BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Review Petition No:	**180 of 2025**
Date of Institution:	21.05.2025
Arguments Heard on:	04.09.2025
Decided on:	**27.10.2025**

CORAM

YASHWANT SINGH CHOGAL
CHAIRMAN-cum-MEMBER (Law)

SHASHI KANT JOSHI
MEMBER

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

Petition under Section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 70 of the HPERC (Conduct of Business) Regulations, 2024, seeking review of order dated 28.03.2025 in Petition No. 156 of 2024.

Present:-

Sh. Kamlesh Saklani, Authorised Representative for the Petitioner.

ORDER

This Review Petition has been filed under Section 94 (1) (f) of the Electricity Act, 2003 (Act for short) read with Regulation 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 for review of order dated 28.03.2025 in Petition No. 156 of 2024.

2. A Petition for approval of Final True up of uncontrollable parameters for FY2022-23, True up of uncontrollable parameters for FY2023-24, True up of controllable parameters of 4th MYT Control Period i.e. FY20-FY24, 1st Annual Performance Review (APR) of 5th MYT Control Period & Determination of Tariff for FY2025-26 for its Distribution Business was filed on 30.11.2024 in the Commission by the Himachal Pradesh State Electricity Board Limited (the HPSEBL/ Petitioner for short) which was disposed of by the Commission vide Order dated 28.03.2025 in Petition No. 156 of 2024 as per the provisions of Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011 (hereinafter referred to as "MYT Regulations, 2011") and HPERC (Multi Year Wheeling Tariff & Retail Supply Tariff) Regulations, 2023 (hereinafter referred to as "MYT Regulations, 2023").

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

A) **<u>True Up of FY2022-23</u>**

(i) <u>Power Purchase Cost -Disallowance of sustained DSM Charges</u>

The Petitioner has submitted that in the provisional True-up of FY2022-23, the Commission has disallowed

25% of the sustained DSM charges whereas at the time of final true up, the same have been disallowed at the rate of 50% unilaterally without there being any provisions in the Regulations causing financial loss to HPSEBL. As per the HPSEBL, an Appeal in this regard has been filed bearing No. 395 of 2024, before the Hon'ble APTEL which is pending adjudication before the Hon'ble APTEL.

The Petitioner has submitted that around 90-92% of the power availability of HPSEBL is from hydro sources, with peak generation in summer/ monsoon months and lean generation in winter months and dependability of this generation is quite high on the weather variations which result in forced outages due to flood/silt even during peak months leaving the HPSEBL with limited options. Further, out of around 2500 MW hydro availability with HPSEBL, around 2100 MW capacity is from IPPs and ISGS/BBMB/Shared Generation Projects where the scheduling of generation is with NRLDC/BBMB/other States. As per the prevalent Regulations, generating stations are allowed numerous revisions and the HPSEBL is left with limited options.

Besides the above, the purchase of power by Open Access Consumers within the State i.e., M/s ACC Ltd., M/s GACL, M/s Ultratech, M/s Inox etc. is quite uncertain and as per the prevalent Regulations, these open access consumers are not charged for any over drawl and the same is treated as the energy availed from the HPSEBL. This results into the sudden change in the energy requirement by Open Access consumers from the HPSEBL.

It is also averred that Additional charges for deviation are based on operating range of frequency as additional charges are applicable for over injection/ under-drawl of Electricity for each time block by a buyer when grid frequency is 50.10 Hz and above and similarly, the additional charges are applicable for over-drawl/ under-injection of electricity for each time block by a buyer when frequency is below 49.85 Hz. The Petitioner has also averred that Additional charges for deviation are based on deviation volume which is normally beyond permissible limits in case of sudden load or generation loss, or non-availability of power in the market which is not in the control of the HPSEBL. Besides the applicability of additional deviation charges, sustained deviation charges, etc. was discontinued by the Hon'ble CERC in the DSM Regulation Order dated 14.03.2022. The similar Regulations have also come into force in Himachal Pradesh w.e.f. 01.07.2024.

(ii) Administrative and General Expenses (AG Expenses)

The Commission has disallowed the A&G Expenses in respect of SI & Projects division of the HPSEBL and has approved the claim against A&G for Distribution Business without expenses for SI & Projects. However, there is a calculation mistake in final True-up of A&G Expenses for FY2022-23 as while calculating the A&G Expenses towards distribution business, the Commission has calculated the same as Rs. 51.19 Cr instead of Rs. 52.40 Cr (Rs. 48.63 Cr Distribution + 3.77 Cr ES/EHV) which is lower by Rs 1.21 Cr and needs to be corrected.

The Petitioner has further submitted that the impact on interest on working capital on account of the aforesaid Rs. 1.21 Cr shall be Rs. 0.01 Cr which may be allowed in the True-up for FY2022-23.

