

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

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

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. These aforesaid regulations were amended on 05.07.2018 and 28.01.2019 so as to align the same with the amended State Hydro Policy issued on 15.05.2018 and the directions given by the State Government. The aforesaid regulations of 2017, read with the above mentioned amendments, have hereinafter been referred as “RE Tariff Regulations, 2017” or “RE Regulations, 2017” or “Principal Regulations”.

2. The outer date of the first control period as per RE Regulations, 2017 was specified as 30.09.2019. 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 small hydro projects in relation to the next control period.
3. Taking into consideration the above, the Commission notified the draft HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Third Amendment) Regulations, 2019 on 31st July, 2019 and published the same in Rajpatra, Himachal Pradesh on 3rd August, 2019 (hereinafter referred to as the “draft amendment regulations” or “draft regulations”) in exercise of the power, conferred under sub-section (1) of section 181 of the Electricity Act, 2003 (36 of 2003).
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 “Divya Himachal” on 4th August, 2019 under Rule (3) of Electricity (Procedure of Previous Publication) Rules, 2005 and the full text of the draft amendment regulations alongwith the explanatory memorandum was made available on the Commission’s website: www.hperc.org.

5. The Commission, vide letter dated 05.08.2019, 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 and also postponement of public hearing on the aforesaid matter by citing various reasons.
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. "Amar Ujala" and "Hindustan Times" on 23.08.2019 and the date of filing objections/suggestions extended upto 07.09.2019. The public hearing which was earlier scheduled to be held on 29.08.2019 was also postponed to 12.09.2019.
8. The Commission received comments/suggestions on the draft amendment from the following stakeholders:-
 - (i) M/s Leond Hydro Power Pvt. Ltd., Skipton Villa, the Ridge, Shimla-171001 (HP).
 - (ii) M/s 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) The Directorate of Energy, Shanti Bhawan, Phase-III, Sector-VI, New Shimla-171009 (HP).
 - (v) The Himalayan Power Producers Association, B-7, Sector-1, New Shimla-171009 (HP).
 - (vi) M/s Swadeshi Distributors, 1st Floor Building, Village Guganh, PO Sach, Distt. Chamba- 176314 (HP).
 - (vii) M/s Sai Engineering Foundation, Sai Bhawan, Sector-4, New Shimla-171009 (HP).
 - (viii) M/s Zaveri Energy LLP, Ground Floor, Swagat Building, C.G.Road, Ahmedabad-380006.
 - (ix) M/s Gee Cee Hydro Power (P) Ltd., VPO Sarahan, Teh. Rampur, Shimla.
 - (x) The Bonafide Himachalies Hydro Power Developers Association, Sai Bhawan, Sector-4, New Shimla-171009 (HP).

- (xi) HP Small Hydro Power Association, B-7, Sector-1, Main Road, New Shimla-171009(HP).
- (xii) The Himachal Pradesh Power Corporation Ltd., Himfed Building, BCS, New Shimla-17109(HP).
- (xiii) M/s POM Hydro Energy Ltd., 131/06, Samkhetar Bazar, Mandi-175001 (HP).
- (xiv) M/s Jagdambey Hydro Projects LLTP, 1st Floor, Vill. Guganh, Teh.& Distt. Chamab-176314(HP).
- (xv) The Himachal Pradesh State Electricity Board Limited (HPSEBL), Vidyut Bhawan, Shimla-171004 (HP).
- (xvi) M/s Priyal Power, 3rd Floor, Landmrk Building, Opp. HDFC House, Navrangpura, Ahmedabad-380009.
- (xvii) M/s Ramesh Hydro Power Pvt. Ltd., Gyamba House, South End, Lane-IV, Sector-1, New Shimla-171009 (HP).
- (xviii) M/s Roura Non Conventional Energy Pvt. Ltd., Gyamba House, South End, Lane-IV, Sector-1, New Shimla-171009 (HP).

9. Apart from comments/suggestions received from the aforesaid stakeholders, the State Government vide Deptt. of MPP & Power letter No. MPP-F(1)-1/2005-4 dated 6th September, 2019, issued advice/directives under Section 108 of the Electricity Act, 2003 on the draft amendment regulations. The directives issued by the State Government have been elaborated in the succeeding paragraphs of this order.

10. The list of participants who attended the public hearing on 12.09.2019 is annexed **as Annexure-“A”**.

11. **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:-

- 11.1 The representative of the Himalayan Power Producers Association stated that SHPs with capacity of 5.00 MW may be made a part of the second category of SHPs (i.e. above 2.00 MW and upto 5.00 MW) instead of considering the same in the higher capacity category as the present proposal of categorization of SHPs is a departure from the previous provisions of the RE Regulations and also taking into consideration that the capacity upto 5.00 MW is being handled by HIMURJA instead of Directorate of Energy.

He further stated that the norms, other than capital cost, as proposed in the draft amendment regulations should also be at par with those considered by

the CERC for FY 2019-20. He also stressed that the normative Capacity Utilization Factor (CUF) should not be more than 45% and the treatment to the taxes may be as per CERC's provisions. It was also stated that the depreciation may be considered as 100% of the cost instead of 90% as proposed in the amendment regulations. He further suggested that about 1500 MUs being presently procured annually by the HPSEBL from fossil fuel based generation, may be substituted with small hydro power so as to make Himachal Pradesh a green State as far as power consumption is concerned.

- 11.2 The representative of M/s Leond Hydro Power Pvt. Ltd. stated that the draft amendment regulations are not consistent with the Electricity Act, 2003. The Commission cannot frame regulations beyond 31.03.2020 as it does not have any power to amend the regulations which have acquired force of law after publishing in the official gazette and Section 21 of General Clause Act is not applicable in this case. The regulation specifies the time period and this regulation is dying natural death on 30.09.2019 unless the same are revived. The expired Act could only be revived by enacting afresh statutory provisions .
- 11.3 Shri Arun Kumar, Director Jaya Hydro Power Pvt. Ltd stated that the provisions of the Model PPA for SHPs, in a scenario where HPSEBL is mandated to procure power from SHPs, require re-drafting. The process of filing joint petition for approval of PPA is also required to be re-looked.
- 11.4 The representative of the Bonafide Himachalies Hydro Power Developers Association stated during the hearing that they have collected the energy generation data of 32 projects for FY 2014-15 and the same has been submitted alongwith written comments. As per the data, the projects are not achieving the benchmarked CUF considered by the Commission. He stated that there may be different reasons for low CUF such as upstream usage of water, interim evacuation arrangements. He stressed that the percentage normative CUF proposed in the draft amendment regulations may be revisited. He further stated that for intermediate connections, the developers are paying losses to STU/HPSEBL resulting open access charges of about Rs. 1.33 per unit, and this issue is also required to be addressed. He further stated that taking into account the geography of the State, the O&M charges may be at par with the CERC and also that the 5.00 MW capacity project(s) may be included in the category of above 2.00 MW and upto 5.00 MW.
- 11.5 The representative of M/s POM Hydro Pvt. Ltd. stated that for the revival of this sector, a reasonable tariff based on actual cost is the only factor which may provide some oxygen (thrust) to the sector and even CERC Tariff may not suit some of the projects. He quoted his own project where 5 Km. long tunnel

is to be developed and stated that financial institutions are reluctant to sanction loans based on current tariff.

