BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Review Petition No:	**178 of 2025**
Date of Institution:	21.05.2025
Arguments Heard on:	04.09.2025
Decided on:	**09.10.2025**

The HP State Electricity Board Ltd. through
Chief Engineer (Commercial),
Vidyut Bhawan, Shimla, HP-171004. **….Petitioner**

Petition under the Electricity Act, 2003 read with Regulation 70 of the HPERC (Conduct of Business) Regulations, 2024, seeking review of order dated 19.03.2025 in Petition No. 117 of 2024.

CORAM

YASHWANT SINGH CHOGAL
CHAIRMAN-cum-MEMBER (Law)

SHASHI KANT JOSHI
MEMBER

Present:-

Sh. Kamlesh Saklani, Authorised Representative for the Petitioner.

ORDER

This Review Petition has been filed by the Himachal Pradesh State Electricity Board Limited (Petitioner/ HPSEBL for short) seeking review of order dated 19.03.2025 in Petition No. 117 of 2024.

2. A Petition for approval of its Aggregate Revenue Requirement (ARR) and determination of Tariff for its own generating stations for

the fifth MYT Control Period (FY2024-25 to FY2028-29) was filed on 06.04.2024 being Petition No. 117 of 2024 by the Himachal Pradesh State Electricity Board Limited (the HPSEBL/ Petitioner for short) which was disposed off by the Commission vide Order dated 19.03.2025 (hereinafter referred to as MYT Order) as per the provisions of Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2024 (hereinafter referred to as MYT Regulations, 2024).

3. The review has been sought on the following grounds:-

a) **Employee Cost**

The Commission at Clause no. 4.2.24 (wrongly mentioned as 4.2.21 in the Petition) in the MYT Order has mentioned that the actual employee expenses for FY2023-24 have not been submitted by the Petitioner and actual employee cost for each plant for FY2022-23 along with approved Consumer Price Index inflation has been considered as the base for projecting the employee cost for FY2023-24. Further, an escalation equivalent to approved CPI inflation has been considered by the Commission to arrive at the employee cost for each year of 5^{th} MYT Control period (FY25 to FY29).

As per the Petitioner, the Commission has not worked out the employee cost as per the above methodology and rather, has averaged out the employee cost of FY19 to FY23 and applied CPI inflation to arrive at base of FY 2023-24 which has further been projected for FY 2024-25 to FY 2028-29 by applying the CPI inflation. Thus, the employee cost for FY 2023-24 and FY 2024-25 has been projected on lower side as compared to actual employee cost of FY 2022-23 which has resulted in under estimation of employee cost. Further by averaging out the employee cost, the impact of 6th pay commission could not be projected which is only applicable after FY 2022-23 and, therefore, the employee cost allowed is not sufficient to cater to the salary of employees which is required to be reviewed.

b) **R&M expenses**

It is averred that the Commission has determined the K-factor based on actual R&M expenses and GFA for the past 5 years upto FY2022-23 and has projected the R&M expenses for FY2023-24 based on the K-factor. The Commission has also projected R&M expenses as per the average K-factor for 5 years with respect to the GFA based on capitalization for

FY2019-20 to FY2023-24 and for the 5th MYT Control period (FY25 to FY29) by applying WPI inflation every year.

The Petitioner has submitted that as per general practices of the accounting of R&M expenses being followed for the power houses, the works related to minor capital are being capitalized and not booked under R&M expenses. Further, in the True-up for FY15 to FY19 and subsequently in the present MYT Business Plan, the minor capital works are not being allowed under CAPEX being works of R&M nature and, therefore, the expenses towards these works will have to be booked under R&M resulting in increase in R&M expenses and K-factor. Thus, the projections for normal actual R&M expenses wherein the minor capital works have not been booked will lead to underestimation of R&M expenses. In view of above, the Petitioner has prayed to consider the R&M expenses as per actual after considering the Minor capital expenditure under R&M at the time of Mid-Term Review and True-up for the 5th MYT Control period (FY25 to FY29).

c) **Return on Equity (RoE)**

The Petitioner has submitted that Return on Equity for Binwa HEP has not been allowed and total cost has been considered as debt (100%). However, while computing the AFC of Binwa HEP in the MYT Business Plan for 5th MYT Control period (FY25 to FY29), a negative RoE of Rs. 0.05 Cr has been indicated which may be a typographic error and needs to be reviewed.

