BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Civil Miscellaneous Application No.: 267 of 2025
Instituted on: 19.03.2025
Heard on: 19.09.2025
Decided on: 26.09.2025

CORAM:

YASHWANT SINGH CHOGAL
MEMBER (Law)-cum- CHAIRMAN.

SHASHI KANT JOSHI
MEMBER.

In the matter of:-

M/s Sai Eternal Foundation,
Sai Bhawan, Sector-4, New Shimla, HP-171009. through
Sh. Munish Sharma, Chief General Manager. ….….Petitioner

Versus

The HP State Electricity Board Limited.
through Chief Engineer (System Operation),
Vidyut Bhawan, Shimla-171004. …….Respondent

Application under Regulation 26, 75 and 76 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 read with Section 152 of the Code of Civil Procedure, 1908 for the amendment/ correction in order dated 26.12.2024 passed by the Commission in Review Petition No. 118 of 2024.

Present:-

Sh. Vikas Chauhan, Ld. Counsel for the Petitioner.
Sh. Kamlesh Saklani, Authorised Representative for the Respondent.

ORDER

This Application has been filed by M/s Sai Eternal Foundation (Applicant/ Petitioner for short) under Regulation 26, 75 and 76 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 read with Section 152 of the Code of Civil

Procedure, 1908 for the amendment/ correction in order dated 26.12.2024 passed by the Commission in Review Petition No. 118 of 2024 (Annexure A-1).

2. As per the Petitioner, the Commission, vide order dated 26.12.2024 in Review Petition No. 118 of 2024, after the adjustment of subsidy of Rs. 2,91,94,719/- under the Industrial Development Scheme, 2017 (IDS, 2017) allowed a tariff at Rs. 4.50 per kWh to the Project of the Applicant/Petitioner from the date of the Schedule Commercial Operation Date (SCOD).

3. However, the Applicant/Petitioner upon careful scrutiny/ review of the above order, noticed an apparent arithmetical mistake in the tariff of Rs. 4.50 per kWh as the order incorrectly states the admissible tariff to the project of the Applicant/Petitioner at Rs. 4.50 per kWh. In fact, the correct and actual figure should be Rs.4.60 Per kWh. This discrepancy appears to be on account of clear oversight in calculation of the tariff as admissible to the Project of the Applicant/Petitioner. The Tariff Calculation Sheet (Annexure A-2) has also been annexed with the Petition clarifying the correct figure/calculation.

4. It is averred that the actual amount of subsidy sanctioned/ approved by the State Level Committee of the Industry Department vide sanction/office order dated 29.02.2024 was only Rs. 2,91,94,719/-, which was credited to the account of the Applicant/ Petitioner on

30.09.2024 (Annexure P-11 to the Review Petition) after three years from the date of SCOD. The Applicant/ Petitioner had secured Term loan from Himachal Pradesh State Cooperative Bank Limited, The Mall, Shimla in the year 2018 (Sanction letter dated 21.12.2018 – Annexure P-6 of the Review Petition) on interest @ 11.50% p.a., with repayment period of 10 years effective from October, 2020 for the implementation of the Kareri HEP and paying the installments of loan since then till date regularly.

5. It is averred that though the Applicant/ Petitioner received the subsidy of Rs. 2,91,94,719/- on 30.09.2024 but the Applicant/ Petitioner has been paying the Interest During Construction (IDC) from the past six years and that the life of the project from the SCOD i.e. 31.05.2021 has already been reduced by more than 4 years. Therefore, the impact of the subsidy for the admissible tariff for the Project of the Applicant/ Petitioner was required to be considered for the remaining life of the project i.e. 36 years and not for 40 years.

6. Therefore, by taking into consideration the parameters fixed by the Commission, the tariff for the remaining 36 years should be Rs. 4.60 per kWh instead of Rs. 4.50 per kWh which has been calculated for the entire life of the project i.e. 40 years as per the provisions of HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017, as

amended from time to time (RE Regulations, 2017 for short) by adjusting the industrial subsidy after 4 years from the date of the SCOD.

