

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

In the matter of finalization of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Fourth Amendment), Regulations, 2020.

ORDER

The Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as “the Commission”) made the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 published in the Rajpatra, Himachal Pradesh, dated 23rd November, 2017 which were further amended on 05.07.2018, 28.01.2019 and 11.11.2019. The aforesaid regulations of 2017, read with the above mentioned amendments, have hereinafter been referred as “RE Tariff Regulations, 2017” or “RE Regulations, 2017”.

2. The outer date of the 2nd control period as per the RE Regulations, 2017 was specified as 31.03.2020. The Commission is thus mandated to fix the new control period and further review/amend the financial parameters of various RE technologies as well as the technical parameters for the small hydro projects in relation to the next control period.
3. Taking the above into consideration, the Commission issued the draft HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Fourth Amendment) Regulations, 2020 on 23.03.2020 and published the same in the Rajpatra, Himachal Pradesh on 01.04.2020.
4. As required under 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. “Times of India” and “Amar Ujala” on 21.04.2020 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. The last date for filing objections/suggestions was 31.05.2020.
5. The Commission, vide letter dated 24.04.2020, also 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.

6. The various stakeholders requested the Commission to extend the date of filing their objections/suggestions on the aforesaid matter taking into account the unprecedented situation arising due to COVID-19.
7. Taking into consideration the request made by the stakeholders, the Commission decided to extend the date of filing their objections/suggestions. Accordingly, the Commission again invited the fresh/additional public objections and suggestions by way of insertions in two News papers i.e. “Hindustan Times” and “Dainik Bhasker” on 28.05.2020 and the date of filing objections/suggestions was extended upto 06.07.2020.
8. The Commission, vide letter dated 04.06.2020, again 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 public notice dated 28.05.2020.
9. In the meanwhile i.e. before the expiry of the due date of 06.07.2020, the Central Commission notified the Central Electricity Regulatory Commission (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2020 on 23rd June, 2020 (hereinafter referred as ‘CERC RE Regulations, 2020’ or ‘CERC RE Regulations’).
10. The Commission, after having perused the CERC RE Tariff Regulations, 2020 notified by the Central Commission for new control period on 23rd June, 2020, found it appropriate to modify some of the provisions/parameters of draft amendment regulations already notified on 23rd March, 2020 and published in the Rajpatra, Himachal Pradesh on 1st April, 2020.
11. Taking the above into consideration, the Commission issued a notification on 03.07.2020 modifying some of the provisions of the draft HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Fourth Amendment) Regulations, 2020 (published in the Rajpatra, Himachal Pradesh on 01.04.2020) and published the same in Rajpatra, Himachal Pradesh on 04.07.2020. The draft amendments to the RE Tariff Regulations, 2017 issued vide the aforesaid notification dated 23.03.2020 (published on 01.04.2020) duly modified as per notification dated 03.07.2020 (published on 04.07.2020) have hereinafter been referred to as the “draft amendment regulations” or “draft regulations”.

12. As required under sub-section (3) of the section 181 of the Act, the Commission again invited public objections and suggestions by way of insertions in two News papers i.e. “Times of India” and “Amar Ujala” on 05.07.2020 under Rule (3) of Electricity (Procedure of Previous Publication) Rules, 2005 and the full text of the draft amendment regulations alongwith modification were made available on the Commission’s website: www.hperc.org. The last date for filing fresh/additional/ revised objections/ suggestions was 27.07.2020.
13. The Commission, vide letter dated 07.07.2020, once again requested the major stakeholders, including Small Hydro Project Developers Associations, State Government, Directorate of Energy, HIMURJA and Distribution Licensee to send their fresh/additional/revised objections/suggestions as per the aforesaid public notice.
14. The public hearing in the matter was scheduled to be held on 11.08.2020 through video conferencing. Stakeholders were informed to attend the said public hearing by way of insertions in two News papers i.e. “Hindustan Times” and “Danik Bhaskar” on 29.07.2020.
15. The Commission received comments/suggestions on the draft amendment from the following stakeholders:-
 - (i) The Directorate of Energy, Shanti Bhawan, Phase-III, Sector-VI, New Shimla 171009 (HP).
 - (ii) M/s Jaya Hydro Power Pvt. Ltd. and Varun Jal Vidyut Shakti Pvt. Ltd., Skipton Villa, the Ridge, Shimla- 171001 (HP).
 - (iii) The Himachal Pradesh State Electricity Board Limited (HPSEBL), Vidyut Bhawan, Shimla-171004 (HP).
 - (iv) M/s Ascent Hydro Projects Ltd., Bldg. 2/RH-1, Visava Enclave, D.P. Road, Aundh, Pune-411007.
 - (v) The Himalaya Power Producers Association, B-7, Sector-1, New Shimla-171009 (HP).
 - (vi) The Himachal Pradesh Power Corporation Ltd., Himfed Building, BCS, New Shimla-17109(HP).
 - (vii) M/s Bharmour Hydro Projects. Pvt. Ltd., D-14, Sector-1, Near SBI, New Shimla-171009(HP).
 - (viii) The Bonafide Himachalies Hydro Power Developers Association, Sai Bhawan, Sector-4, New Shimla-171009 (HP).
 - (ix) All India Renewable Energy Protection Association, Top Floor, 3 Scindia House, Janpath, New Delhi- 110001.
 - (x) Shri Ramesh Chauhan, Consumer Representative, Himanshu Cottage, Cemetery Road, Sanjauli, Shimla- 171006(HP).

- (xi) M/s Panchhor Hydro Power Pvt. Ltd., Gyamba House, South End, Lane-IV, Sector-1, New Shimla-171009 (HP).
- (xii) M/s Greenko Energies Pvt. Ltd., Plot No. 1071, Road No. 44, Jubilee Hills, Hyderabad, 500033 Telangana.
- (xiii) M/s Realidea Consultants, F-26/114, Sector-7, Rohini, Delhi- 110085.
- (xiv) M/s Ramesh Hydro Power Pvt. Ltd., Gyamba House, South End, Lane-IV, Sector-1, New Shimla-171009 (HP).
- (xv) M/s Roura Non Conventional Energy Pvt. Ltd., Gyamba House, South End, Lane-IV, Sector-1, New Shimla-171009 (HP).
- (xvi) M/s OM Energy Generation Pvt. Ltd., 12 D, Race Course, Dehradun-248001.
- (xvii) M/s Chirchind Hydro Power Limited, 216-218, New Industrial Area-II, Mandideep-462046(MP).
- (xviii) M/s Tissa Hydro Power Pvt. Ltd., Gyamba House, South End, Lane-IV, Sector-1, New Shimla-171009 (HP).

16. The public hearing was held through video conferencing, as scheduled, on 11.08.2020. The list of participants who attended the said public hearing is annexed as **Annexure-“A”**.

17. **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:-

- 17.1 The representative of the Bonafide Himachalies Hydro Power Developers Association appreciated the steps taken by the Commission to align the draft amendment regulations with the CERC RE Regulations particularly for SHPs. He further raised some of the issues such as cost of project line and interconnection point, rationalization of transmission losses upto interconnection point viz-a-viz normative loss percentage proposed to be considered. He expressed a view that the SHPs who have signed PPAs in the previous tariff regime and are not coming up may be allowed tariff from date of commissioning by re-opening the PPAs.

It was further suggested that the O&M charges of the project line and bays, being charged by the HPSEBL and the HPPTCL, should not be levied till such time the Committee, as set-up by the State Government, to look into these aspects, submits its report and the Commission takes a view of the same.

