

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

In the matter of formulation of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) (Third Amendment) Regulations, 2018.

CORAM
Sh. S.K.B.S. Negi
Chairman
Sh. Bhanu Pratap Singh
Member

Statement of Reasons

1.0 BACKGROUND:

- 1.1 The Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as “the Commission” or “the HPERC”) published the draft HPERC (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) (Third Amendment) Regulations, 2018 on 08.10.2018 in Rajpatra Himachal Pradesh in exercise of the power conferred under Section 61, sub-section (1) of Section 62, clauses (a),(b) and (e) of sub-section(1) of Section 86 and clause (zd) of sub-section(2) of section 181 of the Electricity Act, 2003 (hereinafter referred as “the Act”).
- 1.2 As required vide sub-section (3) of the Section 181 of the Act, read with sub-regulation (5) of regulation 16 of the HPERC (Conduct of Business) Regulations, 2005 and rule 3 of the Electricity (Procedure for Previous Publication) Rules, 2005, the Commission invited public objections and suggestions by way of insertions in two Newspapers i.e. “Divya Himachal” and “Hindustan Times” on 10th November, 2018 and the full text of the draft Wheeling and Retail Supply Tariff Regulations, 2018 was made available on the Commission’s website www.hperc.org. A time of 21 days was allowed for filing objections and suggestions in relation to the said draft Wheeling and Retail Supply Tariff Regulations, 2018.
- 1.3 Subsequently a public hearing was held on 17.11.2018, wherein stakeholders presented their views before the Commission.
- 1.4 The Commission received comments/suggestions on the draft Wheeling and Retail Supply Tariff Regulations, 2018 from the following stakeholders:-
1. Himachal Pradesh State Electricity Board Ltd.
 2. M/s Ambuja Cements Ltd. P.O. Darlaghat, Tehsil Arki, Distt Solan (HP)-171102.

2.0 Objections and issues rose by the Stakeholders and view point of the Commission:-

2.1 Amendment of regulation 2

The draft regulation states that:-

“(8-a) “consumer” shall mean any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be, but shall be restricted to such consumers within the State except in border areas with neighbouring Indian States where it is non-feasible to provide connection by the other state(s) licensee, but with the mutual consent of the respective State Government;”

“(11-a) “force majeure event” shall mean, with respect to any party, any event or circumstance or combination of events or circumstances including those stated below, which is not within the reasonable control of, and is not due to an act of omission or commission of that party and which, by the exercise of reasonable care and diligence, could not have been avoided, and without limiting the generality of the foregoing, would include the following events:-

- (i) acts of God including lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, geological surprises, or exceptionally adverse weather conditions, or*
- (ii) any act of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, or*
- (iii) industry-wide strikes and labour disturbances having a nationwide impact in India;”*

(a) Comments of M/s Ambuja Cements Ltd.

M/s Ambuja Cements Ltd has submitted that the definition of the consumer should be as per the provisions of the Electricity Act 2003. It further submitted that in clause (11-a) the instead of nationwide impact the impact of specific industry should be considered.

(b) Commission’s View

The definition of the Consumer is as per the provision of Electricity Act, 2003 only. However, we have incorporated some state specific points in the same.

The Commission has considered the same and changed it to wide impact instead of nationwide.

2.2 Targets for Controllable Parameters

The draft regulation states that:-

“7. Targets for Controllable Parameters. - The Commission shall set targets for each year of the control period for the items or parameters that are deemed to be “controllable”. The “Controllable parameters” for a Distribution Licensee shall comprise of the factors which were within the control of the Licensee, shall inter-alia include-

(a) Variations in Capitalisation on account of time and/or cost overruns/ efficiencies in the implementation of a capital expenditure project not attributable to an approved change in scope of such project, change in statutory levies or force majeure events;

(b) Variation in Financing cost which includes cost of debt and cost of equity;

(c) Variations in Distribution losses which will include both technical and commercial losses of Distribution Licensee and shall be measured as the difference between total energy input for sale to all its consumers and sum of the total energy billed in its licence area in the same year;

(d) Variations in performance parameters;

(e) Failure to meet the standards specified in HPERC (Distribution Performance Standards) Regulation, 2010;

(f) Variations in labour productivity;

(g) Variation in Bad and doubtful debts, in accordance with the provisions of Regulation 34-A;

