to deferment of free power, then it should also consider increasing the tariff during the same 12 years, as the interest on loan and repayment obligations are higher, and therefore should completely do away with the concept of 40 years flat levellised tariff. For example, in the March, 2018 SHP Tariff Order, the first- year tariff should ideally be Rs. 3.90/kWh, instead of the levellised 3.44. Therefore, we request the Commission to either apply the year to year tariff methodology, or the flat-levellised tariff methodology, but not a selective mix of the two.

**(ii) Commission's view-**

We observe that basically the following suggestions have been made:-

- (i) the limit of 13% as already specified in the regulations should not be imposed even in normal cases not involving deferment of free power;
- (ii) the deferment of free power should be from the date of actual COD instead of schedule COD;
- (iii) deferment of free power should not impact the tariff payable to the RE generators;

The suggestion as per item (i) neither forms a part of the proposed draft regulations nor any such changes are mandated by the amended Hydro Policy which has triggered the draft regulations. As such, we are not inclined to accept this suggestion. The suggestions/comments as per item (ii) regarding the date from which the deferment of free power shall be applicable does not fall under the purview of the Commission and as such cannot be decided by the Commission.

As regards the suggestion as per item (iii) to the effect that there should not be any impact on the tariff payable to the developer on account of deferment of royalty power, we observe that the proposed amendment would have

automatically facilitated adjustment in the tariff payable to the developers on account of deferment of free power. Since the State Government has subsequently advised that there should be no impact on the tariff payable to the developer on account of deferment of free power, it becomes necessary that the adjustments in relation to quantum of free power deferred by State Govt. should be considered only outside the scope of the RE Regulations as and when State Govt. enters into suitable agreement(s) with the developers and the HPSEBL. As such, now no adjustment in the tariff for net saleable energy (i.e. after accounting for the percentage free energy which was to be recovered in normal case in absence of deferment) shall be made on account of deferment of free power within the scope of these regulations. As suggested by one of the stakeholders, the deferment of free power shall be effectively deemed as supplied by the developer in the year(s) in the year it was due in absence of any deferment. Accordingly as suggested by the developer also, we decide to drop the proposed amendment. Similarly, as required by the State Government, the Commission shall allow the Distribution Licensee to purchase the quantum of deferred free power at a rate equivalent to generic levelled tariff for that SHP in case the Government makes a provision to this effect in the agreements/modalities to be finalized by it with the RE developers and the Distribution Licensee. This will fully take care of the concerns of the developers in line with the intentions of Government and suggestion given by the developers.

The issues regarding purchase of free power, so deferred and the impact thereof on HPSEBL consumers in case of purchase of such power at any rate higher than the normal rate for purchase of free power shall however be considered appropriately in detail outside the scope of these regulations as and when situations arise. The Commission shall suitably quantify and account for the same on yearly basis while determining the rate of purchase of free power after taking into account the various relevant factors such as project specific orders of the State Government about the quantum (%) and period of deferment of free power in each case, as envisaged in the amended hydro policy also, the total quantum of free power to be deferred in each year and the modalities mutually agreed by the State Government with the developer and HPSEBL for implementation of their intentions/policy in this regard as well as the confirmation given by the Department of Power, that Government of Himachal Pradesh is committed that HPSEBL and the consumer of the State will not suffer any loss at all.

**14. Amendment of Chapter.-IV & V.**

**(a) M/s Leond Hydro Power Pvt. Ltd. & Jaya Hydro Power Pvt. Ltd.**

Chapter – IV – Financial Principles

The applicability date of financial principles should be 1<sup>st</sup> April 2017 instead of 1<sup>st</sup> October as per regulations framed by the CERC. The capital cost and other parameters have significantly changed during 2012 to 31.3.2017. Therefore, regulations were required to be formulated from 1<sup>st</sup> April 2017 to 31.3.2020 and 'October' word should be replaced with word 'April'.

**Commission's view:-**

The suggestion to the effect that the RE Regulations, 2017 should be applicable from 01.04.2017 instead of 01.10.2017 is not acceptable in view of the conclusion

already arrived at by us under a separate preceding paragraph. The outer dates of 31.03.2020 proposed under both the chapter IV and V shall however be replaced with 30.09.2019.

We also observe that the many stakeholders have suggested considerable changes in the technical and financial parameters particularly in the background of the SHPs. We decline to accept such suggestions as these are neither a subject matter of the proposed draft regulations nor are mandated by the amended hydro policy which triggered the draft regulations. As such we decide to finalise the regulations with regard to item 15 and 16 of the draft regulation pertaining to Chapter IV and V respectively without any changes except for substitution of the outer date of 31.03.2020 in both cases.

#### **15. Miscellaneous:-**

- (a) The stakeholders have also raised various issues like revision of norms as per CERC's RE Regulations, adoption of CERC tariff, not to include capital subsidy of MNRE in tariff determination, matter related to depreciation, taxes and duties, CUF and review of tariff etc. etc., which are neither a part of proposed amendment nor otherwise mandated.

#### **Commission's View:-**

We are of the view that all such issues raised/suggested by the stakeholders are neither a part of present regulatory intervention nor are mandated by the State Hydro Policy which in fact triggered the draft regulations. As such, we decline to accept the same as a part of these amendment regulations. The next review of norms etc. shall fall due under the next control period only.

- (b) Some of the stakeholders have contended that the amended policy/directions of the State Government have not been honoured. Many claims have been made but no specific item has been supported with the actual text of the amended hydro policy/directions of State Government. We have also discussed some such claims raised by the Stakeholders in the respective paragraphs of this order. We have, on our part, followed the amended Hydro Policy as well as the directions issued by the State Government in totality and in true spirit. However, we decline to accept other/suggestions which are neither supported by the Hydro Policy/directions of State Government nor the subject matter of consideration under the draft regulations.

We, after going through all the submissions made by the various stakeholders including those discussed specifically in the preceding paragraphs, decide to finalize the regulations by incorporating changes specifically discussed herein above and other minor modifications of general nature, as felt necessary while finalising the regulations.

Sd/-  
(Bhanu Pratap Singh)  
**Member**

Sd/-  
(S.K.B.S. Negi)  
**Chairman**

Place: Shimla.  
Dated: 24 .01.2019

**Annexure-A**

Sr. No.	Name
1	Shri. K.S Dhaulta, Consumer Representative
2	Er. Rajan Sharma, SE, Directorate of Energy
3	Er. Maneesh Mahajan, Addl. SE, Directorate of Energy
4	Er. N.P. Gupta, SE (Comm). HPSEBL
5	Er. Ajay Thakur, Sr. Xen (E), HPSEBL
6	Er. Pritam Chauhan, Sr. Xen (E), HPSEBL
7	Er. Anshual Thakur, AEE(E), HPSEBL
8	Shri. Vikas Chauchan, Advocate, the Bonafide Himachalies Hydro Power Producer Associations
9	Shri Rajesh Sharma, M/s Jagdembay Hydro Project.
10	Shri S.N. Kapur, Director & Sr. Vice President, M/s Panchhor Hydro Power & Himalayan Power Producers Associations
11	Shri Shyam Vaidya, M/s DLI Power(I) Pvt. Ltd.
12	Shri Vsva Rao, M/s DLI Power (I) Pvt. LTd.
13	Shri Dharma Pal Reddy, General Manager, M/s Greenko Group
14	Shri Sunil Kundu, SGM, M/s Greenko Group
15	Shri Prabhat Kumar, Lioisoning Manager, M/s POM Hydro Energy Ltd.
16	Shri Arun Kumar, Director, M/s Leond Hydro Power Pvt. Ltd.