- 17.2 The representative of M/s Ascent Hydro Projects Ltd. stated that since hardly any project has been commissioned during the applicability periods of the first two control periods, the Commission may apply the provisions of the draft regulations, especially those relating to the capital cost, from the commencement date of 1st control period.
- 17.3 The representative of M/s Jaya Hydro Power Pvt. Ltd. stated that with the norms for SHPs, as proposed in the draft regulations, the tariff shall now be workable in the State. He further suggested that the provisions for the mutual understanding as per regulation 8 of the RE Regulations, 2017 are required to be re-looked keeping in view that the HPSEBL is mandated to procure power from SHPs.
- 17.4 The representative of M/s Tissa Hydro Power Pvt. Ltd. stated that the proposed CUF (47.85%) is higher as compared to CUF considered by the CERC for SHPs (45%) which is not justifiable. There are number of commissioned projects which are running on the CUF less than 45%. The interconnection point for SHPs may be defined as per the CERC provisions, where the SHPs are connecting with the STU system they have to pay high charges for bay(s). The same should be as per the approved cost data. Some of the provisions of the Model PPA may be allowed to be modified with mutual understanding with the licensee. The actual free power structure may be considered as pass through in the tariff instead of restricting the same upto 13%.
- 17.5 The representative of M/s Greenko Energies Pvt. Ltd. stated that the normative CUF for SHPs may be taken as per the CERC norms. He further suggested that the subsidy may not be adjusted in the capital cost as the capital subsidy is provided for the promotion of the particular sector. He also pleaded that if the intention of the Government was to pass on the benefit to the consumers, the State Government/Central Government would not have provided the same to the project developers. He stated that higher CUF and adjustment of capital subsidy may not result in realistic benchmark tariffs.
- 17.6 The representative of Shree Bhavani Power stated that they are pursuing for reasonable tariff in the State for the last 5 to 6 years so that small hydro power sector may get needed attention.
- 17.7 The representative of M/s Batot Hydro Power stated that the actual O&M and transmission charges for the SHPs of smaller capacities are presently on higher side as compared to the norms and the same requires rationalization. He suggested that since it may take 8 to 10 years for transfer of land for the development of a new project, the SCOD may be finalised after acquisition of

land and applicability of tariff shall be decided accordingly. He further stated that the projects are getting declared as NPAs.

17.8 The representative of the Directorate of Energy stated that the Commission may consider actual applicable free power structure for tariff determination.

17.9 The representative of M/s Chirchind Hydro Power stated that the CUF for SHP may be considered as per the CERC norms.

17.10 The representative of the HPSEBL stated that since it is mandatory for the HPSEBL to buy power from SHPs, the Commission may not blindly follow the CERC regulations. He stated that based on the norms for SHPs, as proposed in the draft regulations, the tariff may work out to Rs. 5.00 per unit approximately whereas average cost of power procurement of the HPSEBL is about Rs. 2.50 per unit only. He further stated that the said norms need to be rationalized in view of the fact that the Commission is also mandated to protect the interest of the consumers and any higher power procurement at higher rates as compared to the average procurement costs of the HPSEBL will put a burden on the consumers. He also suggested that Rs.11.00 Crore capital cost, proposed by the Commission, is on higher side and the proposed higher O&M charges are required to be looked into. He further stated that 47.85% CUF with free power adjustment is on lower side. The representatives of the HPSEBL opposed the suggestion made by a stakeholder to apply the draft amendment regulations from the date of commencement of 1st control period in 2017.

18. **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 submissions and the viewpoints expressed by the various stakeholders in the public hearing, we now proceed to analyze the various suggestions which have been considered to be relevant to the finalization of the amendment regulations. In the first instance, we find it appropriate to consider the legal issues raised by some of the stakeholders, which have been discussed in para 18.1.-

18.1 Legal/Jurisdictional issues raised by some of the stakeholders:-

(a) Duration of tariff under Section 3 of the Act:

Comments:-

- (i) M/s Ascent Hydro Projects Ltd. have stated that the period fixed for determination of tariff by the Section 3 of the Act is up to five year maximum but the draft amendment regulations are proposed to be applicable for about 8 years, in notification dated 23.03.2020, which is not valid as per law. The statutory provision is mandatory and cannot be violated. M/s Jaya Hydro

Power Pvt Ltd have also expressed similar view.

- (ii) M/s Jaya Hydro Power Pvt Ltd have also stated that the Tariff Policy is to be followed by the State Commissions. It has been suggested that in the present case the proposed amendment to the regulations is contrary to the Act and National Tariff Policy since present policy is valid up to 2020 and these draft regulations are to become valid up to March 2025. It has been mentioned that since these regulations shall not be following the tariff policy likely to be notified in 2020, the Fourth Amendment Regulations cannot be made for the period beyond 1.4.2021.

Commission's View:-

Section 3 of the Act does not mention any time limit for the applicability of tariff policy. Moreover, it neither envisages any maximum period for which tariff can be determined nor mentions any maximum period for which the regulations can be made applicable. The objections raised are thus not relevant. The contention that the amendment regulations cannot be made beyond 01.04.2021 (i.e. beyond five years from 01.04.2016) is thus also not correct. We also observe that in case such a contention were to be agreed there could not have been any tariff regulations during the period 2011-2016 which was never the case. In fact, even the CERC Regulations, being relied upon by the developers, could not have been in place. The contention is, therefore, absolutely incorrect.

(b) Power to Amend Regulations:

Comments:-

M/s Jaya Hydro Power Pvt Ltd have submitted that none of the Sections mentioned in the draft notification gives power to amend the regulations. Section 181 gives the power to frame new/ re-enact the regulations only.

Commission's View:-

The contention that section 181 gives powers only making for new regulations and not for amending the existing regulations is not correct when viewed along with the provisions of the General Clauses Act, 1897.

(c) Applicability of RE Regulations, 2017:

Comments:-

- (i) M/s Ascent Hydro Projects Ltd. have stated that the Amendments No. 1 to 3 and Amendment No. 4, once finalized, together will form an extension of the Principal Regulations 2017 dated November 16, 2017.

- (ii) M/s Jaya Hydro Power Pvt Ltd have also stated that the RE Regulations, 2017 have lapsed and has undergone natural death on 31.3.2020 and now cannot be revived and extended through draft notification dated 1.4.2017.

Commission's View:-

On 31.03.2020 only the duration of second control period, as specified in the RE Regulations, 2017, expired. However, the regulations continue to be in force.

(d) Applicability of parameters for part of validity period:

Comments:-

M/s Ascent Hydro Projects Ltd have stated that besides the past conduct of the Commission and practice of following the determination of all tariff components as per the CERC Regulations in HPERC Order in Petition No. 89/2010 decided on 24 January 2011, the Tariff Policy as well as the CERC Regulations are all issued under the Electricity Act 2003 and covered u/s 3 thereof. As such, the HPERC can not apply the parameters for a part of the validity period of the Regulations and needs to make it applicable to the complete validity period

Commission's View:-

The Regulations provide for fixing the control period and also for fixing the norms for each control period. The Commission is not fixing any tariff for the part of the control period. As mentioned earlier by us in the preceding para (a) also, the section 3 of the Act does not provide for any maximum period for which the tariff can be fixed. As such, the objection raised in this regard has no merits.

(e) Inconsistencies with the Act:

Comments:-

M/s Jaya Hydro Power Pvt Ltd have submitted that Section 181 of the Act provides that the Regulations should be consistent with the Electricity Act 2003 and the rules to carry out the provisions of the said Act. It has been claimed that the provisions of RE Regulations, 2017 and its amendments as proposed vide the Fourth Amendment to these Regulations are not consistent with the various clauses of the CERC Regulations, 2020, State Policy, National Tariff Policy and other provisions of the Indian Electricity Act, 2003. Main inconsistencies with the CERC Regulations & the Act include the duration of the control period, applicability as per Commercial Operation Date or filing of

joint petition, differences in Financial Principles and norms for small hydro projects located in Himachal Pradesh etc.

M/s Ascent Hydro Projects Ltd. have also submitted similar views with particular reference to the CERC Regulations, 2017 notified on 17.04.2017 and have suggested that the CERC norms should be followed for the entire validity period 17.04.2017 to 31.03.2020.

The All India Renewable Energy Protection Association has also expressed similar views.

Commission's view:-

The CERC Regulations are applicable only to such projects for which the tariff is to be determined by the CERC under section 62 read with section 79 of the Act. For the projects selling power to the Discom of the State (HP), the tariff is to be determined by the HPERC as per Tariff Regulations specified by the HPERC. The State Commissions have been empowered under the Act to make their own Regulations. For this purpose even though they are to be guided by the principles and methodologies specified by the Central Commission apart from other aspects mentioned in Section 61 of the Act, it is not binding for the State Commissions to essentially follow the CERC Regulations.