- 11.6 The representative of the HPSEBL stated that the tariff is to be calculated on the arrived capital cost and other norms fixed for such determination and that the CERC regulations are not directly applicable to the SERCs.
- 11.7 The representative of the Directorate of Energy stated that to boost the small hydro sector, the tariff should be viable and the proposed control period in the amendment regulations may be aligned with CERC RE Tariff Regulations. He also stated that tariff applicability for the unit(s) commissioned in the different control period is also required to be addressed. He further stated that in the cases where Scheduled COD as per the Implementation Agreement (IA) does not get extended or in cases where it is only partially extended, the Scheduled COD as per IA/SIA may be considered for tariff applicability.
- 11.8 The Consumer representative stated that power procurement at higher tariffs ultimately has a burden on State consumers including industrial consumers. Since it is mandatory for HPSEBL to buy power from SHPs upto 25 MW, the licensee is required to be compensated by the State Government for any gap in the revenue realized vis-à-vis cost of procurement in relation to excess power procured by the HPSEBL due to the obligation imposed by the State Government. He suggested that in a scenario where industrial consumers want lower retail tariff to continue their business in the State and also to install new industries, the Commission is required to adopt a balanced approach. He further stated that the second control period should have a longer duration for better regulatory certainty.
12. The State Government has, vide their letter dated 06.09.2019, advised the Commission u/s 108 of the Electricity Act, 2003, on the draft amendment regulations. The relevant issues of said advisory have been dealt in the respective paragraphs.
13. **Consideration of the comments given in the written submissions and those raised in the Public Hearing as well as of the issues involved in the directions received from the Government.-**

After having gone through all the written submissions including the directions received from the State Government and the viewpoints expressed by the various stakeholders in the public hearing, we now proceed to analyse the various suggestions which have been considered to be relevant to the amendments proposed vide the amendment regulations. In the first instance, we find it

appropriate to consider the legal issues raised by some of the stakeholders, as follows:-

13.1 Comments:-

M/s Leond Hydro Power Pvt. Ltd. & Jaya Hydro Power Pvt. Ltd. have submitted the comments and argued the same during the public hearing stating that the proposed amendments are not consistent with the Act, the rules framed thereunder generally to carry out the provisions of the Act, the CERC Regulations, 2017, the State Government Policy, and the National Tariff Policy. The Policy of the State Government regarding COD for determination of tariff has not been followed, though it carries force of Law. The draft regulations do not specify the manner for filing of application for determination of tariff as per sections 62 & 64 of the Act. The provision for joint petition for approval of PPA under the Conduct of Business Regulations is not consistent with the provisions of sections 61 and 62 of the Act. Sale and purchase of power is to be decided by the State as per its Hydro Policy and National Policy. The Commission can advise the State Government under section 86 (2) of the Act in the matter concerning generation of electricity. These regulations discriminate between the projects where PPA has been signed earlier and those who have not signed the PPAs even though the COD of such projects for both these categories of the projects fall under the same control period. The norms notified by the CERC are statutory and cannot be deviated upon by the State Commission. Section 61 of the Act stipulates that the State Commission is to be guided by the principles adopted by the CERC. The regulations which have elapsed cannot be extended by issuance of amendment. The Commission cannot frame its regulations beyond 31.03.2020. The Commission does not have any power to amend the regulations which have acquired force of Law and section 21 of the General Clauses Act is not applicable in this case. The regulations specifying the time period have died natural death on 30.09.2019, unless the same are revived. The expired Act could only be revived by enacting afresh statutory provision.

Commission's Views:-

Most of the objections raised and suggestions made in this regard are not based on the facts. The Commission has the powers to amend/ revise/review the regulations under section 181, read with the section 21, of the General Clauses Act, 1897. The contention that SERCs cannot make regulations beyond 31.03.2020 keeping in view the fact that the CERC's RE Regulations are applicable upto 31.03.2020 is also not correct. It is a settled law that it is open to State Commission to specify the terms and conditions for determination of tariff even in absence of the Regulations under section 178 of the Central

Commission. Moreover, the SERCs are only mandated to be guided by the principles and methodology laid down by the Central Commission and it is not mandatory for SERCs to essentially follow the same as in that case the CERC regulations would have become applicable ipso facto. The National Policy and State Government Policy directives, the National Tariff Policy are also the guiding factors. There is nothing in law which debars the SERCs to frame the regulations, in the absence of CERCs regulations. There is no restriction on the SERCs to frame their own regulations in a manner which is in consonance of the provisions of the Electricity Act, 2003.

The proposed draft amendment regulations are not an extension of RE Tariff Regulations, 2017 but propose to specify the duration of second control period under RE Tariff Regulations, 2017 with necessary new set of parameters for SHPs falling under the second control period alongwith other need based changes. In this connection we would also like to invite reference to the regulation 9 of RE Regulations, 2017, which provides as under:

“(1) The Commission shall fix the durations of the control period(s) for the respective Renewable Energy Technologies under these regulations from time to time.”

After considering the issues raised by above stakeholders, we decline to accept the prayer made on behalf of M/s Leond Hydro Power Pvt. Ltd. to the effect that the proposed amendment may be dropped and new regulations for determination of tariff for the next five years may be published.

13.2 State Government’s advice under Section 108 of the Electricity Act, 2003.-

Comments:-

The State Government has, vide letter dated 6th September, 2019 expressed the concerns that there is a urgent need for revival of the small hydro power sector in the State and has also issued the advice u/s 108 of the Electricity Act,2003 for necessary modifications/changes in the final amendment regulations mentioning that the policy decision of the Government needs to be supported and appreciated by the Commission for harnessing of hydro generation in the State. The points on which advice has been given in relation to the draft amendment regulations are reproduced as under:-

“1. Regulation No. 9.-

(a)Align the control period for SHPs under this regulation with CERC regulations on the subject.

- (b) Clarify, the applicability of tariff in case of project where it is partially commissioned in one control period (one unit) and other unit(s) is/are commissioned in next control period.
- (c) Clarify, if any additional unit is installed in the existing projects after the one control period is over then what will be the applicability of tariff.

2. **Regulation No. 36.-**

Formulate the regulation 36 of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Third Amendment), Regulations, 2019 strictly in terms of the Government of Himachal Pradesh amendment in Hydro Power Policy notified vide No. MPP(F)-2/2005-X dated 15.05.2018 and the concerns of the HPERC against its Ref No: HPERC/428/Vol-IV-2103-04 dated 01.11.2018 duly replied vide letter dated 22.12.2018. Deferring of free power for initial 12 years from the date of achieving SCOD or COD is a relief being given to the developers by the State by deferring its own share of free power to facilitate the project developers to pay the debt installments on time. State Government intends to receive back this free power during the later period for the development of the Hydro Sector keeping in view the stressed financial conditions of the projects and growing Non Performing Assets that are presently being witnessed in the sector. Undoubtedly, deferred free power is to be recovered during the balance agreement period in a uniform percentage rate for all the ongoing private sector projects which are under construction and at various stages of clearness.

3. **Adoption of CERC Regulations.-**

Incorporate the CERC parameters and guidelines enshrined in the order for determination of levelised generic tariff for FY 2019-20 of the CERC(Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2017 (dated 19.03.2019) for Himachal Pradesh, Uttarakhand and other Hilly States.”

Commission's Views:-

In the first instance, we would like to mention here that the Commission is also equally concerned about the need for encouraging investment in the renewable power sector in the State and in fact also duly takes into account the concerns of power producers while finalizing the RE Tariff Regulations. In fact section 61(h) of the Electricity Act, 2003 also mandates the Commission to be guided by the promotion of co-generation and generation of electricity from the renewable sources of energy while

deciding the terms and conditions for determination of tariff. The provisions of the State Hydro Policy issued vide Notification No. MPP (F)-2/2005-X dated 15.05.2018 have been duly addressed by the Commission in its order dated 24.01.2019 and the second amendment Regulations, 2019 notified pursuant to the said order. In fact, most of the directions contained in above referred communication of 06.09.2019 have already been addressed therein. It may also not be out of context to mention here that the Commission has also been proactively taking up some of the issues with the Government which, in its opinion, can facilitate/expedite smooth implementation of the State Hydro Policy in fair and transparent manner. In this connection communications were sent by the Commission vide letter No. HPERC/428/Vol-XVI/2019/ 910-12 dated 18.07.2019 and letter of even No. 909 dated 18.07.2019 relating to uniform and transparent procedure to be framed by the Designated Agency for issuing requisite certificates and also the manner in which the tariff is to be regulated in cases where only a part of the total delay is regularized by the Government. Reply in this regard is still awaited.

We also observe that at least a major part of the advisory (directions) given by the State Government relates to the process of determination of tariff, which is a function assigned legislatively to the Commission. The guidance available to the State Commission on tariff matters is from the National Electricity Policy and the National Tariff Policy and not from the directions of the State Government under section 108. The term "Tariff" includes within its ambit not only the fixation of rates, but, also the rules and regulations relating to it. The State Government being a major stakeholder, due weightage has however essentially to be placed on its suggestions, while determining tariff or exercising regulatory powers by the State Commission but not in terms of section 108 of the Act. The same is being adhered to and views expressed by the State Government are also always given due weightage/consideration. As regards the other parts of the advisory which may not have direct bearing on the tariff fixation, we agree, in-principle, to the same. The specific issues on which advice has been issued by the Government have however been discussed in detail under respective paragraphs of this order.