(h) Variation in Operation and Maintenance Expenditure which includes employee expenses, repairs and maintenance expenses, administration and general expenses and other miscellaneous expenses viz. audit fees, rents, legal fees etc.; and

(i) Variation in Depreciation:

Provided that the Commission may, while setting the targets, also incorporate suitable mechanisms for automatic adjustments in these targets in case of substantial changes in the basic assumptions/ inputs taken into account and may also provide for the requirements in respect of such components of the O&M expenditure as it may consider appropriate as per actual:

Provided further that, based upon abnormal variations in controllable parameters (distribution losses, operation and maintenance expenditure,

financing cost and depreciation) and for reasons beyond the control of the distribution licensee, the Commission may, at the time of mid-term performance review, review the approved expenditure vis-à-vis the actual expenditure for these controllable parameters and revise the targets set for the balance years of the control period.”

(a) Comments of M/s Ambuja Cements Ltd.

M/s Ambuja Cements Ltd. has submitted that since automatic adjustments have been inbuilt no further relaxation may be allowed made. It further submitted that if expenditure as per actual is allowed subsequently then the very purpose of defining controllable gets defeated.

(b) Comments of HPSEBL

The HPSEBL submitted that apart from the factors mentioned in the Regulations 7(a), the project cost and consequently the capitalization may be affected by several factors including issues related to Right of Way, Land acquisition issues, delay in forest/ other statutory clearances etc. which are beyond the control of the Licensee. Accordingly, variation in capitalization on account of such factors may be allowed and not treated as a controllable parameter. Alternatively, such factors may be included under category of Force Majeure events. Further, the hard cost for a project may not be disallowed under any circumstances as any disallowance in this regard severely affects the financial health of the Licensee.

It is further submitted that the financing cost is based on market factors and economic conditions prevailing in the country as whole. Thus, the variation in financing cost may not be treated as a Controllable parameter.

Further, the said provision contradicts with the Regulation 21(1), which allows computation of interest rate in accordance with the terms and conditions of relevant agreements of loan.

The O&M expenses are affected by inflation, which is also considered as an uncontrollable factor in respect of these Regulations. Accordingly, the said Regulation may be modified as:

“Variation in Operation and Maintenance Expenditure which includes employee expenses, repairs and maintenance expenses, administration and general expenses and other miscellaneous expenses viz. audit fees, rents, legal fees etc, except to the extent of inflation;”

Since, Depreciation expenses for a Licensee are incidental to the capitalization, the variation in Depreciation expenses may not be treated as a controllable parameter and may allowed considering the actuals/approved capitalization.

(c) Commission's View

The expenditure is allowed only after doing the prudence check and exercising due diligence.

The variations in capitalisation on account of factors which are beyond the control of the licensee are allowed. The commission always considers such factors after prudence check. There is no contradiction in the provisions of HPERC regulations. The intention here is to do the true up of controllable parameters at the end of the control period and not during each year of the control period.

O&M expenses and Depreciation are controllable factors. Any variations due to force majeure conditions and the factors beyond the control of licensee are trued up at the end of the control period.

2.3 True Up

The draft regulation states that:-

“(2) The distribution licensee, for the approved true-up of any year over and above that approved in the Tariff Order for that year, shall be entitled to a carrying cost at one (1) Year State Bank of India (SBI) MCLR / any replacement thereof as notified by RBI for the time being in effect applicable for one (1) Year period, as may be applicable as on 1st April of the relevant Year plus 300 basis points and for any true-up resulting in less than that approved in the Tariff Order for that year, the carrying cost shall be recovered at the same rate.”

(a) Comments of HPSEBL

The HPSEBL has submitted that the deficit in revenue requirement and the revenue allowed is usually met through working capital loans, charged at a higher rate than the long-term loans. Accordingly, the carrying cost on deficit during true-up up may be allowed at the said rate of interest i.e. SBI MCLR + 350 bp (should not be reduced to 300).

However, it may be noted that surplus revenue earned by the Licensee usually remains invested and the returns on such investment are not even at par with SBI MCLR. Thus, the carrying cost charged on surplus may be limited to the interest rates allowed by SBI on 1 year Fixed Deposits/ RBI Bank rate.