As regards the comments of M/s Ascent Hydro Projects Ltd., we also observe that they have basically laid stress on the applicability of the CERC Regulations for the period 01.04.2017 to 31.03.2020. This period does not form a part of the third control period for which the norms are being finalized in this Order.

(f) Interpretation of the word "guided":

Comments:-

M/s Jaya Hydro Power Pvt. Ltd have mentioned that the word 'guided' used in Section 61 and 108 of the Act means that Commission is bound by the guidance made by the Central Commission and guidance by the State Govt. It has also been mentioned that the Commission cannot choose independent path meaning thereby that by not adopting guidance it cannot adopt its own course by violating the guidance made by Central Commission under Section 61 and by Sate Government under Section 108 of the Act.

Commission's View:-

We do not agree with the contention that the word "guided" used in section 61, or even in section 108, of the Act, creates any binding on the State Commission

to essentially agree to the same. The word guided has essentially to be treated as its usual meaning. The Commission has however, already duly considered the provisions of the CERC Regulations and has also followed the same to the extent it has considered appropriate to do so.

(g) Applicability of commercial principles:

Comments:-

M/s Jaya Hydro Power Pvt. Ltd have stated that even though as per Section 61 (b) of the Act, the generation is to be conducted on commercial principles, the normative parameters fixed in these Regulations are not based on actuals but on assumptions, presumptions and conjectures which are causing loss to the small hydro power developers. The Commission has adopted some of the normative parameters in the proposed Regulations which are at wide variation with the actual data such as Capacity Utilization Factor, O & M Charges, free power.

Commission's View:-

Section 61 of the Act provides that while specifying the terms and conditions for determination of the tariff, the Commission shall be guided inter-alia by the following, namely.-

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- (b) *the generation, transmission, distribution and supply of electricity are conducted on commercial principles;*
- (c) *the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*
- (d) *safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;*

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In view of above, we observe that the State Commissions are to be guided by all the related factors specified in section 61 of the Act and obviously, in doing so, have also to balance all the factors. As such, we find it appropriate that the norms should be fixed in a manner which does not encourage inefficiencies. The aspects of CUF, O& M Charges and free power, as specifically mentioned by the objector, have however been addressed in a greater detail separately in appropriate paragraphs of this Order. We also observe that the CERC also

follows normative approach in their RE Regulations so far as the financial parameters and the technology specific parameters for Small Hydro Projects are concerned.

(h) Principles and methodologies specified by CERC:

Comments:-

The Himalaya Power Producers Association has stated that in terms of section 61 (a) of the Electricity Act, the guidelines issued by the Central Commission need to be considered by the HPERC while framing the Tariff Regulations. Section 61(h) of the Act, read with section 86(1)(e), provides for promotional tariff to be fixed. It has also been mentioned that in view of the availability of the norms and parameters decided by the Central Commission which is after a detailed deliberation and discussion and after going through number of study materials, it will be appropriate for the HPERC to align the present regulations completely with the provisions contained in the CERC Tariff Order dated 28.06.2020 and that any deviation will virtually amount to disincentivizing the small hydro power generators in the State of HP.

Commission's View:-

The provisions of Section 61(a) and 61 (h) have been duly kept in view while formulating the draft regulations. In fact it was in this context that the Commission after notification of the CERC Regulations on 23.06.2020, reviewed/revised the draft regulations, floated by it in March, 2020.

18.2 Amendment of Regulation 9. Control Period.-

Comments:-

The Directorate of Energy, M/s Jaya Hydro Power Pvt. Ltd. and the Himalayan Power Producers Association have suggested that the 3rd control period for determination of tariff for RE projects may be aligned with the CERC RE Regulations, issued on 23.06.2020 according to which the control period extends upto 31.03.2023.

Commission's View:-

As a general principle, we feel that the control periods should have longer durations so as to provide long term visibility. The duration of 5 years was proposed for the 3rd control period in the draft amendment issued on 23.03.2020. However, subsequently the Commission, while modifying the draft on 03.07.2020, curtailed the outer date of the third control period to 30.09.2023 so as to align the same with the CERC regulations. Time gap of six months (i.e. 01.04.2023 to 30.09.2023) has been provided to cover the time required for completing the process of framing the regulations for the next control period

after the notification of the CERC Regulations. Accordingly, we decide to retain the outer date of the control period as 30.09.2023.

18.3 Regulation 21-B.Capital Cost.-

Comments:-

- (i) The Directorate of Energy have suggested that the first proviso of sub-regulation(2) of regulation 21-B of draft amendment may be modified as under:-

“Provided that any cost pertaining to allotment of the project, including upfront premium and any other amount charged by the State Government while granting extension or capacity enhancement or/and any liquidated damages penalty imposed by the licensee or by the State Government in accordance with the power purchase agreement executed with licensee or the implementation agreement executed with State Government, will not form part of the capital cost:.”

- (ii) The Bonafide Himachalies Association has suggested that the cost of project line and bay in the licensee’s sub-station should not form a part of the normative capital cost of the project in line with the CERC RE Regulation, 2020. They have further stated that the developers should not be burdened with the cost of such line and bay.
- (iii) The Himalaya Power Producers Association has suggested that although capital cost allowed by IREDA for SHPs is higher than the proposed capital cost for different categories of SHPs, the same should be at least at par with that considered by the CERC in its RE Regulations.

Commission’s View:-

- (i) We agree with the suggestion of the Directorate of Energy. As such, the above reproduced proviso shall be modified suitably.
- (ii) We observe that as per the State Hydro Policy, the project line as well as the interconnection facilities form a part of the project. As such, the cost of these components also forms a part of the normative capital cost. In view of above, we decide to retain the provision of the draft regulations without any change on this account.

18.4 Regulation 22-B. Subsidy/Incentive.-

Comments:-

- (i) The Bonafide Himachalies Hydro Power Developers Association has stated that it is a known fact that Ministry of New and Renewable Energy grants capital subsidy after the project is commissioned/stablizes and it is paid directly to the Financial Institutions from where the developer arranges the debt for the project. This capital subsidy is reduced from the Debt by the Financial

Institutions and not paid to the developer. It has further been mentioned that the methodology proposed by the HPERC will hurt the developer financially as the equity already contributed in full will be notionally reduced for the purpose of Return on Equity without receiving back any Equity. It has been suggested that the capital subsidy needs to be reduced from the debt of the project. It has also been suggested that since the subsidy granted by the MNRE is available only after commissioning/stabilization of the project and processing time is also taken for final release, the availability of subsidy should be considered as availed after one year of commissioning of the project and the Interest on debt should be allowed on full loan amount for one year after commissioning.

- (ii) M/s Greenko Energies Pvt. Ltd. submitted that the CERC RE Regulations, 2020 and tariff order issued thereunder for FY 2020-21 treats the capital cost exclusive of capital subsidy being granted to the projects and further requested that the Commission may treat the capital cost of Rs. 1100 Lacs per MW exclusive of capital subsidy.

Commission's View:-

- (i) The draft amendment regulations provide that for arriving at the amount of debt and equity, the debt equity ratio shall be considered after deducting, from the normative capital cost, the amount of grant or capital subsidy etc. available for the project. This provision is in line with the CERC RE Regulations. As such we decline to accept the suggestion to treat the capital subsidy as a part of debt component.
- (ii) In our view, the suggestion to the effect that the incentive/subsidy/grant given by Central/State Government should not be adjusted in tariff lacks justification particularly when reasonable Capital Cost is being allowed and even the CERC RE Regulations also provide for adjustment of subsidy/ incentive etc. As such we decline to accept the suggestion made in this regard.

18.5 Regulation 23-B. Debt-Equity Ratio.-

Comments:-

The Bonafide Himachalies Hydro Power Developers Association has made similar suggestion on this proposal as has been made in relation to regulation 22-B.

Commission's View:-

The draft amendment regulations provide that for arriving at the amount of debt and equity, the debt equity ratio shall be considered after deducting, from the normative capital cost, the amount of grant or capital subsidy etc. available for the project. The proposed provision is in line with the CERC RE

Regulations, 2020. Accordingly, we decline to accept the suggestion made in this regard. However, the text of this regulation shall be modified slightly to make it consistent with the provisions made in regulation 22-B.