d) **Calculation of Energy Charges Rate (ECR)**

The Petitioner has submitted that HPSEBL in the MYT Business Plan for FY 25 to FY 29 has made projections in respect of various power Houses (Andhra, Baner, Bassi, Chaba, Chamba, Giri, Nogli, Rongtong, Rukti) based on the provisions of sub-regulation (6) of Regulation 26 of HPERC (Terms and Conditions for Determination of Hydro generation Tariff) Regulations, 2011, as amended from time to time. Subsequently, the Commission, vide notification dated 5.6.2024, has notified the HPERC (Terms and conditions for Determination of Hydro Generation Tariff) Regulations, 2024. Both the Regulations provide similar provisions for determination of ECR in case the actual energy is less than design energy.

The Petitioner has submitted that it has provided all the details of the Energy Generation from the aforesaid projects for the last

4 years, which show that the actual generation was lower than Design Energy. Further, these projects have completed the life of ten years as mentioned in the Regulations. However, while calculating the Energy Charges Rate (ECR) for these projects, the Commission has not considered the provisions of the Regulations resulting in underestimation of the ECR for 5th Control Period which may be reviewed.

4. The notice of the Review Petition was issued to the major stakeholders. However, only the Directorate of Energy (DoE for short) and the Consumer Representative have submitted the replies to the Review Petition.

5. The DoE in its reply to the employee cost has averred that as per Regulation 35 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2024 (Hydro Generation Tariff Regulations, 2024 for short), the O&M expenses shall comprise the following:-

a) Salaries, wages, pension contribution and other employee costs;
b) Administrative and general expenses including insurance charges, if any;
c) Repairs and maintenance expenses, and

d) Other miscellaneous expenses, statutory levies and taxes (except corporate income tax).

6. Further, Regulation 35.3 of the Hydro Generation Tariff Regulations, 2024 stipulates that the hydro generation company shall submit the O&M expenses for the control period in the Multi Year Tariff (MYT) filing procedure and the O&M expenses for the base year will be approved by the Commission taking into account the latest available audited accounts, business plan filed by the hydro generation company, estimates of the actuals for the base year, actual O&M expenses for the last five years till base year subject to prudence check and any other factors considered appropriate by the Commission.

7. According to the DoE, the Commission while working out the base year employee cost has considered averaging of the actual O&M expenses for last five years and has overlooked the factors such as latest audited accounts i.e. FY 2022-23, business plan filed for the 5th control period which has resulted in lowering of employee cost. It is averred that the Commission could have taken into account the latest audited accounts for FY 2022-23 after prudence check and may consider the same in the Review Petition.

8. Regarding the R&M expenses, it is averred that while considering the repair and maintenance expenses, the projected

expenses have not been considered while working out the K-factor which is determined based on the actual R&M expense and GFA for past five years i.e. FY 2018-19 to FY 2022-23. The works related to minor capital during the period of FY 2018-19 to FY 2022-23 have not been considered in the true-up or business plan or under R&M expenses resulting in underestimation of actual R&M expenses. Therefore, the Commission may decide the same considering the works related to minor capital expenses under CAPEX or R&M expenses.

9. Regarding the Return on Equity (RoE) it is averred that there appears to be a typographical error and the Commission may examine the same.

10. Regarding calculation of energy charges, it is averred that the Commission has not considered the same as per the Hydro Generation Tariff Regulations, 2024 in respect of Andhra, Baner, Bassi, Chaba, Chamba, Giri Nogli, Rongtong and Rukti for addressing the issue of generation being less than the design energy for the last four years consecutively. Further, Regulation 42.6 of the Hydro Generation Tariff Regulations, 2024 provides for energy charge rates which is based on the annual design energy specified for the hydro generation station, in MWh subject to the

provisions of the aforesaid Regulations. According to the DoE, in case the actual total energy generated by a hydro generating station during a year is less than the design energy for reasons beyond the control of the generating company, the treatment on the rolling basis for recovery of enhanced ECR has been provided. Thus, rolling treatment should have been exercised by the HPSEBL under the provisions of the Regulations. Also while filing the true-up for the respective hydro generating station, the reasons for the shortfall in energy generation from the design energy should have been given which were not provided.