14. After addressing the basic issues touching the general principles, we now proceed to address the specific issues, as follows-

14.1. **Short title and commencement.-**

Comments:-

The Directorate of Energy and M/s Jaya Hydro have suggested that the outer/end date up to which the third amendment of RE Tariff regulations, 2017 will remain in force may be specified in the regulation 1 of the amendment regulations.

Commission's Views:-

The third amendment of the RE regulations is to form a part of RE tariff regulations 2017 published on 23.11.2017 read with the subsequent amendments issued on 05.07.2018 and 28.01.2019. The date upto which the RE Tariff regulations, 2017 shall remain applicable has already been specified in regulation 1 of the said regulations of 2017. As such, there is no need of modification in regulation 1 of the draft amendment regulations on this account. The outer dates for the various provisions which are specific to the second control period have however already been incorporated in the respective paragraphs of the draft amendment regulations. In view of above, we decide to finalize the proposal made in the draft amendment regulations in relation to the Short title and Commencement' without any changes.

14.2. Amendment of Regulations 3 & 8.-

No comments have been received on these items. However, we decide to address this matter in a subsequent paragraph of the order while dealing with insertion of Regulation 16A.

14.3. Amendment of Regulation 9.-**Comments:-**

- (i) The State Government has advised the Commission u/s 108 of the Electricity Act, 2003, to align the control period for SHPs under regulation 9 of the RE Tariff Regulations, 2017 with CERC RE Regulations.
- (ii) The Directorate of Energy, The Bonafide Himachalies Hydro Power Developers Association/Sai Engineering/Priyal Power/Zaveri Energy/Zaveri & Company/Gee Cee Hydro/Swadeshi Distributors/ Jagdamba have suggested that the control period for determination of tariff for RE projects may be aligned with CERC RE Regulations as amended upto date, because the additional period of six month would affect the tariff of SHP commissioned during extended period.
- (iii) The Bonafide Himachalies Hydro Power Developers Association have also submitted that piece meal extension and frequent changes are being made in the methodology, as a result of which long term visibility is missing. It has been stated that whereas the normal gestation period of

SHPs is 3-4 years, the Regulations are framed/control periods are being fixed on yearly basis.

- (iv) The Bonafide Himachalies Hydro Power Developers Association, M/s Sai Engineering Foundation and some other stakeholder(s) have submitted that six months period required by the Commission for drafting and finalizing new RE Tariff Regulations does not have any backing of Hydro Policy of Government of Himachal Pradesh and its amendment.
- (v) The Consumers' representative suggested that the second control period should have a longer duration for better regulatory certainty.

Commission's Views:-

We observe that whereas some stakeholders, including consumers' representative, have suggested that the control period should be of longer duration i.e. of 3-4 years to provide long term visibility, most of other stakeholders have insisted that the second control period be aligned with the CERC's RE Regulations, thereby meaning that the duration of second control period should be for 6 months only.

In this connection, we also observe that even though the Commission had originally fixed the duration of the control period in the RE Tariff Regulations, 2017 up to 31.3.2020, the same had to be amended from time to time keeping in view the policy changes in the State Hydro Policy as well as the demands raised by the SHP developers. In the draft amendment regulations, the duration of second control period has been proposed upto 30.9.2020, but even this is being objected and demands have been raised for alignment of the control period with the CERC's RE Regulations. Advice has also been received from the State Government in this regard. As a general principle, we feel that the control periods should have longer durations so as to provide long term visibility, as suggested by some of the stakeholders including consumers' representative. The stress being made here by other stakeholders is however focused at alignment with CERC's Regulations.

The Commission, in the draft Amendment Regulations, has proposed the duration of the second control period of one year for all RE technologies including SHPs. As mentioned in the Explanatory Memorandum to the draft Regulations, the duration of the second control period was proposed as one year keeping in view the fact that the new CERC's RE Regulations may come into force w.e.f. 01.04.2020, it may be expedient for this Commission to notify the new RE Regulations for the next control period, (which was envisaged to start from 01.10.2020), after considering the provisions of new RE Regulations

of CERC. We are however otherwise not averse to curtail the duration of the second control period to six months in order to align the outer date of this control period with CERC's RE Tariff Regulations. Accordingly, in view of the advice received from State Government and suggestions received from other stakeholders to modify the outer date of second control period as 31.03.2020, we decide to fix the duration of the second control period as six months starting from 1st day of October, 2019.

As regards the comment made by M/s Sai Engineering Foundation, we observe that the State Hydro Policy does not deal with the process of framing regulations by the State Commission. As such, the comment made in this regard is not relevant to the context.

14.4 **Amendment of Regulation 13.-**

The proposal made in the draft amendment regulations envisaged, in nutshell, the addition of words, "or as per any other agreement," in sub regulation (2) of Regulation 13. No comments have been received on these items. We decide to address the matter in a subsequent paragraph of this order while dealing with the insertion of Regulation 16A.

However, in relation to sub regulation (1) of Regulation 13, the Directorate of Energy has suggested that the tariff determined in relation to the control period encompassing the scheduled COD or extended scheduled COD as determined by the State Government or its designated agency, falls should be applicable. It has been contended that the provision to this extent shall provide more clarity on this issue and shall be in line with the Policy of HP Government. In this regard we observe that the relevant provision of State Hydro Policy (15.05.2018) was incorporated in the RE Tariff Regulations as explained clearly in the order dated 24th January, 2019. We do not accept the contention of the Directorate of Energy that such a provision is contemplated in the Policy dated 15.05.2018. However, otherwise we agree to the suggestion given by Directorate of Energy to the effect that in cases where the delay is regularized only partially by the Government, the benefit to the extent of the revised scheduled regularized by the State Government should be allowed and the generic levellised tariff applicable on the revised scheduled date of commencement of operation should be considered. In fact, the Commission, on its own, also made a reference to the State Government before framing the draft amendment Regulations but no reply has been received in this regard. In the above background, we agree to the proposal of Directorate of Energy, in principle, with a specific change that the scheduled date of commencement of operation of the SHPs, as fixed or revised by the Government shall only be

taken into consideration. This clarification/change is necessarily required to avoid any confusion on account of the fact that term “Commercial Operation Date” has been assigned different meanings in different IAs (i.e. for SHP upto 5.00 MW and those above 5.00MW) signed by the State Government.

In view of above, we decide that in sub regulation (1) of regulation 13 of the RE Tariff Regulations, 2017 read with the second amendment regulations, for the clause (a) and the first proviso thereto, the following shall be substituted, namely:-

“(a) in case of RE technologies, other than SHPs, 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 RE Generator and Distribution Licensee file the joint petition for approval of Power Purchase Agreement(PPA):

Provided that in case a specific provision is made in the PPA about the applicability of tariff in cases where the commissioning of the project is delayed, the tariff shall be regulated accordingly.

(aa) in case of SHPs, to be governed by the generic levelled tariff determined, or to be determined, by the Commission in accordance with the provisions of the RE Tariff Regulations/practice followed by it in relation to the control period or any other period, not forming the part of any control period, encompassing the scheduled date of commencement of operation of the project, as fixed or revised by the Government, till the date on which the distribution licensee and RE Generator file the joint petition before the Commission for approval of Power Purchase Agreement:

Provided that if, subsequent to filing such joint petition, the Government further revises the scheduled date of commencement of operation of the project and a certificate to this effect is issued by the Government or its 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 generic levelled tariff determined, or to be determined, in relation to the control period, or any period, encompassing such revised scheduled date of commencement of operation of the project (SHP):

Provided further that in case the commencement of operation of the project takes place before the scheduled date of commencement of operation of the project (SHP), as fixed or revised by the Government, the date on which the project actually achieves the date of commencement of operation of the project shall be considered for the proposes of this clause;”.

Consequent to above, the second proviso to the existing clause (a), as already appearing, shall continue to appear ‘without any change’ but as the third proviso of the modified clause (aa).

Moreover, we also observe that as a consequence of this change, suitable changes may also be required to be made in regulation 14 and regulation 16 of the RE Tariff Regulations, 2017. These changes have been discussed in the respective paragraphs.

14.5 **Amendment of Regulation 16.-**

No comments have been received on the amendment proposed in this regulation as per the draft amendment regulations. Accordingly, we decide to finalize the proposed amendment without any significant change in this regard.