18.6 **Regulation 24-B. Loan and Finance Charges.-**

Comments:-

- (i) The Directorate of Energy have suggested that the loan tenure for determination of tariff may be considered in line with the CERC RE Regulations, 2020.
- (ii) The Himalaya Power Producers Association suggested that for arriving at the normative interest rate, three hundred (300) basis points (instead of two hundred (200) basis points as per the draft regulations) above the average SBI Marginal Cost of Funds based Lending Rate (MCLR)(one year tenure) may be considered which will also be in line with the same considered for working capital.
- (iii) M/s Greenko Energies Pvt. Ltd. suggested that as per the provisions of the draft regulations, interest rates may be around 11%. However, the major chunk of hydro stations gets financed through IREDA wherein the rate of investment is between 11.45-14%. It has been suggested that for the purpose of computation of tariff(s) under these Regulations, normative interest rate of IREDA prevalent during the last available six months, prior to the respective date(s) from which such tariff(s) the respective generic levellised tariffs are to be made applicable, should be considered.

Commission's View:-

- (i) The draft regulations already provide for loan tenure of 15 years as per the CERC RE Regulations, 2020. As such the suggestion made by DoE already stands accepted by the Commission.
- (ii) For the purpose of computation of tariff(s), normative interest rate of two hundred (200) basis points above the average SBI Marginal Cost of Funds based Lending Rate (MCLR)(one year tenure) prevalent during the last available six months, prior to the respective date(s) from which such tariff(s) (i.e. the respective generic levellised tariffs) are to be made applicable, has been included in the draft regulations. This provision is in line with the CERC RE Regulations, 2020. We decline to accept the suggestion of the Himalaya Power Producers Association for higher rate of interest and also of M/s Greenko Energies Pvt. Ltd. to consider normative rate of IREDA instead of SBI.

In view of above, we decide to retain the provisions contained in the draft regulations without any change.

18.7 **Regulation 25-B. Depreciation.-**

Comments:-

- (i) The Directorate of Energy has suggested that the depreciation rate of 4.67% per annum should be considered for the first 15 years and remaining depreciation should be evenly spread over the remaining useful life of the project.
- (ii) The Himalaya Power Producers Association, the Bonafide Himachalies Hydro Power Developers Association and M/s OM Energy Generation Pvt. Ltd. have stated that the GoHP Hydro Policy provides that the project will be handed over to GoHP on the expiry of PPA in full running condition free of cost and that in view of this position, the developers in HP shall not be able to recover 10% salvage value of the assets. It has been suggested that the Regulations should provide for 100% Depreciation of the assets in the levellised tariff. A similar view was also expressed by the representative of the Bonafide Himachalies Hydro Power Developers Association in the public hearing.

Commission's View:-

- (i) The draft regulations formulated by the Commission already incorporate provision in line with the suggestion made by the Directorate of Energy.
- (ii) It is a standard practice to allow depreciation to the extent of only 90% and we do not find it appropriate to allow any depreciation beyond 90% of the value base. However, in cases where the RE projects are to be taken over by the State Government after completion of useful life of the project, the matter regarding balance 10% depreciation (salvage value) may need to be addressed by the State Government as a part of State Policy. In view of above, we decline to accept the suggestion made in this regard. However, the text of this regulation shall be modified slightly to make it consistent with the provisions made in regulations 22-B and 23-B.

18.8 **Regulation 26-B. Return on Equity;**

Comments:-

- (i) The Directorate of Energy has suggested that the normative Return on Equity may be considered as per the CERC RE Regulations, 2020.
- (ii) The Himalaya Power Producers Association has submitted that the scheme of generic tariff is such that a developer has to continue financing the project for at least 7 to 8 years after its commissioning, since cost of generation is higher

than the generic tariff. Therefore, in such a scenario, Renewable Projects need to be given higher post tax Return on Equity.

Commission's View:-

The draft regulations formulated by the Commission already incorporate provision in line with the suggestion made by the Directorate of Energy. As regards the comments of Himalaya Power Producers Association for higher Return on Equity, we observe that the Commission has already provided Return on Equity at par with the provisions of the CERC RE Regulations, 2020. This has been done in spite of the fact that whereas the CERC Regulations envisage adjustment of the accelerated depreciation benefit, no such adjustment is envisaged under the HPERC Regulations. In view of above, we decide to retain the rate for Return on Equity as provided in the draft regulations. However, the text of this regulation shall be modified slightly to make it consistent with the provisions made in regulations 22-B and 23-B.

18.9 Regulation 27-B. Interest on working capital; and Regulation 28-B. Operation and Maintenance Expenses.-

Comments:-

The Directorate of Energy has suggested that the norms for interest on working capital and Operation and Maintenance Expenses may be considered as per the CERC RE Regulations, 2020.

Commission's View:-

The draft regulations formulated by the Commission already incorporate provision in line with the suggestion made by the Directorate of Energy.

18.10 Regulation 29-B. Taxes and duties.-

Comments:-

- (i) The Bonafide Himachalies Hydro Power Developers Association has suggested that whereas the draft regulations provide that the normative tariff determined will be inclusive of all taxes and duties, the CERC RE Regulations allow it as exclusive of all statutory charges. It has been mentioned that as the normative tariff has been worked out on the basis of ground situation prevailing as on date, such risk of future statutory charges cannot be passed on to the Developer for mere 14% return on equity. It has been suggested that CERC RE Regulations need to be followed and also imposition of Electricity Duty on Auxiliary Consumption be added in regulation 20 in line with Regulation 23 of CERC RE Regulations, 2020.

- (ii) The Himalaya Power Producers Association has also expressed similar view as above and have further suggested that the provision for change in law may be consistent with the Central Commission's Regulations.

Commission's View:-

The Regulation 20 of RE Tariff Regulations, 2017 already provides for review of tariff on the following grounds:-

- “i) a water cess or tax on generation is levied which impacts all or any of the projects; and /or
- ii) 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; and/or
- iii) the mechanism or the quantum of the capital subsidy or budgetary grant mentioned in regulation 22, is changed as a matter of policy; and/or
- iv) the State Government revises its instructions with regard to the minimum flow of water downstream of diversion structure of the small hydro projects and implements the same;”

We feel that the above provisions are reasonably adequate and accordingly we decide not to make any change in this regard.

18.11 Regulation 30-B. Rebate.-

Comments:-

The Directorate of Energy has suggested that the norms for Rebate may be considered as per the CERC RE Regulations, 2020.

Commission's View:-

The draft regulations formulated by the Commission already incorporate provision in line with the suggestion made by the Directorate of Energy. As such the draft regulations do not require any changes on this account. However, need based minor change shall be made in the explanation part of this regulation.

18.12 Regulation 31-B Late Payment Surcharge.-

Comments:-

The Directorate of Energy has suggested that the norms for Late payment surcharge may be considered as per the CERC RE Regulations, 2020.

Commission's View:-

The draft regulations formulated by the Commission not only already incorporate provision in line with the suggestion made by the Directorate of

Energy but also contain adequate provisions in line with the CERC Regulations.

18.13 Regulations 32-B Ceiling Norms; and Regulations 33-B Categorisation.-

No comments have been received in this regard and we decide to retain the provisions incorporated in the draft amendment regulations without any change.

18.14 Regulations 34-B. Normative Capital Cost.- Comments:-

- (i) The Directorate of Energy and M/s Chirchind Hydro Power Limited have suggested that the normative capital cost for SHPs may be considered as per the CERC RE Regulations, 2020.
- (ii) The Consumer Representative has stated, with reference to the draft amendment regulations dated 23.03.2020, that the Commission has proposed to increase the normative capital cost specified in November 2019 for the SHPs by Rs. 50 Lac/MW, Rs. 50 Lac/MW and Rs. 45 Lac/MW for the 1st, 2nd and 3rd categories of SHPs respectively. It has been mentioned that the proposed increase will further increase the generic levelled tariff burdening the HPSEBL with additional Power Purchase Cost and Consumers with marginal increase in Tariff. It has been requested to compare the normative cost with the actual DPR cost approved by the Directorate of Energy, which as understood, is lower than the proposed normative capital cost, so that the tariff for consumers of the State is not increased on account of additional power purchase cost. It was also mentioned that in case the CERC recommends a lower capital cost, then the same may please be considered for the purpose of calculating generic levelled tariff.
- (iii) The HPSEBL has suggested, with reference to the draft amendment regulations dated 23.03.2020, that there is an increase of Rs. 50 Lac/MW for the two categories of projects below 5 MW and Rs. 45 Lac/MW for category of projects 5 MW to 25 MW capacity. The foregoing enhancements shall increase the overall generic tariff for SHPs which shall be an additional burden on the consumers of the State. The draft CERC RE Regulations, 2020 notified on 28.04.2020 provide for normative capital cost of Rs. 10 Crore/MW and Rs. 9 Crore/MW for SHPs below 5 MW and 5 MW to 25 MW respectively which are less than that specified in the HPERC draft regulations. It was suggested that the HPERC, being guided by the CERC, should consider fixing the normative capital cost as specified by the CERC in the draft regulations dated 28.04.2020. The representative of

HPSEBL expressed a view in the public hearing that the normative capital cost should be kept low.