7. According to the Petitioner, the Applicant/Petitioner has been paying the annual Interest on the loan Amount since the FY 2019-2020 as under: -

Financial year	Interest paid	Remarks
2019 – 2020	1,42,76,180.00	Interest during construction
2020 – 2021	3,44,70,891.00	Interest after commissioning
2021 – 2022	3,63,85,319.84	-do-
2022 – 2023	2,83,72,159.00	-do-
2023 – 2024	2,42,08,723.00	-do-
2024 – 2025	1,74,71,306.00	Interest after subsidy

8. The reduction of interest from the FY 2024-25, after adjustment of subsidy suggests that the impact of subsidy has to be taken into consideration from the actual disbursement for the remaining life of the project and the tariff has to be calculated accordingly and that the arithmetical error in the abovementioned order shall result in long term financial loss to the Applicant/Petitioner. Therefore, rectifying of this mistake is crucial and essential for ensuring the accuracy and proper implementation of the order.

REPLY OF THE RESPONDENT

9. The review Petition has been resisted by filing reply that the application is not maintainable and liable to be dismissed as the application has been filed on incorrect and wrong assumption of an

arithmetic error and that the Commission while passing the impugned order has considered each and every aspect of the matter including Regulation 22-B of the RE Regulations, 2017 and after due diligence has rightly determined the tariff of Rs. 4.50 per kWh after adjusting the subsidy of Rs. 2,91,94,719/- in the normative capital cost of the Project.

10. According to the Respondent, the Applicant/Petitioner has adopted its own method of tariff computation by treating the capital subsidy as an additional installment towards the loan repayment in the fourth year of the project operation, which is totally wrong and incorrect. It submitted that the Commission has rightly determined the applicable tariff by adjusting capital subsidy in the normative capital cost of the project as per the mandate of the RE Regulations, 2017. A copy of the relevant extract of the RE Regulations, 2017 has been annexed as Annexure R-1.

11. It is averred that the instant application seeking revision of the tariff on the ground of “arithmetical error” is nothing but a re-argument on merits already adjudicated by the Commission. The Interlocutory Application, in fact, raises issues which are outside the limited scope of correction contemplated under the principles governing interlocutory relief or modification of orders. As such, the application is liable to be dismissed.

12. Further, the Petitioner has devised its own method of tariff computation by treating the capital subsidy as an additional installment towards loan repayment in the fourth year of the project's operation and thereby spreading its impact only over the balance project life of 36 years. This methodology is not only inconsistent with the RE Tariff Regulations, 2017, but also in contravention of the binding regulatory principle that subsidy shall be adjusted in the normative capital cost *ab initio* and not on actual disbursement basis. According to the Respondent, the application is sheer attempt to open the concluded and adjudicated matter afresh, by adopting own set of the principles, as such, the same is liable to be dismissed.

13. According to the Respondent, the calculations submitted by the Petitioner in Annexure A-2 are contrary to Regulation 22-B of the RE Tariff Regulations, 2017 and cannot be accepted as a valid basis for tariff revision. Also the Respondent had been making payment to the Applicant at the rate of Rs. 4.67 per kWh since the synchronization of the Kareri Hydro Electric Project, which took place on 21.04.2021. However, the Commission, vide order dated 26.12.2024, has determined the applicable tariff for the said project as Rs. 4.50 per kWh, which is to be applied retrospectively from the date of synchronization, i.e., 21.04.2021, for the entire useful life of the project, i.e., 40 years, in accordance with the applicable regulatory provisions and settled

principles. It is further submitted that due to payment of tariff at a higher rate of Rs. 4.67 per kWh, during the interim period, a financial implication has accrued upon the Respondent on account of the interest burden on the differential amount and, therefore, the attempt of the Applicant to seek further enhancement of tariff beyond Rs. 4.50 per kWh by relying upon the date of actual disbursement of subsidy is wholly untenable, inequitable, and contrary to the regulatory mandate, and deserves outright rejection.

14. On merits, the contents of the Petition have been denied reiterating the averments made by way of preliminary submissions. It is averred that actual date of receipt of subsidy has no bearing on the treatment of subsidy under Regulation 22-B of the RE Tariff Regulations, 2017 which expressly provides that subsidy should be reduced from normative capital cost irrespective of its disbursement and this principle has been uniformly applied in similarly situated cases. Also that delay in disbursement of subsidy does not want re-calculation of tariff. It is also averred that the actual interest figure submitted by the Petitioner pertaining to Interest during construction, interest accrued post commissioning or interest implication following disbursal of subsidy have no bearing with the tariff determination. Further, averred that the tariff of Rs. 4.50 per kWh, as determined is fair and reasonable and no error has been made in re-calculation.