(b) Commission's View

The Commission has finalized the rate for carrying cost after considering all the factors. However, The Commission in the final regulations has modified the SBI MCLR rate as on 1st April of the relevant year to the weighted average of SBI MCLR rate during the year for working out carrying cost and has incorporated the same in the final regulations. Also, there cannot be two different rates for surpluses and deficits as suggested.

2.4 Asset Base

The draft regulation states that:-

“18. Asset Base.- (1) *The Commission shall determine the asset base for each year of the control period at the beginning of the control period, which shall be-*

Sum of -

(a) *The asset base of the base year as determined by the Commission, considering the most recent audited accounts, estimates of actuals during the base year after doing prudence check and any other factors considered appropriate by the Commission, and*

(b) *Proposed capitalisation during the year after exercising prudence check shall be -*

- (i) *schemes for which Commission's approval has been granted,*
- (ii) *schemes which have been submitted for Commission's approval, and*
- (iii) *schemes not requiring Commission's approval;*

Less-

Assets proposed to be retired during the year.

The net value of such retired assets shall be calculated as follows:

Net Value of retired Assets = OCFA – AD – CC

Where;

OCFA: Original capital cost of Replaced Assets

AD: Accumulated depreciation pertaining to the Replaced Assets

CC: Total Consumer Contribution pertaining to the Replaced Assets:

Provided that the amount of insurance proceeds received, if any, towards damage to any asset requiring its replacement shall be first adjusted towards outstanding actual or normative loan and the balance amount, if any, shall be utilised to reduce the capital cost of such replaced asset, and any further balance amount shall be considered as Non-Tariff Income.

(2) *The interest on loan capital and return on equity shall be computed on the financing of the cost of the schemes included in the asset base.*

(a) Comments of HPSEBL

The HPSEBL has submitted that in order to allow further clarity, the following provision may be added to the said Regulations:

“The asset base for the nth year of the control period shall be sum of the asset base of the base year, proposed capitalization in the preceding years of the control period and the proposed capitalization for the nth year.”

Further in order to allow more clarity, the provision may be modified as: “The interest on loan capital and return on equity shall be computed on debt and equity portions of the asset base determined in accordance with the Regulations.”

(b) Commission’s View

The Commission feels that the provision under regulation 18 has been very much clear and there is as such no need of any further clarity as suggested by HPSEBL.

2.5 Interest Charges on Working Capital

The draft regulation states that:-

“22. Interest Charges on Working Capital.- Rate of interest on working capital to be computed as provided hereinafter in these regulations shall be on normative basis and shall be equal one (1) Year State Bank of India (SBI) MCLR / any replacement thereof as notified by RBI for the time being in effect applicable for one (1) Year period, as may be applicable as on 1st April of the Financial Year in which the Petition is filed plus 300 basis points. The interest on working capital shall be payable on normative basis notwithstanding that the licensee has not taken working capital loan from any outside agency or has exceeded the working capital loan based on the normative figures. The Commission shall calculate working capital requirement for wheeling and retail supply business in accordance with these regulations to arrive at working capital requirement of distribution licensee.”

(a) Comments of HPSEBL

The HPSEBL has submitted that the basis points should not be reduced from existing 350 to 300.

(b) Commission’s View

The Commission has finalized the rate for interest on working capital after considering all the factors. Therefore, the Commission does not find any merit to review the same for now.

2.6 Non tariff income

The draft regulation states that:-

“25. Non tariff income: - (1) *All incomes being incidental to electricity business and derived by the licensee from sources, including but not limited to profit derived from disposal of assets, rents, meter rent (if any), income from investments other than contingency reserves, miscellaneous receipts from the consumers but excluding delayed payment surcharge and income to licensed business from the other business of the distribution licensee shall constitute non tariff income of the licensee.*

(2) *The amount of non tariff income as approved by the Commission shall be deducted from the Aggregate Revenue Requirement of the distribution licensee:*

Provided that the distribution licensee shall submit full details of its forecast of non tariff income to the Commission along with its application for determination of tariff.