- (iv) The Himalaya Power Producers Association has submitted that the soft costs, in addition to construction cost, have to be borne by the developer to ensure starting of the project construction activities irrespective of the size of the project. It has been requested to allow the fees, charges and these statutory expenses as a pass through in CAPEX for SHPs.
- (v) M/s Greenko Energies Pvt. Ltd. has stated that as per IREDA, the capital cost for Small Hydro projects in Himachal Pradesh is Rs. 1100-1500 Lac/MW. Also, due to applicability of GST, project costs has seen an increase of approx. 7%-8%. Further, due to the ongoing COVID-19 pandemic, there will be huge impact on the logistics, manpower and IDC costs. It has been suggested that in view of above, the capital cost of the small hydro projects should be considered as Rs. 1500 Lac/MW exclusive of Capital Subsidy.
- (vi) M/s OM Energy Generation Pvt. Ltd. have suggested, by referring their specific project Holi-II, that the capital cost should, based on their experience, at least be Rs. 12.00 Crore/MW as future construction of SHP projects will be at higher altitude and more difficult terrain.

Commission's View:-

- (i) The draft regulations formulated by the Commission already incorporate provisions in line with the suggestion made by the Directorate of Energy.
- (ii) The suggestion given by the HPSEBL and the Consumer Representative to keep the normative Capital Cost on lower side has not been supported with any supporting argument/data. Moreover, the HPSEBL, in the written submissions, suggested to consider the capital cost of draft CERC RE Regulations, 2020 which have now been enhanced by the Central Commission in its final notification dated 23.06.2020. We decline to accept the suggestion of consumer representative and HPSEBL to reduce the normative capital cost to a level lower than what has been provided in the draft regulations.
- (iii) As regards the suggestion made by developers to increase the normative capital cost beyond the same provided in the draft regulations, we feel that this may increase the tariff to unviable values. We feel that any such RE Project, which involves abnormally high cost components, should be considered for implementation only after examining the viability aspects in detail. In fact even at DPR stage alternative solutions should be explored so as to reduce the per megawatt cost to reasonable and viable limits. All

components including the pre-operative expenses and the primary costs etc form a part of the capital cost and cannot be allowed over and above the normative cost. We also observe that the Commission has already enhanced the normative capital cost considerably to bring it at par with the rates of CERC in the third control period.

In view of above, we decide to retain the provisions incorporated in the draft regulations without any changes.

**18.15 Regulations 35-B. Normative Saleable Energy.-
Comments:-**

- (i) The Consumer representative has suggested that the normative annual Capacity Utilisation Factor (CUF) may be kept at 55%.
- (ii) HPSEBL has stated that PLF of 47.85% with free power adjustment is on lower side and needs to be increased upwards. The HPSEBL has also furnished data of their SHPs for the year FY2014-15 onwards, pursuant to the discussions in the Public Hearing.
- (iii) M/s Greenko Energies Pvt. Ltd. and M/s Ascent Hydro Project have suggested that the CUF may be considered as 45%, as per the CERC RE Tariff Regulations. 2017 and 2020. This CUF is net of free power to the State.
- (iv) The Bonafide Himachalies Hydro Power Developers Association has suggested that the HPERC is still retaining the Gross Annual PLF of 55% and assuming 12% free power and 1% LADA throughout the 40 years life of the project. Whereas the CERC has proposed 45% PLF net of free power, the corresponding figure of PLF for HP is 47.85%. The developers of Himachal Pradesh will have to supply 2.85% power more to the HPSEBL in same tariff and also bear the line losses above normative level.
- (v) M/s Jaya Hydro Power Pvt. Ltd. has suggested that the State Commission cannot vary the norms from the CERC Norms since these should be consistent, as provided under Section 181 of the Act, with the other provisions of the Act. 'Consistent' means same or similar or of same standard as per dictionary. If the Commission feels that higher CUF can be achieved in that event tariff for annual primary energy (saleable energy) up to 3.91 MU per MW as fixed by CERC, should be fixed and above this limit a tariff for secondary energy can be fixed separately.
- (vi) The Himalaya Power Producers Association has suggested that the CERC has considered the CUF for HP as 45% net of free energy. However, HPERC has proposed the CUF as 47.85% net of free energy. The additional generation of 2.85% purely on normative basis for calculation of generic tariff which will

considerably reduce the tariff payable to the developer. It is also noteworthy that the CUF in most of already commissioned projects is not touching even 45%. The Association further requested that the CUF for SHP may be aligned with the CERC norms. They have also submitted CUF data for various IPPs as well as the projects of HPSEBL for the period starting from FY 2015-16 to FY 2017-18.

- (vii) M/s Ascent Hydro Projects Ltd have submitted that the gross 60% plus (47.85+13) CUF being taken by the HPERC is very high. Almost 75% of the operational projects have overall CUF even below 50%. Declining snow cover and erratic rainfall pattern has adversely affected hydrology and the trend of declining CUF is continuing. Frequent restrictions imposed through verbal directives on generation by the Licensee citing Grid conditions further reduce the CUF. Even most of the ongoing and already allotted projects cannot match such an expectation of 60% CUF of the Commission. However, in view of the CERC RE Regulations 2017 as well as of 2020 specifying 45% CUF net of free power, the HPERC should consider same 45% CUF to make the provision consistent with CERC defined parameters in its Regulations.
- (viii) As sought during the Public Hearing on 11.08.2020, the HPSEBL has supplied the CUF data for the SHPs of capacity up to 25.00MW owned by them for the FY 2014-15 to FY 2019-20.

Commission's View:-

The contention of M/s Jaya Hydro Power Pvt. Ltd. that the Commission cannot vary its norms from the CERC norms is neither correct nor appropriate and we decline to accept the same. The contention that such revision will amount to inconsistency with the Act or the Rules is also not correct. As regards the contention of M/s Ascent Hydro Projects Ltd that the CUF as given in the draft regulations, enhanced to include free power, works out to 60% is not correct, keeping in view, the fact that 13% free power is to be computed on 47.85% CUF only.

We observe that the SHPs in the State are purely run of the river projects and there is hardly any pondage available in these projects. It is in this background that the Commission has, time and again, stressed particularly at the time of finalization of its RE Tariff Regulations of 2012 as well as of 2017, the need for fixation of the installed capacity after carrying out sensitivity studies based on the incremental energy benefits and incremental costs. We feel that in case of purely run of the river SHPs, which do not have any pondage, the installed capacity should be kept reasonably low as to achieve higher CUF particularly in

view of the viability considerations. The potential usages of water, upstream of the project which may affect the water availability for the project in the later timeframe should also be kept in view while fixing the installed capacity so as to make the SHPs more viable.

We also find that the provisions of the draft regulations not only facilitates continuity of the approach followed by the Commission for fixation of capacity for the SHP and the implementation thereof in a optimum and efficient manner, but may now also further incentivize the developers for such optimization keeping in view the fact that no differential rate has been envisaged for the generation beyond the threshold limit even though such a differential rate has now been provided by the CERC in their RE Regulations of July, 2020. Marginal variation in the normative CUF, as compared to the CERC norms, may not only get offset by the provision for uniform tariff for the entire saleable energy but may also, in some cases, leave a surplus with the developers. In fact, this may help the developers in offsetting the burden to some extent in cases where free power of more than 13% has been committed by them to the State Government. The net amount of additional revenue will, however, vary depending upon the increase in the level of optimization/efficiency. The provisions of the draft amendment regulations, when viewed alongwith the related factors, provide a balanced and fair deal to the developers.