11. The Consumer Representative in its reply regarding the employee cost has averred that the expenses have been approved by the Commission taking into account the submissions of the Petitioner. Further, the Petitioner has projected the employee cost for the FY 2023-24 with further escalation equivalent to the approved CPI inflation to arrive at employee cost. These expenses are required to be considered subject to prudence check and any other factors considered appropriate by the Commission. It has been prayed that no additional cost on this count may be allowed to be passed onto the consumers.

12. Regarding the R&M expenses, it is averred that the submissions made by the Petitioner are devoid of plausible reasons and that no additional cost on this count be allowed to be passed on to the consumers. Further, the Petitioner has not been able to justify the reasons for allowing the RoE for Binwa HEP.

13. Regarding the calculation of ECR, it is averred that the Commission may consider the same keeping in view the provisions of the extant Regulations and facts on record and in case the actual total energy generated by a hydro generating station is less than the design energy for the reasons beyond the control of the hydro generating company, the treatment on the rolling basis for recovery of enhanced ECR has been provided in the Regulations and the rolling basis treatment should have been exercised by the Petitioner.

14. No other stakeholder have contested the Petition.

15. In rejoinders, the contents of the reply have been denied and those of the Petition have been reaffirmed.

16. We have heard Sh. Kamlesh Saklani, Authorised Representative for the Petitioner and have perused the entire record carefully. The following points arise for determination in the Petition:-

<u>Point No. 1</u>: Whether there are sufficient reasons for reviewing the Order dated 19.03.2025 in Petition No. 117 of 2024 as alleged?

Point No. 2: Final Order

17. For the reasons to be recorded hereinafter in writing, our point wise findings are as under.

Point No. 1: Partially Yes.

Point No. 2: (Final Order) The Petition partially allowed per the operative part of the Order.

REASONS FOR FINDINGS

Point No. 1:

18. It is well settled principle that the power of review can be exercised for correction of some mistake or error apparent on the face of the record but not to substitute a view. Such power can be exercised within the limits of the statute dealing with the exercise of power and the review cannot be treated like an appeal in disguise.

19. The review has been sought on the grounds of employee cost, R&M expenses, Return on Equity and calculation of energy charges which are being taken up separately as under:-

(A) Employee cost:

20. From a careful perusal of order dated 19.03.2025, it is evident that the Commission at Para 4.2.23 of the MYT Order dated 19.03.2025, has elaborated the methodology to calculate the O&M

expenses which also includes the employee cost as well. The same is reproduced as under:

> *"4.2.23. For projecting the various components of O&M expense, the Commission has considered the actual expense for the period FY 2018-19 to FY 2022-23 provided by the Petitioner in its audited accounts. However, it was observed that there have been significant differences in year-on-year expenditure under each head i.e., employee, R&M and A&G. Accordingly, the Commission has considered average of past 5 years (i.e., FY19 to FY23) while determining the value for base year (FY 2023-24)."*

21. However, at Para 4.2.24 (ii) of the MYT Order, the methodology for determining the employee expenses has been inadvertently mentioned as under:

> *"ii. Employee Cost: As the actual employee expense for FY 2023-24 is not submitted by the Petitioner, actual employee cost for each plant for FY 2022-23 along with the approved CPI inflation has been considered as the base for projecting the employee cost for FY 2023-24."*

22. Significantly, the Commission under the impugned order has observed that the actual employee expense for FY2023-24 has not been submitted by the Petitioner. Therefore, as per the practice followed in the HPSEBL Generation MYT Tariff Order for the 4th MYT Control Period (FY20-FY24), the Commission has averaged out the employee cost for the period with effect from FY19 to FY23 and has applied CPI inflation to arrive at base of FY24 which has further been used to project the employee expenses for FY25 to FY29 by applying CPI Inflation.

23. Accordingly, the Commission while determining the Employee expenses under the impugned Order had not taken into consideration the actual employee expenses for FY2023-24 along with the impact of 6th pay commission revision for the reasons that the same were not submitted by the Petitioner constraining the Commission to average out the employee cost for the period w.e.f. FY 19 to FY 23 and apply CPI inflation to arrive at base of FY 24. Thus, there is no error apparent on the face of record.