We however also observe that the Bonafide Himachalies Hydro Power Developers Association/Sai Engineering/Priyal Power/Zaveri Energy/Zaveri & Company/ Gee Cee Hydro/Swadeshi Distributors/Jagdambay Hydro have suggested that the projects which, after their commissioning or executing PPA/selling power in the REC Mechanism, sell power to the licensee for residual period, should be allowed the generic levelled tariff applicable on the SCOD. In this connection we observe that the RE Tariff Regulations, 2017 basically provided mutates-mutands and large a similar treatment to the SHPs who, after commencement of operation and sale of power under REC mechanism for certain period, sell power to Distribution Licensee for the residual useful life of the project as would otherwise have been available to him if the joint petition for approval of a long term PPA would have been filed in the same time frame in which the approval of first PPA under REC mechanism was sought before commencement of operation of the project. As such the existing provision does not require any major modification. However, now since the tariff linked with Scheduled date of commencement of operation of the SHP, as approved or revised by the Government is to be considered as per discussion under para 14.4 of this order, we find it appropriate to add a suitable proviso after clause (b) of sub regulation (1) of regulation 16 of RE Regulations, 2017, so as to harmonize the provisions under regulation 16 with those under regulation 13.

In the above background and also to provide more clarity, we decide to make the following changes in regulation 16 of RE Regulations, 2017, namely;-

(i) in sub regulation (1)-

(a) for the words “mutually agreed initial period(s)”, the words “mutually agreed initial period(s) starting from the date of commencement of operation of the project” shall be substituted; and

(b) in clause (b)- for the words and sign “by the Commission for the relevant category of Small hydro projects under these regulations,” the words and signs “by the Commission for the relevant category of Small hydro projects, in relation to the control period in which such joint petition for approval of the first PPA under REC mechanism for the SHP is filed or the control period in which the RE generator commenced operation at his project, whichever is earlier, under these regulations,” shall be substituted; and

(c) at the end of the clause (b) the following proviso shall be added, namely,-

“Provided that if, in relation to a SHP, all of the following milestones, namely.-

- (i) submission of the joint petition for approval of the first PPA under REC mechanism; and
- (ii) signing of the first PPA under REC mechanism; and
- (iii) commencement of operation of the SHP;

are achieved on or after the first day of October, 2019 and no joint petition for approval of PPA for sale/purchase of power for the residual useful life of the project has been filed before the Commission prior to the said date (i.e. 1.10.2019), the Commission may, upon receipt of joint petition for sale/purchase of power for the residual useful life of the SHP, allow the generic levelled tariff determined by it for such control period, or any other past period, as it may consider appropriate in accordance with the clause (aa) read with the provisos thereto, of sub regulation (1) of regulation 13 of these regulations.”; and

(ii) in sub-regulation (2), for the sign “.” sign “:.” shall be substituted and the following proviso shall be added, namely;-

“Provided further that the SHP developer shall, before executing the long term agreement for sale of power to the licensee for the residual period, have to discharge his obligations, if any, under the power purchase agreement approved and/or signed for the relevant period under REC mechanism.”.

14.6 Amendment of Regulation 14.-

No comments have been received on this item. However, we find it appropriate to harmonize the provisions of sub regulation (4) of the regulation 14 with the changes made in regulations 13 and 16 as per the paragraphs 14.4 and 14.5 of this order. In this background, we decide to add the following proviso to sub regulation (4) of regulation 14 of RE Regulations, 2017, namely;-

“Provided that the generic levelled tariff determined, or to be determined, by the Commission in accordance with the provisions of the RE Tariff Regulations/practice followed by it in relation to such control period or any other period, not forming the part of any control period, as the case may be, as considered appropriate by the Commission in accordance with the provision under the clause (a), or clause (aa), as the case may be, of the sub regulation (1) of regulation 13 of these regulations, shall be applicable in the following cases, namely.-

- (i) cases covered under the proviso to clause (b) of sub regulation (1) of regulation 16 of these regulations; or
- (ii) where any specific provisions have been made in the PPA approved by the Commission pursuant to clauses (a) or clause (aa), alongwith the provisions thereto, as the case may be, under sub regulation (1) of regulation 13 of these regulations.”

14.7 Insertion of Regulation 16A-Switching the mode of sale by SHP developers.-
Comments:-

The stakeholders have stated that the qualifying date for grant of generic tariff and applicability of RE tariff Regulations, 2007, 2012 or 2017 in case of Projects initially opting for open access/short term sale is to be taken as the date of signing of Open Access agreement or commencement of operation, whichever is earlier (Regulation 16-A) and in case of projects initially opting for sale on APPC under REC mechanism, date of filing of joint petition or commencement of operation, whichever is earlier is to be taken. This is against the provisions of State Hydro Policy which states that date of COD is to be taken as qualifying date for grant of tariff as per the DOE determined Zero date and operation date. Therefore, the linking with the date of filing of joint petition or date of agreement of open access or short term sale be deleted as the only criteria needs to be COD. M/s POM Energy Ltd. have submitted that the prevailing rate of generic levelled tariff should be applicable at the time of signing of PPA with HP Government for sale of power to the licensee for residual useful life of the project and power must be mandatorily purchased by the HPSEBL for residual useful life of the project.

Commission’s Views:-

The suggestions made by M/s POM Energy Ltd. to the effect that it should be mandatory for the licensee to purchase power for the residual useful life of the project does not fall in the scope of these amendment Regulations. The proposal that generic levelled rate prevailing at the time of signing PPA with ‘HP Government’ should be allowed for the residual period lacks rationale.

After going through the comments received on the issue and examining the matter in further detail, we feel that insertion of such a provision in the regulations may only complicate the matter particularly when the State Hydro

Policy does not deal with specifics of such cases. As such, we decide to drop the proposal made out in this regard in the draft amendment regulations.

Consequently, save as decided in para 14.4 & 14.6 of this order, in relation to amendment of Regulation 13 & 14, the modifications proposed in the draft amendment regulations in relation to clause (iii) of sub regulation (1) of Regulation 8, sub regulation (2) of Regulation 13 and sub regulation (4) of Regulation 14 are also dropped. Moreover, in relation to the proposal for amendment of Regulation 3 as contained in the draft amendment regulations, we decide to finalize the proposal with a change that the 'words and Regulation 16A' shall not be inserted.

14.8 **Amendment of Regulation 18.-**

No comments have been received in this regard. However, in view of the discussion under para 14.7 we decide to drop the proposal in this regard.

14.9 **Applicability of Chapter-IV- Financial Principles.-**

In view of discussion under para 14.3, we decide to fix the outer date in respective of provisions under this Chapter relating to the second control period as 31.03.2020 instead of 30.09.2020 proposed in the draft amendment regulations.

14.10 **Regulation 21-Capital Cost.-**

Comments:-

- (i) The Bonafide Himachalies Association have suggested that LADF payable during construction period should not be in the scope of IPPs as a part of the project cost keeping in view the fact that as per the CERC regulations these do not form part of the project cost.
- (ii) The Himalayan Power Producers Association/Panchhor Hydro/Raura Non-Conventional/Ramesh Hydro, The Bonafide Himachalies Hydro Power Developers Association/ Sai Engineering/Priyal Power/Zaveri Energy/Zaveri & Company/ Gee Cee Hydro/Swadeshi Distributors/ Jagdambay Hydro have suggested that the cost of project line and incoming bay should either fall in the scope of Discom (on the pattern of CERC) or the capital cost of the project be enhanced to cover this expenditure.
- (iii) The Directorate of Energy have suggested that since the Implementation agreement are executed by the State Government, the penalties imposed by state Government or its designated agencies should also not be considered as a part of the capital cost under regulation 21.

Commission's Views:-

- (i) In our view, the LADF payable by the IPPs during the construction of the project under the State Hydro Policy is a valid component of the project cost. In view of above, we decide not to make any changes on this account.
- (ii) We are of the view that since as per the State Hydro Policy, the project line as well as the interconnection facilities will form a part of the project, the cost of these components also form a part of the capital cost and is covered in the Normative Capital Cost which has been proposed at a very reasonable level. In view of above, we decide not to make any changes on this account.
- (iii) We agree with the comments given by the Directorate of Energy in this regard and decide to incorporate suitable changes in the first proviso to the sub regulation 2 of Regulation 21 of the draft amendment regulations. Similar change shall also be made in the second proviso to sub-clause(c) under clause (i) of sub-regulations (1) of regulation 15 of RE Regulations.