(3) *The indicative list of items under non-tariff income of licensee shall inter-alia include:*

- (a) *Income from rent of land or buildings;*
- (b) *Income from sale of scrap;*
- (c) *Income from statutory investments;*
- (d) *Income from interest on contingency reserve investment;*
- (e) *Interest on advances to suppliers/contractors;*
- (f) *Rental from staff quarters;*
- (g) *Rental from contractors;*
- (h) *Income from hire charges from contractors and others;*
- (i) *Income from advertisements, etc.;*
- (j) *Meter/metering equipment/service line rentals;*
- (k) *Service charges;*
- (l) *Consumer charges;*
- (m) *Recovery for theft and pilferage of energy;*
- (n) *Rebate availed on account of timely payment of bills;*
- (o) *Miscellaneous receipts;*
- (p) *Deferred Income from grant, subsidy, etc., as per Annual Accounts;*
- (q) *Miscellaneous receipts;*
- (r) *Excess found on physical verification;*
- (s) *Prior period income.”*

(a) Comments of HPSEBL

The HPSEBL has submitted that that a portion of the non-tariff income should be allowed to be retained by the Licensee to allow the Licensee to build internal accruals for investment into projects to further improve supply quality/meeting the increasing demand.

Since such investments/advances are made from working capital/internal surplus and the cost of such investment is not allowed in ARR (through higher working capital allowance), such income may not be included in non-tariff income.

Working capital for retail supply business is reduced by an amount equivalent to one month of power purchase expenses. Thus, the Licensee wishing to earn the full rebate allowed as per Regulations (HPERC/CERC) has to avail higher working capital loans than allowed and the cost of such loans is not allowed in the revenue requirement. Accordingly, the Licensee should be allowed to retain the rebate earned by it.

(b) Commission's View

The Commission has never disallowed any investments by the utility to improve the quality and reliability of the power supply within the state. Till now, there has not been any single instance when such projects have been struck up due to non availability of funds.

The Commission has not come across such cases wherein Capital Expenditures have been funded through working capital loan by HPSEBL. Also, it has been said that the licensee be allowed to retain the rebate earned on power purchase bills. The HPERC regulation 14(5) already provides for retaining of 25% of the maximum normative rebate by the licensee. Therefore, the statement that the utility is not allowed to retain rebate is misleading. However, keeping in view the difficulties faced by HPSEBL to arrange the working capital, the Commission has increased the incentive to 50% from current 25%.

The income from sale of scrap is not included in the Non-tariff income for now but the Commission feels that the same will be considered under Non-tariff income in case of sale of assets/ scraps funded through grant and/or consumer contribution after doing prudence check.

2.7 Working Capital for Wheeling Business

The draft regulation states that:-

“30. Working Capital for Wheeling Business.- The Commission shall calculate the working capital requirement for the wheeling business containing the following components:

- (a) O&M expenses for one month;
- (b) receivables for two months of the wheeling charges;
- (c) maintenance spares @ 15% of O&M expenses for one month;

Provided that for working out maintenance spares requirement under working capital any provisions, terminal benefits & any arrears payment made shall not be considered.

and Less

consumer security deposit, if any.”

(a) Comments of HPSEBL

The HPSEBL has submitted that since, the security deposits may be in cash or bank guarantee and the bank guarantees do not make contribution towards reducing the working capital requirement, it is suggested that the provision may be changed to: “consumer security deposits except the security deposits held in the form of Bank Guarantees.”

(b) Commission’s View

The Commission agrees with the view point of the HPSEBL that the security deposits in the form of bank guarantees do not make contribution towards reducing the working capital requirement. This matter shall be considered by the Commission at the time of processing of the MYT petition after prudence check.

2.8 Working Capital for Retail Supply Business

The draft regulation states that:-

“32. Working Capital for Retail Supply Business.- The Commission shall calculate the working capital requirement for the wheeling business containing the following components:

- (a) O&M expenses for one month;
- (b) receivables for two months of revenue from sale of electricity;
- (c) maintenance spares @ 15% of O&M Expenses for one month;

Provided that for working out maintenance spares requirement under working capital any provisions, terminal benefits & any arrears payment made shall not be considered.

and Less

- (i) power purchase costs for one month; and
- (ii) consumer security deposit, if any.”

(a) Comments of HPSEBL

The HPSEBL has submitted that in Haryana & Punjab, there is no reduction of one month power purchase cost from the total working capital while the same is being deducted from total working capital which is in consonance with the Model Regulation of forum of regulator for Multi Year Distribution tariff. Therefore, HPSEBL requests Hon'ble Commission not to deduct one month power purchase cost from total working capital in the current regulation.