24. The Mid-Term Review of the Generation Tariff for the 5th Control Period is yet to be filed. Therefore, the Commission based on the submissions of requisite information in the Mid-term Review (such as actual employee expenses for FY 23-24, details 6th Pay Commission revision etc.,) along with proper justification, may consider the same during the Mid-Term review/True-up of the Generation Tariff for the 5th MYT Control period (FY25 to FY29) and revise the Employee cost based on the revision in the base values as per the submissions of the Petitioner and after doing required prudence check. Therefore, no review can be exercised at this stage as prayed.

(B) <u>R&M expenses:</u>

25. In accordance with MYT Tariff Regulations, 2024, the Commission has determined the K factor based on actual R&M expense and GFA for past five years i.e., FY2018-19 to FY2022-23 as actual R&M expense for FY2023-24 was not submitted by the Petitioner. The Commission has further considered an appropriate escalation based on WPI inflation to project the R&M cost for FY2023-24 and each year for the 5th MYT Control Period.

26. Though, for the projections for R&M expenses, minor capital works have not been booked by the Commission but the same has resulted due to non-submission of complete information at the time of passing of the impugned MYT Order. Further, the Commission has forecasted the R&M expenses based on the submitted data. In fact, the Commission has taken a considerate view in this regard and thus, there is no error apparent on the face of record. Since the Mid Term Review is yet to be filed, the Commission, based on the submissions of requisite information along with proper justification, may consider the same during the Mid-Term review/True-up of the Generation Tariff for the 5th MYT Control period (FY25 to FY29) and revise the R&M cost based on the revision in the base values as per the submissions of the Petitioner and after doing required prudence

check. Hence, no review on this count can be considered at this stage.

(C) <u>Return on Equity (RoE)</u>

27. With respect to the negative RoE of Rs. 0.05 Cr as mentioned while computing the AFC of Binwa HEP, the Commission observes that the same is a typographical error, apparent on the face of the record. Hence, the same is corrected and shall be read as Rs. 0.00 Cr. The review to this extent is being allowed.

(D) <u>Calculation of Energy Charges Rate (ECR)</u>

28. On the issue of calculation of Energy Charge Rate (ECR), it is observed that the Commission had asked the Petitioner vide query No. 5 of the letter dated 03.05.2024 to submit the Plant Availability Factor (PAF) and Actual Generation for each of the 13 Stations for last 5 years (4th MYT Control Period) duly certified by the SLDC. However, the Petitioner could not submit the same. Accordingly, the Commission has mentioned in the MYT order that any moderation of Design Energy, based on submissions of the same, shall be considered at the time of Mid-Term review or final Truing-up exercise.

29. Further, the Commission in its Order dated 15.01.2014 for 'Restating of Design Energy and Reconsideration of Tariff for Small

Hydro Power Plants of HPSEB Limited', has indicated the design energy and auxiliary consumption for various Small Hydro Plants. The design energy and auxiliary consumption for these plants have, accordingly, been considered by the Commission as per Order dated 19.03.2025.

30. However, as mentioned in the MYT Order also, any moderation of Design Energy, based on submissions of the same, shall be considered at the time of Mid-Term review or final Truing-up exercise.

31. The Petitioner has been able to substantiate that there is an error apparent on the fact of record with respect to Return on Equity qua Binwa HEP which is required to be corrected. However, it is not substantiated that there is any error apparent on the face of record in respect of Employee Cost, R&M expenses or calculation of energy charges. In the circumstances, Point No. 1 is partly decided in favour of the Petitioner and partly against it.

<u>Final Order</u>

32. In view of the above discussions and findings, the Review Petition partly allowed in favour of the Petitioner to the extent of Return on Equity that while computing the AFC on Binwa HEP, the cost has been incorrectly recorded as Rs. 0.05 Crore which should

have been recorded as Rs. 0.00 Crore and has accordingly been corrected to be read as Rs. 0.00 Crore. Other contentions i.e. Employee Cost, R&M Expenses and Energy Charge Rate of the Petitioner have not been considered due to non-submission of actual expenses and information which may be considered on submission of correct information and actual expenses at the time of filing of the Mid-term Review.

33. The Review Petition is accordingly disposed off. The pending applications, if any, are also deemed to have been disposed off.

The file after needful be consigned to records.

Announced
09.10.2025

-Sd-	**-Sd-**
(Shashi Kant Joshi)	**(Yashwant Singh Chogal)**
Member	**Chairman-cum-Member(Law)**