14.11 Regulation 22-Subsidy/Incentive.-

Comments:-

- (i) The Bonafide Himachalies Hydro Power Developers Association/Sai Engineering/ Priyal Power/Zaveri Energy/Zaveri & Company/Gee Cee Hydro/Swadeshi Distributors/Jagdambay Hydro/POM Hydro have suggested that the capital subsidy/incentive available to the SHPs from the MNRE and the MSME etc. should not be adjusted in tariff determination.
- (ii) Some stakeholders have also stated that whereas they do agree to lower the generic tariff on account of the capital Subsidy given by the MNRE, but strongly object to reduction in the tariff on account of incentives given to specific areas or for a larger section of business/industry including SHPs. It has been stated that the incentives given by Ministry of Commerce and Industry, for industry located in hilly areas which include MSMEs and SHPs up to 10MW are a hand holding incentives and should be excluded from Regulation 22.
- (iii) Some stakeholders have suggested that subsidy should not be adjusted on deemed basis.

Commission's Views:-

- (i) The suggestion that subsidy/grant etc. should not be adjusted at all lacks rationale and we are not inclined to make any changes in the text of draft regulations on this account.

- (ii) In our view, the suggestion to the effect that the incentive given by Ministry of Commerce and Industry should not be adjusted in tariff also lacks justification particularly when reasonable Capital Cost is being allowed and even the CERC RE Regulations provide for adjustment of subsidy/incentive etc.
- (iii) The regulation 22 of the draft regulations provides for adjustment of incentive and/or subsidy and/or grant available under the schemes of central or state government or their agencies. As such the adjustment is to be made on normative basis based on the provisions of various schemes of the Central or State Government irrespective of disbursement. However in case the provisions under such schemes are withdrawn by the concerned government due to paucity of the funds etc. and the concerned IPP does not receive such subsidy/ incentive etc. without any reasons attributed to him, he can pursue his matter with the licensee.

In view of above, we decide to finalise the proposal made in the draft amendment regulations without any change.

14.12 **Regulation 23 & Regulation 24.-**

No comments have been received in this regard and we decide to finalise the proposal made in the draft amendment regulations without any change.

14.13 **Regulation 25-Depreciation.-**

Comments:-

The Bonafide Himachalies Hydro Power Developers Association/Sai Engineering/Priyal Power/Zaveri Energy/Zaveri & Company/Gee Cee Hydro/Swadeshi Distributors/Jagdambay Hydro have suggested that the depreciation to the extent of 100% of capital cost of SHP may be considered instead of 90% as proposed in the draft amendment regulations.

Commission's View:-

It is a standard practice to allow depreciation to the extent of only 90% of the capital cost and we do not find it appropriate to allow any depreciation beyond 90% of the capital cost. 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 may need to be addressed by the State Government as a part of State Policy.

14.14 **Regulation 26-Return of Equity.-**

Comments:-

- (i) The Himalayan Power Producers Association/Panchhor Hydro/Raura Non-Conventional/Ramesh Hydro/Jaya Hydro have suggested that RoE should be taken as 17.56% at par with the CERC instead of 17% proposed in the draft amendment regulations.
- (ii) State Government has also advised the Commission to adopt the CERC norms and parameters.

Commission's Views:-

The CERC's Regulations provide for Return of Equity (RoE) at the rate of 17.56% with simultaneous provisions for adjustment of the Accelerated Depreciation (AD) in cases where it is availed. The component of accelerated depreciation to be deducted out of the respective tariffs has been computed to be of the order of 40 to 44 paisa per unit in case of SHP technology.

The aforesaid rate of 17.56% has been worked out by indexing the base rate of 14% with the average MAT of 20.26% as applicable at the time of formulation of CERC RE Regulations.

We feel that lower corporate tax regime and falling trend of interest rates may provide better post tax return on equity to the SHPs as well as other RE technologies. Moreover, RE Tariff Regulations, 2017 do not envisage any reduction in tariff on account of accelerated depreciation benefit and depreciation available for new plant and machinery in spite of the fact that the CERC's RE Regulations, 2017 do provide for certain reduction in tariff on this account, at least under certain situations. We feel that in view of the above and also the fact that the MAT rate has been reduced considerably, the CERC rate of 17.56 % may not be relevant in the present scenario.

In view of above, we find it appropriate not to revise the normative RoE for the second control period and decide to finalise the proposal made in the draft amendment regulations without any change.

14.15 **(i) Regulation 27-Interest on working capital; and
(ii) Regulation 28-Operation and Maintenance Expenses.-**

No comments have been received on these items and we decide to finalise the proposal made in the draft amendment regulations without any change.

14.16 **Regulation 29-Taxes and duties.-**

Comments:-

The Himalayan Power Producers Association/Panchhor Hydro/Raura Non-Conventional/Ramesh Hydro have suggested that the tariff should be exclusive of duties and taxes as per the CERC regulations and accordingly wherever there is change in law brought by Central Government or the State Government which has impact on the cost of generation or revenue from the sale of electricity, such change should be allowed as pass through.

Commission's Views:-

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 the Government Supply (free power) in the tariff, as per the National Hydro Policy/Tariff Policy is revised, and/or
- iii) the mechanism or the quantum of the capital subsidy or budgetary grant mentioned in Section 6.2 of Model PPA and applicable RE Regulations 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 changes in this regard.

14.17 **(i) Regulation 30-Rebate;
(ii) Regulation 31-Late Payment Surcharge; and
(iii) Regulations 32-Ceiling Norms.-**

No comments have been received on these items and we decide to finalise the proposal made in the draft amendment regulations without any change.

14.18 **General issues concerning Chapter-V.-**

Before taking up the para wise comments concerning this chapter, we find it appropriate to take up the generic comments/advice given by the State Government and generic comments given by other stakeholders on the issues concerning the financial and technical parameters, as follows, namely;-

Comments:-

- (a) **Adoption of CERC norms**-State Government has advised the Commission under section 108 of the Electricity Act, 2003 to “incorporate the CERC parameters and guidelines enshrined in the order for determination of levelled generic tariff for FY 2019-20 of the CERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2017 (dated 19.03.2019) for Himachal Pradesh, Uttrakhand and other Hilly States”. Some other stakeholders have also suggested that CERC norms should be followed.

Commission’s Views:-

In addition to the views expressed by us under para 13.2 of this order, we feel that the contention of the State Government and other objectors to amend the RE Tariff Regulations to make it at par with the CERC RE Regulations is misconceived. The powers of the CERC under section 178 and powers of State Commission under section 181 are independent of each other. Section 61 of the Electricity Act, 2003 requires the appropriate Commission to specify terms and conditions for determination of tariff, and while doing so it shall inter alia be, guided by the principles and methodologies specified by the CERC. If the intention of the Legislature was that the State Commission would adopt the provisions of the regulations framed by the Central Commission, the Legislature would have used the term “shall follow” rather than the term shall be “guided by” in section 61 of the Act. To guide means to show a way and it is not direction to be obeyed.

The Commission otherwise duly takes into consideration the provisions of the CERC’s Regulations, while framing its RE Tariff Regulations. As a recent step forward in this direction, the Commission has proposed in the draft amendment Regulations, the Capital Cost at the rates provided in the CERC’s RE Regulations, in spite of the fact that as per the data provided to the Commission by the Directorate of Energy, the Capital Costs for SHPs recently approved in the DPRs are much lower than what have been proposed in the draft Regulations. Moreover, the norms being fixed at present will in actual practice apply to the SHPs who started the work on the project 3-4 years back.

We however feel that even otherwise it will not be prudent to straightaway adopt the CERC parameters for SHPs keeping in view the State specific features and practices being followed in case of SHP technology. We also observe that in some cases this may even amount to violation of the State Hydro Policy as well as the Implementation Agreements already signed by the

State Government with the developers. Some of the aspects in which the adoption of CERC parameters may amount to violation of State Hydro Policy are highlighted as follows:-

- (a) The useful life of the SHPs as per the State Hydro Policy is 40 years but CERC takes the same as 35 years.
- (b) The tariff linkage with the COD is applicable under the State Hydro Policy only in certain situations and subject to fulfillment of the stipulated conditions. In fact this will also be in conflict with the suggestion given by the Directorate of Energy that the tariff should be linked with the Scheduled COD fixed or revised by the State Government.
- (c) The royalty structure and categorization of SHPs are not in full conformity with the CERC's RE Regulations.
- (d) As per the State Hydro Policy, the interconnection is to be provided at the nearest manned control station of the Licensee and it may not be possible to shift the interconnection points to the generating stations.