15. We have heard Sh. Vikas Chauhan, Ld. Counsel for the Petitioner and Sh. Kamlesh Saklani, Authorised Representative for the Respondent and carefully gone through the record. The following points arise for determination in the Petition:-

<u>Point No. 1</u>: Whether the impact of subsidy was required to be taken from the date of its actual disbursal and on account of arithmetical mistake, the tariff in respect of Kareri Hydro Electric Project has been wrongfully calculated as Rs. 4.50 per kWh instead of Rs. 4.60 per kWh?

<u>Point No. 2</u>: **Final Order**

Point No. 1: No.

Point No. 2: The Petition dismissed per operative part of the Order.

<u>REASONS FOR FINDINGS</u>

<u>Point No. 1:</u>

16. It is the case of the Petitioner that from the careful perusal /scrutiny of the Order dated 26.12.2024 in Review Petition No. 118 of 2024, it was noticed that there is an arithmetical error in calculation of the applicable tariff of Rs. 4.50 per kWh which should have been Rs. 4.60 per kWh by applying the subsidy from the actual date of disbursement i.e 30.09.2024 as the Petitioner had secured term loan from the Bank for a period of 10 years effective from October 2020 with interest @ 11.50 % per Annum and has been paying the regular

installments ever since the disbursal of loan. According to the Petitioner, the Industrial subsidy was credited in the account only on 30.09.2024 and since the Petitioner has already been paying the Interest During Construction (IDC) for the past six years and life of project from the SCOD i.e. 31.05.2021 has been reduced by more than 4 years, the impact of subsidy of Rs. 2,91,94,719/- for the admissible tariff for the project was required to be considered for the remaining life of the Project i.e. 36 years only and not for the entire useful life of the Project i.e. 40 years, as considered by the Commission while working out the tariff. It is also the case of the Petitioner that keeping in view the parameters fixed by the Commission, the tariff for remaining 36 years of the Project should be Rs. 4.60 per kWh instead of 4.50 per kWh as calculated by the Commission for the entire life of the Project i.e 40 years

17. Section 152 of the code of Civil Procedure, 1908 permits correction of Clerical or arithmetical mistakes in judgments, decrees or orders arising from any accidental slip on clerical and arithmetical mistake.

18. The Commission in Joint Petition No. 20 of 2021 vide order dated 14.07.2021 allowed a provisional tariff of Rs. 4.67 per kWh for the Project, subject to the condition that such tariff is subject to adjustment of admissible subsidy. As directed vide order dated 14.07.2021 in

Petition No. 20 of 2021, the parties i.e. the Petitioner and the HPSEBL fied another Joint Petition No. 104 of 2024 for appropriate tariff that industrial subisy of Rs. 4,98,69,432/- has been worked out and accordingly a provisional tariff of Rs. 4.38 per kWh was allowed to the Project for a period of six months after adjusting the admissible Industrial Subsidy of Rs. 4,98,69,432/- and admissible MNRE subsidy vide order dated 09.09.2024. However, the parties were given liberty to approach the Commission after a period of six months. Meanwhile, the Petitioner filed a review Petition being Review Petition No. 118 of 2024 seeking review of order dated 09.09.2024 passed by the Commission in Petition No. 104 of 2024 that against the proposed subsidy of Rs. 4,98,69,432/- only a subsidy of Rs. 2,91,94,719/- has been sanctioned on account of industrial subsidy and that the Petitioner was not eligible for the MNRE subsidy and the order dated 09.09.2024 in Petition No. 104 of 2024 be reviewed. The Review Petition No. 118 of 2024 was allowed vide order dated 26.12.2024 and a tariff of Rs. 4.50 per kWh was allowed for the Project by making adjustment of industrial subsidy of Rs. 2,91,94,791/- and by not taking into account the MNRE subsidy of Rs. 5.0 crore, being not available.

19. Now the present application has been filed by the Petitioner that since the Industrial subsidy has been received only on 30.09.2024, after 03 years of SCOD and the Petitioner/ Applicant has already been

paying the interest during construction for the past six years and since the life of the Project has been reduced by more than 04 years, the impact of industrial subsidy is required to be considered for the remaining life of the Project i.e. 36 years and not 40 years and thus, the tariff for the Project comes to Rs. 4.60 per kWh and not Rs. 4.50 per kWh which has been calculated for the entire life of the Project i.e. 40 years.