As regards the data given by the stakeholders, we do not find it appropriate to base the norms on the actuals keeping in view the fact that the CUF as per the DPRs is on higher side. As already suggested in the earlier orders from 2012 onwards the installed capacity should be fixed in a manner which facilitates higher CUF.

In view of above, we decide to retain the provision contained in the draft amendment regulations without any change.

18.16 **Regulations 36-B. Free Power.-**

Comments:-

- (i) M/s Jaya Hydro Power Pvt. Ltd. has suggested that regulations 20 and 36 are also not consistent with the National Tariff Policy for free power and the recovery of free power is to be considered as per National Policy only since it has the statutory force. The Clause 5.1 (e) (iii) of the National Tariff Policy is quoted below;

“Annual fixed charges shall be taken pro-rate to the saleable design energy tied up on the basis of long term PPAs with respect to total saleable design energy. The total saleable design energy shall be arrived at by deducting the following from the design energy at the bus-bar:

a) 13% of free power (12% for the host Government and 1% for contribution towards Local Area Development Fund as constituted by the State Government). This 12 % free power may be suitably staggered as decided by the State Government.

b). Energy corresponding to 100 units of electricity to be provided free of cost every month to every Project Affected Family notified by the State Government to be offered through the concerned distribution licensee / the designated resettlement area/project area for a period of ten years from the date of commissioning.”

It has also been stated that staggering of free power by the State Government is an administrative function and should not be taken for consideration in determination of the tariff. Regulation 35-B of the draft Regulations limits the free power to 13% maximum thus the Commission is fixing two methods for consideration of free power either it has to follow the percentage free power as per Implementation Agreement or to follow the National Tariff Policy. As per the Section 3 of the Electricity Act the Commission has to adopt norms of free power as per National Tariff Policy only. The National Tariff Policy as per Section 3 of the Electricity Act carries the force of the law thus the regulation 35-B needs to be amended accordingly.

- (ii) The Himalaya Power Producers Association has suggested that the regulation 36 provides for the free energy accounting in Net Saleable Energy and determination of tariff. The regulations provide that the max quantum of Free energy in any year will be limited to 13% (12% plus 1%). Since the present policy of the Govt. of HP stipulates far higher free power quantum to the tune of 18% from 13th to 30th years and 30% from 31st to 40th year, the impact of free power beyond 13% as considered for determination of tariff should be factored in as a pass through in the tariff. A similar view has also been expressed by the representative of M/s Tissa Hydro Power Pvt. Ltd., the Bonafide Himachalies Hydro Power Developers Association and the Directorate of Energy in the public hearing.

Commission’s View:-

- (i) In regard to the issues relating to deferment of free power, as per the directions received from the State Government vide letter No. MPP-F(I)-2/2005-XII dated 28.09.2018 and the confirmation given vide letter No. MPP-F(1)/2005-XIII-Loose dated 22.12.2018 to the effect that GoHP is committed that the HPSEBL and consumers of the State shall not suffer any loss at all, the Commission decided that the adjustment on account of deferment of free power shall not be carried out within the scope of RE Regulations for tariff purposes. This means that the free power shall be deemed to have been provided to State Government as per the normal schedule without any deferment. It was also decided that the matter regarding further disposal and recovery of deferred power shall be dealt

as per the provisions of the agreements to be the executed by the State Government with the HPSEBL and the SHP developers and also that the impact, if any, on the HPSEBL on this account shall be adjusted by the Commission while determining the rate for purchase of free power by the HPSEBL from the State Government. As such, no further regulatory intervention is required in the RE Tariff Regulations on this account.

- (ii) As regards the limit of free power to be considered as pass through for SHPs, we observe that for tariff purposes, it has been provided as 13% based on the provisions in the National Hydro Policy/Tariff Policy of the Central Government.

In view of above, we decline to make any changes in this regard and decide to finalise the proposal made in the draft amendment regulations without any change.

18.17 **Regulations 37-B. Auxiliary consumption and transformation losses.-
Comments:-**

The Bonafide Himachalies Hydro Power Developers Association has suggested that the parameter of aggregate 1% loss for auxiliary consumption and transformation loss for SHPs upto 5.00 MW capacity is on lower side because in SHPs upto 5 MW capacity, it has been observed to be more than 2%. Therefore, for SHPs up to 5 MW capacities, this parameter should be kept as 2%.

Commission's View:-

The norms of normative auxiliary consumption and transformation losses for SHPs, as incorporated in the draft regulations, are in line with the provisions of the CERC RE Regulations, 2020. In fact, similar percentage has been considered by the Commission in its previous RE Regulations as well as for the 1st and the 2nd control periods of the HPERC RE Tariff Regulations, 2017. As such, we decide to retain the provision contained in the draft amendment regulations without any change.

18.18 **Regulations 38-B Energy Losses, Location of Interconnection Point.-
Comments:-**

The Bonafide Himachalies Hydro Power Developers Association has stated that whereas as per the CERC Regulations, the interconnection point for measurement of the energy sold is located at the switch yard of the project, the same is considered at the HPSEBL Grid in case of the HPERC Regulations with a provision of pass through of normative 0.7% transmission line losses. It has been mentioned that in reality, the transmission line losses are much more due to the location of the SHP in remote areas and that the average transmission

losses up to interconnection point are 2%. It has been suggested that in line with the CERC RE Regulations, the interconnection point/delivery point of power should be at the switch yard of the power house and the transmission line losses need to be borne by the HPSEBL.

Commission's View:-

We observe that as per the State Hydro Policy, the project line as well as the interconnection facilities form a part of the project. As such the present definition of the interconnection point is in line with the State Hydro Policy. As regards the normative losses of 0.7%, we find the same to be quite reasonable and decline to accept the suggestion to increase the same to 2%. However, for the sake of simplicity, we decide to compute these losses on the gross generation instead of net generation. The Regulation 38-B shall be modified accordingly to that extent.

18.19 Regulations 39-B. Operation and Maintenance Expenses.-

Comments:-

- (i) The Directorate of Energy has suggested that the Operation and Maintenance Expenses and escalation during tariff period may be considered as per the CERC RE Regulations, 2020.
- (ii) M/s Greenko Energies Pvt. Ltd. has mentioned in their written submission that as per IREDA, the O&M Expenses for small hydro projects in Himachal Pradesh is around Rs. 37 Lac per MW and further suggested to consider the same for capacity 5.00 MW to 25 MW.
- (iii) The HPSEBL has suggested on the draft amendment 23.03.2020 that the annual normative O&M expenses has been enhanced by Rs. 2.00 Lac for each category of projects vis-a-vis the normative O&M expenses specified in HPERC RE Regulations, 2017 (2nd control period). Any increase on this account have an impact on the tariff.
- (iv) The Himalaya Power Producers Association has suggested that the Operation and Maintenance Expenses may be considered as per the CERC RE Regulations, 2020.

Commission's View:-

The Commission has considered the O&M charges at par with those allowed by the CERC RE Regulations, 2020 for the respective categories of SHPs and we decline to accept the suggestion made by M/s Greenko Energies Pvt. Ltd. to further enhance the normative O&M charges for category of 5.00 MW to 25 MW. The suggestion made by the HPSEBL to curtail the O&M charges is also not acceptable.

In view of above, we decide to retain the provisions contained in the draft amendment regulations without any change.

18.20 General issues concerning the RE Tariff Regulations, 2017.-

We now also take up the generic comments given by the stakeholders on the different issues concerning the RE Tariff Regulations, 2017, even though these do not form the subject matter of the amendment regulations presently under consideration:-

(I) Finalisation of proposed amendment.-

Comments:-

M/s Panchhor Hydro Power Pvt. Ltd., M/s Roura Non Conventional Energy Pvt. Ltd., M/s Ramesh Hydro Power Pvt. Ltd. and M/s Bharmour Hydro Projects. Pvt. Ltd. have suggested that Commission may notify the proposed regulations at the earliest, enabling them to file petition for approval of PPA under this control period (i.e. 01.04.2020 onwards).