As regards other parameters like CUF, O&M charges, RoE etc., the matter has been discussed in the respective paragraphs.

(b) Need for balanced approach.-

The Consumers' Representative stated during the course of Public Hearing that on one hand, the SHP developers are asking for higher and higher tariffs and on the other hand, the industrial consumers want that tariff should be as low as possible so as to enable them to continue their business and to install new industries in the State. He suggested that the Commission should adopt balanced approach in the matter.

Commission's Views:-

We agree with the genuine concerns expressed by the Consumers' Representative and also feel that the Commission invariably takes into consideration all such concerns and determines the norms and consequently the tariffs after careful balancing of various factors.

(c) Comparison of Tariff with other States.-

The Bonafide Himachalies Association have stated that the generic levellised tariffs being allowed to SHPs in Himachal Pradesh are lower than those applicable in other States and need to be enhanced.

Commission's Views:-

The tariff norms/parameters and consequently the tariffs are to be fixed/determined keeping in view the States specific considerations such as terms

and conditions of allotment, operative period of the project, royalty structure etc. As such, any comparison with other states may not be relevant.

(d) SERC Specific Parameters.-

The Bonafide Himachalies Association have mentioned that HPERC has devised its own parameters for SHPs in deviation to CERC parameters resulting in lowering the generic Levellised tariff.

Commissions Views:-

It is not mandatory for the State Commission to straightaway follow CERC parameters. The state commissions are only to be guided by the same. The commission fixes the various parameters keeping in view the provisions of State Hydro Policy and State specific considerations, apart from CERC norms. We do not find it appropriate to make any changes on account of this comment.

14.19 After having discussed the generic issues as above, we now proceed further to take up the specific issues concerning this Chapter in the following paragraphs;-

14.20 **Applicability of Chapter-V.-**

Technology Specific Parameters for Small Hydro Projects.-

In view of discussion under para 14.3, we decide to fix the outer date in respective of provisions under this Chapter relating to the second control period as 31.03.2020 instead of 30.09.2020 proposed in the draft amendment regulations.

14.21 **Regulation 33-Categorization of SHPs.-**

Comments:-

The Bonafide Himachalies Association/Himalayan Power Producers Association have suggested that the SHPs with installed capacity of 5 MW be included in the lower (second) category in line with the existing regulations.

Commission's Views:-

As per the CERC's RE regulations, 2017, the SHPs of 5 MW and above (up to 25 MW) fall in the same category. The Commission has proposed the changes in relation to categorization of SHPs with installed capacity of 5 MW in line with the CERC's RE regulations. Accordingly, we decide to finalise the proposal made in the draft amendment regulations without any change.

14.22 **Regulation 34-Normative Capital Cost.-**

Comments:-

- (i) The Himalayan Power Producers Association, M/s Panchhor Hydro Power Pvt. Ltd, M/s Raura Non-Conventional, M/s Ramesh Hydro have welcomed the Capital Cost proposal in the draft regulations on CERC pattern.
- (ii) The HPSEBL have suggested that the normative Capital Cost should be retained at present level.
- (iii) M/s POM have suggested that actual Capital Cost should be allowed even if it is higher than CERC norms. During the course of hearing they quoted their own project where 5 Km. long tunnel is to be developed and stated that financial institutions are reluctant to sanction loans based on current tariff.

Commission's Views:-

- (i) The draft regulations envisage the Capital Cost for FY 2019-20 at the rate of Rs. 1000 lacs per MW with installed capacity for SHPs below 5 MW and Rs. 900 lacs per MW for SHPs having 5 MW to 25 MW capacities. These are otherwise higher than the Capital Cost provided in the DPRs recently approved by the Directorate of Energy. Moreover, the norms being fixed at present will in actual practice apply to the SHPs who started the work on the project 3-4 years back.
- (ii) The suggestion given by HPSEBL to keep the normative Capital Cost fixed for the first control period ending on 30.09.2019 for the second control period as well, has not been supported with any supporting argument/data and we are not inclined to accept the same.
- (iii) The contention that actual Capital Cost should be allowed even if it is higher than that the CERC norms cannot be agreed to unless such higher cost is justified by better performance in relation to other parameters such as better hydrology and low O&M expenses etc. We feel that each such RE Project, which involve 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.

14.23 Regulation 35-Normative Saleable Energy.-

Comments:-

- (i) The Himalayan Power Producers Association, M/s Panchhor Hydro Pvt. Ltd., M/s Raura non-conventional, M/s Ramesh Hydro, M/s Jaya HEP, Bonafide Himachalies Hydro Power Developers Association/Sai Engineering/Priyal Power/Zaveri Energy/Zaveri & Company/Gee Cee Hydro/Swadeshi Distributors/Jagdambay Hydro have submitted that CUF should be taken as 45% net of free energy as the additional generation of 2.85% purely on normative basis for calculation of tariff shall reduce the tariff payable to the developer. Some of these stakeholders have also submitted a data of saleable energy for FY 2014-15 of 32 projects with a request that normative CUF may be considered equal to the CUF considered by the CERC.
- (ii) State Government has also advised the Commission to adopt the CERC norms and procedures.

Commission's Views:-

In case of Himachal Pradesh different rates of free power are applicable for the projects of different capacities and also for the projects allotted in various time frames. We are therefore of the firm view that the CUF inclusive of free power should be retained on the pattern of existing regulations and the free power shall be adjusted for various categories of projects based on free power structure actually applicable to the projects as per the State Hydro Policy, but to the extent of the maximum limits already specified in norms for the first control period which have been proposed for the second control period also as per the draft amendment regulations. We also 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 in the explanatory memorandum/order related to its RE 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. Fixation of capacity by taking a higher CUF make the SHPs more viable.

In this connection we have also referred to the CUF considered in the DPRs of some of the projects recently approved by the Directorate of Energy and observe that average CUF in such cases is more than 55%. As regards the data submitted by the stakeholders for the FY 2014-15, we do not find it appropriate to base our findings on the data for one year and that too for a year which has elapsed more than four years back. Even otherwise the amendment regulations as being finalized presently shall not be applicable to these projects for which the data has been given.

In view of above, we decide to finalise the proposal made in the draft amendment regulations without any change.

14.24 **Regulation 36-Free Power.-**

Comments:-

- (i) The State Government has advised, u/s 108 of the Electricity Act,2003 as follows;-

“that deferring of free power for initial 12 years from the date of achieving SCOD or COD is a relief being given to the developers by the State by deferring its own share of free power to facilitate the project developers to pay the debt installments on time. State Government intends to receive back this free power during the later period for the development of the Hydro Sector keeping in view the stressed financial conditions of the projects and growing Non Performing Assets that are presently being witnessed in the sector. Undoubtedly, deferred free power is to be recovered during the balance agreement period in a uniform percentage rate for all the ongoing private sector projects which are under construction and various stages of clearances”.

- (ii) The Himalayan Power Producers Association/Panchhor Hydro/Raura Non-Conventional/Ramesh Hydro/Directorate of Energy/The Bonafide Himachalies Hydro Power Developers Association/Sai Engineering/Priyal Power/Zaveri Energy/Zaveri & Company/Gee Cee Hydro/ Swadeshi Distributors/Jagdambay Hydro/Jaya Hydro as well as the Directorate of Energy, have in their written submission/public hearing, submitted that there should not be any reduction in tariff due to deferment of free power (royalty) by the State Government as per the Notification dated 15.05.2018 relating to amendment in Hydro Policy, 2006.
- (iii) M/s POM Hydro have requested to provide illustration of formula given in the Regulation 36(2) of RE Regulations, 2017.
- (iv) The Himalayan Power Producers Association/Panchhor Hydro/Raura Non-Conventional/Ramesh Hydro have suggested that the free power to be

allowed as pass through should not be restricted to 13% in tariff determination process keeping in view the higher royalty structure imposed by the HP Govt.