20. As per the date of synchronization of the project, the Tariff under 3rd control period was applicable to the project and the same has been allowed by the Commission as mentioned above. The adjustment of subsidy has been made as per the provision of sub-regulation (1) of regulation 22-B of the RE Tariff Regulations, 2017, as amended, which provides as under:

> *"(1) While determining the generic levellised or project specific levellised tariff, as the case may be, for the renewable energy project(s) under these Regulations, the Commission shall take into consideration any incentive and/or subsidy and/or grant available under the schemes of the Central or State Government or their agencies, but excluding accelerated depreciation benefit under the Income Tax Act:*
>
> *Provided that the capital subsidy under the schemes of the Central or State Government or their agencies shall be adjusted in the normative capital cost and the cost so arrived, after such adjustment, shall be considered for computing Debt-Equity Components for the purposes of determination of generic levellised tariffs:*
>
> *Provided further that where the Central Government or the State Government notifies, or has notified, any generation based incentive (GBI) scheme for a particular kind of renewable technology, such technology based generating station shall be assumed to have availed the benefit of such a scheme and their tariffs shall be reduced by*

the amount of generation based incentive (GBI) per unit for the period during which such incentive remains applicable.

(2) Where any additional project specific grant or budgetary support is available to any project, apart from the incentive and/or subsidy and/or grant available under sub-regulation (1) of this regulation, the Commission shall account for such budgetary support also, while determining project specific levellised tariff.

(3) The amount of subsidy shall be considered for each renewable source as per the applicable policy of the MNRE/State Government/Central Government and if the amount and/or mechanism of subsidy is changed by the MNRE/State Government/ Central Government, consequent corrections in tariffs may be carried out by the Commission in accordance with regulation 20."

21. The Commission while determining the generic levellized tariff for the 3rd Control Period vide order dated 22.12.2020 vide the Suo-Motu Petition No. 76 of 2020, has provided the following in Sub-para (ii) of Para 8.14:

"(ii) No adjustment on account of incentive and/or subsidy and/or grant etc. is being made in the value base for the calculations of Generic Levellised Tariffs under this order. However, the rates at which adjustments shall be made in the Generic Levellised Tariffs on this account have been worked out and mentioned in the attached calculation sheets for each category of the SHPs. The adjustment, if any, on account of the same shall be made at appropriate stage while applying the tariff after taking into account the eligibility conditions in each case. Similarly, adjustment on account of subsidy available under the Ministry of Commerce & Industry, Government of India and/or any other subsidy scheme(s) of Government (Central/State) shall also be made at appropriate stage(s) after taking into account the applicable subsidy(ies) available under such scheme(s). The adjustments on account of incentives and/or subsidies and/or grants etc. are to be made at the rates indicated in the calculation sheets on normative basis by considering the provisions of regulations 20-B, 23-B, 24-B, 25-B and 26-B. For this purpose the total amount (in crore rupees) of incentive and/or subsidy and/or grant etc., shall be divided by the installed capacity of the projects and the per MW amount (in crore rupees) so arrived at, shall be multiplied by the rate indicated in the calculation sheet for the relevant category of SHPs."

22. It is also relevant to re-produce the Regulation 23-B of the RE Tariff Regulations, 2017 which provides as under:

> *"23-B. Debt-Equity Ratio.—*
> *(1) The normative debt equity ratio shall be 70:30.*
> *(2) For generic levellised tariff, the Commission shall adopt debt equity ratio of 70:30:*
> *Provided that for arriving at the amount of debt and equity, the debt equity ratio shall be considered after deducting, from the normative capital cost, the amount of incentive, grant and capital subsidy available for the project.*
> *(3) For project specific levellised tariff, the following provisions shall apply—*
> *………*
> *……..*
> *(4) The Commission shall treat any incentive or subsidy and/or grant/ budgetary support available from the MNRE/State Government/Central Government, to have been availed and shall adjust the same as per the provisions of these regulations."*