Commission's View:-

We appreciate the concern shown by the developers. During the process of framing the amendment regulations, the Commission felt it appropriate to take into account the CERC RE Regulations, 2020, notified on 23.06.2020. We feel that a reasonable time gap between the date of notification of the CERC RE Regulations and finalization of the HPERC RE Regulations is inevitable. In fact, it is in this context that the duration of 3rd control period is being fixed for a period which extends beyond the duration of control period under the CERC RE Regulations, 2020 by six months. So far as the urgency of signing the PPA, we feel that the developers should finalise and execute PPAs well in advance instead of deferring the same upto the eleventh hour as this provides more stable vision to both the parties. The unforeseen circumstances arising due to COVID-19 pandemic have also resulted in delay in finalization of amendment regulations.

(II) Amendment in Regulations 16.-

Comments:-

All India Renewable Energy Protection Association have raised the issues relating to regulations 16 of the RE Tariff Regulations, 2017 i.e. "Tariff for residual period after sale/purchase under REC mechanism". It has been stressed by giving the detailed background that it is manifest that the concerned State Electricity Regulatory Commissions are to be guided by the methodologies of the CERC, which would include *inter-alia* the CERC Regulations. It has been mentioned that Regulation 16(l)(b) of the 2017 RE

Regulations (as amended by the 2019 Regulations) insofar as it accords liberty to the HPERC to consider the earlier of the two Control Periods for determining tariff under the REC Mechanism, is incongruous with the CERC Regulations. It has been suggested that the HPERC may amend Regulations 16(1)(b) of the 2017 Regulations (as amended by the 2019 Regulations) so as to accord primacy to the year of commissioning of the project. They have further mentioned that the same would not only be in consonance with the CERC Regulations but would also be in keeping with the practice followed by several other State Electricity Regulatory Commissions.

Commission's View:-

The review of Regulations 16(1)(b), as suggested, does not form a part of the subject matter being finalized by this order. We, however, observe that the CERC Regulations do not provide for such situations involving combination of two or more types of PPAs for the same project.

(III) Applicability of Tariff from the date of commissioning of SHPs.-

Comments:-

- (i) M/s Jaya Hydro Power Pvt. Ltd. have stated that as per the policy of the State Government, tariff is to be determined as per commercial date of the project but these regulations still link the determination of the tariff to the Implementation agreement. The policy of the State Government regarding commercial operation date for determination of tariff has not been followed, though it carries force of Law. The Commission in these proposed Regulations still has linked date of filing of joint petition for approval of power Purchase Agreement to the determination of tariff and applicability of these Regulations. The date of filing of joint petition is generally six months to 24 months prior to the commercial operation date of the small hydro project, and these two dates may fall in different control periods. Thus these regulations are volatile of the provisions of the Act and the Hydro Policy of the State.
- (ii) All India Renewable Energy Protection Association has commented that instead of linking the tariff with the date of filing the petition for approval of PPA, the tariff should be linked with the date of commissioning only in order to make hydro projects financially viable again and attract investment into this sector.

Commission's View:-

The comments made by M/s Jaya Hydro Power Pvt Ltd and All India Renewable Energy Protection Association are not based on the facts as the provisions of the RE Regulations, 2017 have already been aligned with the views/policies of

the State Government. Further, the Commission has already made provisions in the RE Tariff Regulations, 2017 for the tariff applicability to the small hydro projects linked with the scheduled date of commencement of operation of the project, as certified by the State Government or its designated agency within the frame work of the State Hydro Policy.

In view of above, we feel that no change may be required in the regulations on account of these comments. However, in order to facilitate smooth implementation of this provision, we decide that for the words “zero date and issuing the certificate as per the preceding proviso to this regulation” appearing in the 3rd proviso of clause (aa) of sub-regulation (1) of regulation 13 of RE Tariff Regulations, 2017, the words and signs “zero date, fixing or revising scheduled date of commencement of operation of the project, issuing certificates and also for providing such other information as may be required by the Commission to meet the requirements of these regulations and the State Hydro Policy” shall be substituted.

(IV) COD linked tariff where PPAs have already been executed.-

Comments:-

All India Renewable Energy Protection Association has suggested that the tariff to the SHPs having concluded PPAs should also be provided from the date of commencement of these projects. A similar view was also expressed by the representative of the Bonafide Himachalies Hydro Power Developers Association during public hearing.

Commission’s View:-

The suggestion envisages reopening of concluded PPAs which is not a subject matter of the amendment regulations being finalised through this order.

(V) O&M charges of bays.-

Comments:-

- i. The Bonafide Himachalies Hydro Power Developers Association has suggested that O&M charges for the bays should be charged as a percentage on the capital cost of the interconnection facilities and such percentage should be equal to the percentage which the normative O&M charges of the project bear to the normative project cost. It has further been suggested that annual escalation in the O&M charges of the interconnection facilities should also be charged at the same percentage in which the normative O&M charges of the project are escalated. It was also stated that although the facilities have to be operated and maintained by Discom having expertise as part of State Grid System, the Regulations for HP have put the expenditure on the evacuation line and bay in the HPSEBL Grid in the scope of the developers. Going one step

further, the O&M of the line and bay to be carried out by the HPSEBL is also payable by the developers on actual basis for the entire 40 years term of the PPA and the developers are receiving highly inflated bills for such O&M Charges.

- ii. The Himalaya Power Producers Association has suggested that the O&M charges of incoming bay should be fixed as a percentage of the cost of the assets and annual escalation should be limited to 5.72% (as assumed for determination of tariff or actuals whichever is lower). Some other stakeholders have also suggested that uniform per MW rates for interconnection facility need to be fixed for annual charges of the interconnection facilities.
- iii. M/s OM Energy Generation Pvt. Ltd. have stated that the biggest disadvantage for the investors today is unjustified bills for O&M assets of the HPSEBL without any project specific depreciation calculation.

Commission's View:-

The O&M charges of the bays primarily comprise of the establishment cost of the operating staff of the HPSEBL which remain on duty round the clock at the Sub-station. The percentage of these charges to the capital cost is therefore bound to be higher. In any case, we also observe that a committee has already been setup for rationalization of these charges. The Commission may not be averse to consider the matter regarding fixation of the operation and maintenance charges of the bay, on uniform/normative basis, separately after taking into account geographical area, capacity of SHP and any other relevant factor with some suitable escalation.

(VI) Cost of bays.-

Comments:-

The Bonafide Himachalies Hydro Power Developers Association has commented that there are no uniform calculations for working out the proportionate cost of bay for the project in the sub-station. Instead of linking it with the capacity of power plant, it is being worked out on the basis of total expenditure incurred in the Grid including residential quarters and number of bays in the Grid. This needs to be reviewed and either the tariff of the project be enhanced to cover this expenditure upto a certain limit on normative basis or else it should be in the scope of Discom. The representative of M/s Tissa Hydro Power stated in the public hearing that in cases where the SHPs are to be connected with the STU system, the project developer has to pay high charges for bay(s). The same should be as per the approved cost data.

Commission's View:-

We feel that this is not a subject matter of these regulations.

(VII) Disagreement with the licensee on certain provisions of Model PPA.-

Comments:-

- (i) M/s Jaya Hydro Power Pvt. Ltd. has suggested that Section 64 of the IE Act, 2003 stipulates that '*application for determination of tariff under section 62 shall be made by a generating company ... in such manner and accompanied by such fee as determined by the regulations*'. These draft regulations do not specify the manner for filing application for determination of tariff. The joint petition as provided in the conduct of business is contrary to the Section 64 because generally there is no consensus on some of the clauses of model Power Purchase Agreement and in case of disagreement no methodology to file petition for determination of tariff is provided in the Regulations.
- (ii) The Himalaya Power Producers Association suggested that Regulations need to provide clearly that the Generic Tariff of the year shall be applicable for the projects getting commissioned in a particular year and PPAs need to be drafted suitably to incorporate such provisions.

Commission's View:-

Since the procedure for filing the petitions under provisions in the HPERC (Conduct of Business) Regulations, 2005 applies to all petitions irrespective of the fact whether these relates to tariff or non-tariff matters, there is no need to specify in these regulations, the manner for determination of tariff, as per section 62 and 64 of the Act. The filing of joint petition for approval of PPA is already envisaged under regulation 50-A of the said Conduct of Business Regulations.