Commission's Views:-

- (i) In regard to the issues relating to deferment of free power, we observe that the Commission had, keeping in view the provisions of the State Hydro Policy issued on 15.05.2018, proposed certain amendments in the second draft amendment Regulations issued on 01.08.2018 to facilitate relaxation in the limit of maximum free power (in percentage) to be allowed for tariff purposes so as to facilitate the implementation of Policy amendments issued by the State Government. This would have automatically facilitated adjustment in tariff on account of deferment of free power within the framework of Regulations. However, subsequently in view of 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 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 executed by the State Government with HPSEBL and the SHP developers and also that the impact, if any, on 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. In this connection, para-13 (ii) of the Commission Order dated 24.01.2019 may be referred. As regards the mode/schedule of recovery of deferred power, the matter falls under the purview of the State Government.

In view of above, no further regulatory intervention is required in the RE Tariff Regulations on this account. However, in order to remove any apprehension expressed by the State Government and the other stakeholders in relation to Regulation 36(2), it is clarified that the formula given in the Regulation shall be applicable in the cases where there is any change in the structure of the power in normal case (i.e. without considering deferment of free power) as compared to the structure considered in the tariff determination and that the formula does not apply for adjustment of tariff due to any such change to the extent the same is caused due to deferment of free power (royalty). In view of above, we

decide to incorporate the following note at the end of sub- regulation (3) of regulation 36.

“Note: In case of the deferment of free power by the State Government, the provisions of the sub regulation (2) shall not be applicable for the adjustment in tariff on account of change in the structure of free power to the extent such change is caused due to deferment of free power by the State Government.”

- (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 Central Government. As such, we decline to make any changes in this regard and decide to finalise the proposal made in the draft amendment regulations without any change.
- (iii) In regard to the suggestion given by M/s POM Hydro that formula specified in the Regulation 36 (2) should be explained with example to avoid confusion, we are of the view that the formula is quite clear. However, the Commission may consider providing the need based illustration in the order to be issued pursuant to the amendment regulations for determining generic levelled tariffs for second control period.

14.25 **Regulation 37-Auxiliary consumption.-**

No comments have been received in this regard and as such, we decide to finalise the proposal made in the draft amendment regulations without any change.

14.26 **Regulation 38-Energy Losses.-**

It has been suggested by some of the stakeholders that the normative loss of the project lines should be considered. We however observe that since regulation 38 of draft amendment regulations already provides for adjustment of normative losses for the project line @ 0.7% of net generation. No change is required on this account.

14.27 **Regulation 39-Operation & Maintenance Expenses.-**

Comments:-

- (i) The Himalayan Power Producers Association/Panchhor Hydro/Raura non-conventional/Ramesh Hydro/Directorate of Energy/The Bonafide Himachalies Hydro Power Developers Association/Sai Engineering/ Priyal Power/Zaveri Energy/Zaveri & Company/Gee Cee Hydro/Swadeshi Distributors/Jagdambay Hydro/POM Hydro/Jaya Hydro have commented

that the O&M charges should be in line with the CERC's RE regulations i.e. Rs. 40.24 lac per MW (below 5 MW) & Rs. 30.18 Lac per MW (for 5-25 MW) instead of Rs. 37 lac/ Rs. 32 lac and Rs. 27 lac respectively.

- (ii) State Government has also advised the Commission to adopt the CERC norms and parameters.

Commission's Views:-

The stakeholders have, vide their written and oral submissions made during the hearing, stressed for higher O&M expenses for SHPs. We observe that the O&M expenses for the second control period of RE Tariff Regulations, 2017 have been proposed by escalating the rates for the first control period under the RE Regulations, 2017 @ 5.72% per annum even though as per the present trends of inflation a lower rate of escalation may be justified. Moreover, provision has also been made for escalation @ 5.72% per annum for the entire tariff period. These provisions, when looked into in totality, are considered to be quite reasonable, particularly keeping in view the fact that the annual inflation rate as per the present trend may be lesser than 5.72% and also the fact that this inflation rate is also to be allowed for the entire useful life of the project. Even otherwise the O&M expenses considered in the Technical Concurrences (TC) accorded by the Directorate of Energy are much less than what has been proposed. In some cases the rates proposed in the subject cited draft Regulations are more than even two and a half times of the rates approved by the Directorate of Energy. As such, we decide to finalise the proposal made in the draft amendment regulations without any change.

15. **Miscellaneous.-**

After having addressed the specific issues relating to the third amendment regulations, we now address, the miscellaneous issues raised by stakeholders, which may not be directly related to these amendment regulations as follows, namely:-

(a) **Definition of the term COD.-**

Comments:-

It has been stated that the definition of the terms commencement of operation of the project and COD have been combined which has variance with definition appearing in the model PPA and the one issued by State Government. This anomaly is to be removed.

Commission's Views:-

In view of the comments received as well as the position clarified in para 14.4 of this order, we decide to omit the signs and words, **'/Commercial operation date of the project/COD of the project'** as appearing in clause (g) of sub

regulation (1) of Regulation 2 of the RE Tariff Regulations, 2017. Moreover, should any anomaly(ies) still persist the Commission will not be averse to remove the same at appropriate stage when model PPA comes up for revision.

(b) Useful life of the project.-

Comments:-

The Bonafide Himachalies Hydro Power Developers Association/Sai Engineering/Priyal Power/Zaveri Energy/Zaveri & Company/Gee Cee Hydro/ Swadeshi Distributors/Jagdambay Hydro have suggested that the useful life of the Small Hydro Project should be considered as 35 years as per CERC norms instead of 40 years.

Commission's Views:-

The State Hydro Policy envisages the useful life of SHPs as 40 years and the same has accordingly been provided in the RE Tariff regulations, 2017 also. As such, we do not find it appropriate to revisit this provision.

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

Comments:-

M/s Jaya Hydro have commented that the State Government directive stipulates that tariff should be determined on the basis of COD and it does not debar the projects where PPA has already been signed but yet to be commissioned. It has also been submitted that clause 3(2)(i) and 3(3)(b) of the RE Tariff Regulations, 2017 should be deleted.

Commission's Views:-

As per the State Hydro Policy the tariff as per COD is to be allowed only if certain conditions are met. We also observe that the State Hydro Policy does not envisage opening of the PPAs already approved/concluded. In view of above we do not find it appropriate to make any changes in the RE Tariff regulations in this regard.

(d) Timelines for seeking connectivity.-

Comments:-

M/s Jaya Hydro have suggested that the permissible period for applying for connectivity should be reduced from 24 months to 15 months prior to the intended date of such connectivity.

Commission's view:-

We are of the view that since the STU/Transmission Licensee and Distribution Licensee also require certain minimum time in making arrangement for providing smooth connectivity and completion of such

arrangements in time, it may not be feasible to reduce the time period of 24 months. However, there is no bar for the licensee to agree for a time period of less than 24 months in case the system parameters permit him to do so. In fact, the RE developers should, in their own interest, apply for connectivity at the earliest possible after signing Implementation Agreement to avoid any time lags.

(e) Deletion of clauses (a), (b) & (c) under the proviso to the sub regulation (2) of Regulation 8.-

Comments:-

M/s Jaya Hydro has suggested that these provisions of the RE Tariff regulations, 2017 should be deleted as the fixation of zero date and the outer date is in the domain of the State Government and not in the scope of the Commission.

Commission's Views:-

These provisions have been made by the Commission 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. There is otherwise no binding on the developer to obtain such 'in-principle approval' before filing the joint petition for approval of the PPA. We also observe that the State Hydro Policy does not envisage any such 'in-principle approval' and the Commission may not be averse to consider deletion of the provision relating to the same from the RE regulations, if the developers so propose after considering the matter in the right perspective and also keeping in view the fact that joint petition for approval of PPA can be filed even before Zero Date. We also feel that comment about the domain of the Commission is totally out of context and does not warrant any consideration in the present order relating to finalization of the proposals made in the draft amendment regulations.

(f) Amendment of model PPA for SHPs.-

Comments:-

Model PPA for SHPs needs to be amended as per the discussions held between the power producers and Discom and clauses of disagreement should be submitted to the Commission.

Commission's views:-

The model PPA only provides standard format to be used for finalizing PPA. The model PPA is, however, otherwise also not a subject matter of the proposed

amendment and issues related to model PPA can be discussed at the time of modification of the same.

(g) Tariff Period.-

Comments:-

M/s Leond Hydro Power Pvt. Ltd. & M/s Jaya Hydro Power Pvt. Ltd have stated that the tariff period of 40 years falls beyond the control period of these regulations which is anomalous.