23. It is thus evident from the conjoint reading of Regulations 22-B and 23-B of the RE Regulations, 2017, as amended, and sub-para (ii) of para 8.14 of the order dated 22.12.2020 in Suo Moto Petition No. 76 of 2020 for fixation of generic levellized tariff, that the Commission while determining the generic levellized tariff, has considered the impact of subsidy on normative capital cost and the cost so arrived, after such adjustment shall be considered for computing Debt equity components for the purpose of determination of generic levellized tariff. Netither Regulation 22-B of the RE Regulations, 2017 nor sub-para (ii) of para 8.14 of order dated 22.12.2020 in Suo Moto Petition No. 76 of 2020 provides that the impact or adjustment of subsidy is to be made from the date of its actual receipt or for the remaining life of the Project in

case the same is released after the SCOD. Therefore, the contention of the Petitioner that the impact of subsidy was to be considered for the remaining life of the Project i.e. 36 years and not for the entire life of the Project i.e. 40 years is without any substance. Similarly, repayment of loan amount or IDC is also of no consequence as impact of the subsidy is to be treated on normative basis by treating it on normative capital cost, as deemed availed, and in the case at hand, the amount of Rs. 2,91,94,719/- was reduced from the normative capital cost while working out the generic levellized tariff for the Project. This principle of adjusting the subsidy in the normative capital cost is being followed by the Commission uniformly in all the cases under generic levellized tariff and the Petitioner cannot be treated differently. In the circumstances, there is no substance in the contention of the Petitioner that the impact of subsidy is to be considered for the remaining life of the Project i.e. 36 years. Similarly, the raising of loan and repaying the installments is also not relevant in so far as deducting of the subsidy from the normative capital cost is concerned.

24. Coming to the arithmetical mistake as pointed out by the Petitioner that the tariff ought to have been Rs. 4.60 per kWh is also without any substance or basis. The Commission while working out the tariff of Rs. 4.50 per kWh, after the release of subsidy amount of Rs. 2,91,94,719/- vide order dated 26.12.2024 in Petition No. 118 of 2024,

has considered the adjustment of the subsidy amounting to Rs.2,91,94,719/- in the normative capital cost from the first day of the 40 years of Tariff Period of the Kareri SHEP(4.80MW) which has been calculated in following manner:-

1	Tariff without adjustment of any incentive/subsidy considering Rs. 1100 Lakh Capital Cost for 1 MW Capacity of the Project as per the Generic Levellised Tariffs for Small Hydro Projects for 3rd control period (i.e. 01.04.2020 to 30.09.2023) fixed vide Commission's Order dated 22.12.2020	(A)	=	4.67	Rs.	
2	Adjustment in tariff after considering Rs. 100 Lakh subsidy per MW	(B)	=	0.28	Rs.	
3	Adjustment in tariff after considering **Rs. 1 Lakh** subsidy per MW	(C)	=	0.0028	Rs.	(B/100)
4	The total amount of incentives/subsidy approved by the State Level Committee of the Department of Industries, GoHP vide sanction/office **Order dated 29.02.2024**	(D)	=	291.94719	Rs. In Lakhs	
5	Resultant subsidy/incentive for 1 MW Capacity of the Project	(E)	=	60.822331	Rs. In Lakhs	(D/4.8)
6	Adjustment in the Tariff for resultant subsidy/incentives of **Rs. 60.822331 Lakhs/MW**	(F)	=	0.1703025	Rs.	(E x C)
7	Resulting Tariff for the Project after adjustment of the subsidy	(G)	=	4.4996975	Rs.	(A-F)
8	Net levellized tariff payable	Rs. 4.50 per kWh				

25. In the circumstances, the Commission has carefully considered each and every aspect while working out the tariff of Rs. 4.50 per kWh and there is no arithmetical mistake in arriving the above tariff.

26. In view of the above, The Petitioner has miserably failed to establish on record that the impact of subsidy was required to be taken from the date of its actual disbursal or on account of arithmetical mistake the tariff in respect of Kareri Hydro Electric Project has been wrongfully calculated as Rs. 4.50 per kWh instead of Rs. 4.60 per kWh. Point No. 1 is accordingly answered against the Petitioner.

Final Order

27. In view of the aforesaid discussions and findings, the Petition fails and is accordingly dismissed. The pending applications, if any, are also deemed to have been disposed off.

28. The file after completion be tagged to review Petition No. 118 of 2024 for record.

Announced
26.09.2025

-Sd-
(Shashi Kant Joshi)
Member

-Sd-
(Yashwant Singh Chogal)
Member (Law)-cum-Chairman