Further, HPSEBL has adopted the Govt. of India's (GoI) UDAY Scheme, being monitored by Hon'ble HPERC, for financial and operational turnaround of Discom and MOU for this is signed amongst Minister of Power, GoI, Govt. of Himachal Pradesh (GoHP) and HPSEBL on dt. 08.12.2016 as per which HPSEBL can raise Working capital loans upto 25% of the previous year revenue. Therefore, Hon'ble Commission is requested to kindly allow working capital loan to 25% of previous year revenue or normative working capital loan whichever is higher.

In accordance with the CERC Tariff Regulations and HPERC Generation MYT Regulations, a rebate of 2% is allowed for payment of power purchase bills within 2 days (CERC)/ through LC (HPERC) and 1% if the payment is made within 30 days. Accordingly, if the retail supply business wishes to avail the rebate of 2% of power purchase bill by making an early payment, the Licensee would require procuring an increased amount of working capital loans (than allowed to Licensee) to fund the payment of early payment of bills. At the same time, the entire rebate is passed on to consumers as Non-tariff income, which would amount to double penalization of the Licensee.

Accordingly, the power purchase expenses for one month should not be reduced from the allowed working capital requirement, thus permitting Licensee sufficient allowance for working capital.

(b) Commission's View

The Commission does not agree with the viewpoint of the HPSEBL for reduction of one month power purchase cost from the total working capital requirement. The bills of power procurement are paid after one month. Therefore, this Commission is rightly reducing the same from working capital requirement.

The regulations of HPERC cannot be compared with the UDAY scheme. UDAY scheme is a tripartite agreement between GoI, GoHP and HPSEBL to turn around the financial and operational performance of the HPSEBL. The Commission

believes that the principles laid down in UDAY scheme cannot be applied in the regulations.

It has already been clarified that the HPERC regulation 14(5) already provides for retaining of 25% of the maximum normative rebate availed by the licensee. Therefore, the statement that the utility is not allowed to retain rebate is misleading. However, keeping in view the difficulties faced by HPSEBL to arrange the working capital, the Commission has increased the incentive to retain the maximum normative rebate to 50% from current 25%.

2.9 Provision for bad and doubtful debts

The draft regulation states that:-

“34-A. Provision for bad and doubtful debts.- The Commission may allow a provision for bad and doubtful debts upto one percent (1%) of the estimated annual revenue of the distribution licensee, subject to actual writing off of bad debts by it in the previous years:

Provided further that where the total amount of such provisioning allowed in previous years for bad and doubtful debts exceed five (5) per cent of the receivables at the beginning of the year, no such appropriation shall be allowed which would have the effect of increasing the provisioning beyond the said maximum.”

(a) Comments of HPSEBL

The HPSEBL has submitted that the bad debts may be allowed on normative basis only and not subject to actual writing-off of the bad debts. Usually, the bad debts are carried in books of accounts for several years before being written-off after approval from the competent authority. Hence, if pass through of bad debts written off would be subject to future prudence check, it may not allow any provision for bad debts to the Licensee.

(b) Commission’s View

The Commission does not agree with HPSEBL that bad debts be allowed on normative basis. The Commission feels that we have rightly allowed for any provisioning for bad debts subject to actual writing off of it by the utility in the previous years.

2.10 Adherence to Tariff Order

The draft regulation states that:-

“(1) If the distribution licensee recovers a price or charge exceeding the tariff determined under Section 62 of the Act and in accordance with these regulations,

the excess amount shall be recoverable by the person who has paid such price or charge, along with interest equivalent to the one (1) Year State Bank of India (SBI) MCLR / any replacement thereof as notified by RBI for the time being in effect applicable for one (1) Year period, as may be applicable as on 1st April of the Financial Year plus 300 basis points prevailing during the relevant period, without prejudice to any other liability to which such licensee may be subject:

Provided that such interest payable to any party shall not be allowed to be recovered through the Aggregate Revenue Requirement of the licensee:

Provided further that the licensee shall maintain separate details of such interest paid or payable by it, and shall submit them to the Commission along with its petition."

(a) Comments of HPSEBL

The HPSEBL has submitted that the basis points should not be reduced from existing 350 to 300.

(b) Commission's View

The Commission has finalized the rate after considering all the factors. Therefore, the Commission does not find any merit to review the same for now.

-Sd/-
(Bhanu Partap Singh)
Member

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

Place: Shimla
Dated: -22.11.2018