Commission's view:-

The Control Period refers to the period in which the norms and parameters specified for the same shall remain applicable. The tariffs based on the norms and parameters applicable for the Control Period are however to be worked out for the entire tariff period which has been specified as 40 years in case of the SHPs. In fact the sub-regulation (2) of the regulation 9 of the RE Tariff Regulations, 2017 also makes it quite clear. As such, we feel that there is no anomaly in this regard.

(h) Clarification about the applicability of tariff in case of project where it is partially commissioned in one control period (one unit) and other unit(s) is/are commissioned in next control period.-

The Government as well as the Directorate of Energy have suggested that a clarification be provided about the applicability of tariff in such cases. As per the present provisions of the IAs for a SHP upto 5MW capacity the term Commercial Operation Date (COD) is defined as on the date on which the such generator synchronizes the first unit of the project with the grid. The RE Regulations are also in conformity with aforesaid provisions of the IA. However, in the IAs for SHPs above 5MW and upto 25MW the term COD has been defined differently.

In view of the above, the date of commencement of operation is considered tariff the purpose under the regulatory provisions in this regard which are already quite clear and the linkage of the tariff with the completion of the project is to be reckoned with reference to the date of synchronization of the first unit of the project with the grid for the first time irrespective of the date of completion of the different units of the project or declaration of COD of Project.

It is however worth-mentioning here that the Commission had also considered the matter in detail, based on the comments received from the Directorate of Energy while finalizing the second amendment of RE Regulations, 2017 and had brought out that since the definitions of the term Commercial Operation Date as incorporated in the IAs signed by the State Government with SHPs upto 5MW and those from 5MW to 25MW are at complete variance from each other, this shall obviously create complications/anomalies at implementation stage. In this connection, para-10 of the Commission's Order dated 24.01.2019 may be

perused. No response has so far been received from the Government on the anomalies so brought out. In view of above, the definition of the term COD appearing in the IAs signed by the State Government for the SHPs of the two categories need to be reconciled by the State Government. No further clarification may be required in the Regulations on this account particularly keeping in view the contents of para 14.4 of this order.

(i) Project specific tariff determination.-

Comments:-

M/s POM Hydro have suggested that.-

- (i) Actual completion cost of the project as duly certified by the Chartered Accountants (CAs) firm should be adopted for the purpose of project specific determination to avoid ambiguity;
- (ii) Clear cut guidelines for prudence check should be incorporated.
- (iii) The tariff should not be capped at 105% for the purpose of exit option.

Commission's Views:-

- (i) We feel that Commission is duty bound to exercise due diligence and prudence check while determining the Capital Cost and the completed cost as certified by CAs firm cannot be straightway adopted.
- (ii) The RE Tariff Regulations 2017 already contain the guidelines based on Hob'ble APTEL guidelines.
- (iii) The provisions of project specific determination of tariff only provide for additional comfort to the developer as this may provide for a tariff even higher than the generic levelled tariff. As such, we are not inclined to relax this condition. In this connection, we also observe that CERC RE Regulations do not envisage project specific determination of tariff for the SHPs.

(j) Format of Model PPA.-

Comments:-

M/s Jaya Hydro have stated that in view of the mandatory purchase of power from SHPs upto 25 MW as per Policy notified by the State Government, there is no choice of the Discom to offer the mode of purchase of power, rather it a right of the power producer to have choice and tariff is to be determined by the Commission. It has also been stated that since as per the Policy of State Government the energy from the RE project upto 25 MW is to be purchased by the Discom and as such no prior permission of the Discom and approval of the Commission is required. A new model PPA as well as the method of joint petition needs redrafting. It has also been submitted that clause 13(5)

needs to be deleted as this clause does not provide for any mechanism when there is no mutual understanding between the parties in view of mandatory purchase power from RE Developers of SHPs upto 25 MW capacity.

Commission's views:-

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 State Hydro Policy primarily relate to the Distribution Licensee and his role cannot be avoided/ignored. We also feel that the Commission cannot bind the Licensee to submit the joint petition in a particular manner. As such, we decline to delete the Regulations 13(5) of the RE Tariff Regulations, 2017. Moreover, since the procedure for filing the petitions under provisions in the HPERC (Conduct of Business) Regulations 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. Further the filing of joint petition for approval of PPA is permissible under regulation 50-A of the said Conduct of Business Regulations. As regards the redrafting of model PPA, suitable changes therein can be considered at the time of revision of the model PPA as explained in item (f) of this para.

(k) Tariff for capacity enhancement, if any additional unit is installed in the existing projects after the one control period is over.-

Comments:-

The Government as well as the Directorate of Energy have requested that clarification be provided about the applicability of tariff in such cases.

Commission's views.-

The RE regulations, 2017 already contain elaborate provisions in this regard and may not require any further clarity. In this connection, Regulation 17 of the second amendment Regulations may be perused in particular. However, in case any specific situation leading to any anomaly is brought to the notice of the Commission, it may not be averse to provide suitable clarity in the regulations.

(l) Principles for joint evacuation.-

Comments:-

It has been suggested that the principles for joint evacuation should be spelt out.

Commission's Views:-

The matter shall require to be dealt on case to case basis keeping in view the general principles already addressed by the Commission in its judicial orders.

(m) O&M charges of bays.-

Comments:-

The Himalayan Power Producers Association/Panchhor Hydro/Raura Non-Conventional/Ramesh Hydro have suggested that without prejudice to their suggestions, the O&M 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 stakeholders have also suggested that uniform per MW rates for interconnection facility need to be fixed for annual charges of the interconnection facilities.

Commission's Views:-

This is not a subject matter of the amendment regulations being finalised presently. However, the Commission may be inclined to consider the matter regarding fixation of the operation and maintenance charges of the bay, on uniform/normative basis, separately after receipt of more inputs from the stakeholders and licensees.

(n) Graded rates linked with CUF.-

Comments:-

M/s Jaya Hydro Power Pvt. Ltd. has submitted that the graded slab wise tariff rates linked with CUF should be considered.

Commission's Views:-

The tariff design already envisaged in the RE Tariff Regulations, 2017 is in line with the same followed by CERC. Moreover, we feel that such a provision can lead to complications. In some case, it may also involve issues concerning lack in proper designing/construction of the project and maintenance thereof, etc.

(o) Exemption of Intra state Open Access Charges.-

Comments:-

The Bonafide Himachalies Hydro Power Developers Association/Sai Engineering/ Priyal Power/Zaveri Energy/Zaveri & Company/Gee Cee Hydro/Swadeshi Distributors/Jagdambay Hydro mentioned that the Commission has not notified such exemption till date.

Commission's Views:-

We observe that the issue being raised here is not a subject matter of RE Tariff Regulations. As such, we do not find it appropriate to discuss the same in this order.

We, after going through the advice received from the State Government under Section 108 of the Electricity Act, 2003 and the submissions made by the various stakeholders including those discussed specifically in the preceding paragraphs, decide to finalise the regulations by incorporating changes specifically discussed herein above and other need based minor modifications of general nature, as may be considered necessary while finalising the draft amendment regulations.

-Sd-

(Bhanu Pratap Singh)

Member

-Sd-

(S.K.B.S. Negi)

Chairman

Place: Shimla.

Date: 11.11.2019

Annexure-“A”**List of participants who represented the stakeholders in public hearing on 12.09.2019.**

Sr. No.	Name
1	Er. P.K.S Rohela, Chief Engineer, DoE
2	Er. Anshul Sharma, Addl. SE, DoE
3	Er. Tushar Gupta, SE (Elect), HPSEBL
4	Er. Pritam Chauhan, Sr. XEN (E), HPSEBL
5	Shri Dinesh Kumar, Advocate, M/s Leond HEP
6	Shri Yoginder Paul, Advocate, M/s Jaya HEP
7	Shri Arun Kumar, Director, M/s Leond & Jaya HEP
8	Shri Ramesh Chauhan, Consumer Representative
9	Shri Arvind Kaul, GM, POM HEP
10	Shri Dharam Paul Reddy, GM, Greenko Energy
11	Shri S.N. Kapur, Sr. VP & Director, HPPA & M/s Panchhor HEP
12	Shri V.S.V.A. Rao, DM(C), DLI/AHPL
13	Shri Rajesh Kumar Sharma, President, Bonaifide Himachalies Developer Associations
14	Shri Pankaj Thakur, Priyal Power
15	Shri Pawan, CMD, KKK Hydro.