As regard the comments made by the Himalaya Power Producers Association, the Commission shall consider redrafting of the Model PPA to align the same with the provisions of the RE regulations applicable for the relevant control period.

(VIII) Model PPA:-

Comments:-

- (i) M/s Jaya Hydro Power Pvt. Ltd. have stated that Clause 8 (2) specifies that petition for PPA is to be filed after mutual understanding on the various issues of the PPA but the Commission has already defined Model PPA and generic tariff is to be determined by order to be issued by the Commission. This leaves no scope for negotiations or mutual understanding. The issues already defined

in Model PPA are heavily favourable towards the HPSEBL and the Power Producer is forced to sign PPA on basis of Model PPA because of nature of electricity generation. Therefore, Model PPA needs to be amended as per discussion held between power producer and distribution licensee. In the event of non-agreement to some of the clauses these can be submitted to the Commission for decision at the time of filing petition for tariff determination.

- (ii) The Bonafide Himachalies Hydro Power Developers Association has submitted that the Model PPA and regulations finalized by the HPERC do not leave any room or space for mutual understanding and the generators are forced to agree to such PPA and have to sign on dotted line of the PPA. It has been submitted that instead of imposing restrictions and deductions here and there, and picking up State specific parameters where it penalizes the generator, the HPERC needs to be liberal while determining generic tariff for SHPs.
- (iii) The representative of M/s Tissa Hydro Power stated during the public hearing that some of the provisions of the Model PPA may be allowed to be modified with mutual understanding with the licensee.

Commission's View:-

The issues relating to Model PPA do not form the subject matter of the amendment regulations being finalized at present. We however decline to accept the suggestion that some of the provisions of the Model PPA may be allowed to be modified with mutual understanding with the licensee as this may be against the spirit of Model PPA. As regards the redrafting of Model PPA, suitable changes therein can be considered at the time of revision of the Model PPA.

(IX) Mutual acceptance of parties to the PPA:-

Comments:-

M/s Jaya Hydro Power Pvt. Ltd has suggested that since the tariff option is to be exercised by the power producers and it is not the right of the distribution licensee as per the Policy of the State, the sub-regulation 8(1) should be modified by deleting the words "or the distribution licensee". On the similar plea it has also been suggested that the words "subject to mutual acceptance of both the parties" appearing in regulation 13(1) may be omitted and also that sub-regulation 13(5) may also be omitted.

Commission's View:-

We feel that even though option to sell power vests with the developer as per existing Policy, the licensee has also to work out/finalize the detailed terms

duly keeping into view the option being exercised by the developer within his entitlement and also process the matter within the frame work of Act. The licensee has, therefore, to be an essential party in any petition filed before the Commission for approval of PPA/tariff. We also feel that must buy provisions under the State Hydro Policy primarily relate to the Distribution Licensee and his role cannot be avoided/ignored. As such the requirement of filing the joint petition is very logical and inevitable and cannot be dispensed with. For similar reasons the suggestion for modification in sub-regulation 13(1) and for omission of sub-regulation 13(5) are not acceptable.

(X) In-Principle Approval:-

Comments:-

M/s Jaya Hydro Power Pvt. Ltd have stated with respect to Regulation 8(2) that the financial closure is required to achieve zero date and consent for sale of power is a prerequisite for achieving financial closure. Definite zero date cannot be defined at this stage. Therefore, the words “within the framework State Hydro Policy” are vague and need clarification.

Commission’s View:-

The proviso to sub-regulation 8(2) empowers the Distribution Licensee to issue the in-principle approval for the purchase of power to facilitate the developers in getting the “in-principle approval” for purchase of power pending the submission of joint petition for approval of PPA/achieving zero date, but cannot be allowed without any restrictions and time limits. We also observe that there is otherwise no binding on the developers to obtain such “in-principle approval” before filing the joint petition for approval of the PPA. The powers so delegated to the Distribution Licensee have essentially to be exercised within the framework of the prevalent policy. This is a general provision which applies to all categories of RE technologies and is, in our view, quite clear.

(XI) Non facilitation of Open Access facility.-

Comments:-

The Bonafide Himachalies Hydro Power Developers Association has stated that on one side HPSEBL claims to be surplus both in power availability as well as RPO compliance, on the other side the facility of open access on easy terms and reasonable charges is not being allowed to the IPPs for taking power out of the State for captive usage of third party sale in spite of the provision for exemption of charges introduced in Hydro Policy. Appropriate intervention is required.

Commission’s view:-

The above comment does not form a subject matter of the RE Regulations being finalized in this Order. We, however, feel that the various charges etc. for the

open access have to be determined in accordance with the provisions of the Act and Regulations framed thereunder and such exercise is carried out on periodical basis after inviting public objections and suggestions. We also observe that the rates of wheeling charges and the losses have been reduced considerably in the recent past. In view of above, we do not consider it appropriate to address the matter in a greater detail in this Order.

(XII) Modification of item 8(II) of notification dated 11.11.2019 containing 3rd amendment of RE Regulations, 2017.-

Comments:-

The Realidea Consultants has submitted that in item 8(II) of notification dated 11.11.2019, the “existing proviso” referred for adding the proviso whereas no such proviso was existing in sub-regulation (2) of regulation 16 of RE Tariff Regulations, 2017 and requested to clarify the same.

Commission’s View:-

We appreciate the Realidea Consultants for bringing this discrepancy to our notice. The additional words “existing proviso to” appearing in item 8(II) of notification dated 11.11.2019 seem to have crept in due to a clerical error. As such we decide to issue a separate corrigendum to omit these words.

(XIII) Deemed generation on paper:

Comments:-

The Bonafide Himachalies Hydro Power Developers Association has stated that Deemed generation is on paper only.

Commission’s View:-

This is not the subject matter of the RE Regulations. However, provisions for deemed generation have been duly incorporated in the Model Power Purchase Agreement in line with the provisions of the State Hydro Policy.

We, after the consideration of the objections raised and suggestions made on the draft regulations by the stakeholders and deliberations held at the public hearing thereon, decide to finalize the amendment regulations by incorporating changes on the above lines and also after incorporating other need based minor modifications of general nature.

Sd/-

(Bhanu Pratap Singh)

Member

Place: Shimla.

Date: 08.09.2020

Sd/-

(S.K.B.S. Negi)

Chairman

Annexure-A

Sr. No.	Participant
1	Er. RamPrakash, Chief Engineer (Comm.), HPSEBL
2	Er. Tushar Gupta, SE (SERC), HPSEBL
3	Er. Pritam Chand Chauhan, Sr. XEN, HPSEBL
4	Sh. Kamlesh Saklani , Law Officer, HPSEBL
5.	Er. Manoj Kumar, SE (Electrical), DoE
6.	Er. Ajay Kumar , Sr. XEN (Electrical) DoE
7.	Mr. Rajesh Sharma, Bonafide Himachalies Hydro Power Developers Association
8.	Mr. Arun Kumar, M/s Jaya Hydro Power Pvt. Ltd.
9	Mr. Shyam Vaidya, M/s Ascent Hydro Projects Ltd.
10	Er. S.N. Kapur, M/s Tissa Hydro Power Pvt. Ltd.
11	Mr. K. Durga Srinivas, M/s Batot Hydro Power Ltd.
12	Mr. Deepak Gupta, All India Renewable Energy Protection Association
13	Mr. Ashish Kumar, All India Renewable Energy Protection Association
14	Mr. Gaurav Agrawal, M/s Chirchind Hydro Power Ltd.
15	Miss Namrata Dhanjal, M/s Greenko Energies Pvt. Ltd.
16	Mr. Seshagiri Rao N, M/s Greenko Energies Pvt. Ltd.
17	Mr. Manoj Kumar Tanwar, M/s Greenko Energies Pvt. Ltd.
18	Mr. Dharampal Reddy, M/s Greenko Energies Pvt. Ltd.
19	Mr. Budhi Parkash, Haripur Nallah SHEP
20	Mr. Bhanu Pratap Singh, Shree Bhavani Power