(iii) Non tariff Income.

The Petitioner has submitted that in the True-up Petition, the HPSEBL had prayed for retaining 20% of the pole rental charges for FY2022-23 in pursuance to the Regulation 5(4) of the HPERC (Treatment of Income of Other Business of Transmission and Distribution Licensee) (First Amendment) Regulations, 2023. Though, an amount of Rs 4.05 Cr has been booked as income from other business yet 20% of the income has not been allowed to the HPSEBL.

Further, the Petitioner has submitted that the Commission has not allowed the expenses (Employees Expenses, R&M Expenses and A&G Expenses) by S&I and Projects Division of the HPSEBL and on similar analogy, the income from said division amounting to Rs. 0.08 Cr ought not to be deducted from Non-Tariff Income since the HPSEBL had claimed both income as well as expenses. The Commission has, however, disallowed the expense but not deducted the income. Thus, income of Rs. 0.8 Crore may not be deducted from non-tariff income.

Further, the Petitioner at Table No. 2-26 in the True-up Petition, had proposed for deduction of Rs. 0.49 Cr booked under GL 78.867 by ALDC Office towards expenditure on account of Sale of RE Certificates and had prayed to adjust the same against the Non Tariff income since the income from Sale of RECs had been adjusted under Non Tariff Income and, therefore, the expenses for such sale should also be adjusted and net amount should be passed through to the consumers. However, the Commission has not discussed the same in the True-up and has disallowed the expenditure which may be reviewed and allowed.

It is also averred that the HPSEBL has also claimed the following deductions in Non Tariff income with proper justification during various replies but the same have been disallowed by the Commission and may be reviewed which are as under:-

Particulars	Amount(FY 2022-23)	Remarks/ Justification
Interest Income from Investments	0.05	Amount represents interest on mandatory margin to be maintained with the energy exchanges. The said item has been exclude from the non tariff income as working capital of the company is blocked for maintaining margin money for which no working capital is being allowed by the Commission. Hence any income on this account should be allowed to the petitioner. 1.1.1
Interest on Fixed Deposit	6.32	The amount represents interest accrued and due against the FDRs maintained as a lien with banks against PPAs of CPSUs/IPPs. The said item has been excluded from Non-Tariff Income in the True Up Petition as working capital of the Company is blocked for maintaining margin money for which no working capital is being allowed by the Commission. It is prayed to review the decision and allow the income to the petitioner.
Interest on Banks (Other than fixed Deposit)	1.04	This amount represents interest earned on saving accounts maintained with banks. The said item has been excluded by the petitioner in the True Up petition from non-Tariff income since working capital of the company is blocked for maintaining the margin money for which no such amount of working capital is being allowed by the Commission and therefore any income earned should have been passed to the petitioner. It is prayed to review and allow the petitioner to retain the income.
TOTAL	**7.41**	

(iv) Miscellaneous Written Off.

The HPSEBL had submitted the details of the Miscellaneous Written Off as per accounting practice in the True-up Petition for FY2022-23. Though, some of the claims have been allowed by the Commission, whereas, the following claims, as per actual as mentioned at Annexure-4 to the Petition have not been allowed and may be reviewed:-

a) Loss on sale of scrap: The Petitioner had claimed Rs. 1,41,151/- on account of unserviceable material (Lines and cable) and Rs. 12,22,586/-on account of unserviceable material at Chief Engineer (ES), Rs. 6,961/- on account of wrong upload initially on 31st March, 2016 as per the Statutory Auditor observations and Rs. 2,65,164/- on account of Aluminium and Iron scrap material already sold at the time of initial upload (booked as Income) but cost of the material could not be booked as expense earlier. Thus, Rs. 16,35,862/- on account of loss incurred on sale of material which either became unserviceable or the cost of material was wrongly booked/missed was claimed by the Petitioner in the True-up Petition but the same was not allowed by the Commission.

b) <u>Loss on sale of fixed assets</u>: The Petitioner had claimed Rs. 1.21 Cr citing that the Commission has already passed through the benefit of the sale proceeds as Non-Tariff Income and, therefore, the corresponding debit on account of sale of scrap or written off assets which includes the book value of the asset sold so that the actual profit or loss on sale of scrap can be treated accordingly in the tariff as it is not justifiable that entire sale proceeds of the scrap is passed through to the consumers and book value of these assets sold is not being adjusted thereof. However, the said claim of the Petitioner has not been allowed by the Commission.

B) **<u>True Up of FY2023-24</u>**

(i) <u>Power Purchase Cost -Disallowance of sustained DSM Charges</u>.

The Petitioner has submitted that the Commission has disallowed 50% of the sustained deviation charges in the provisional True-up of FY2023-24 without any provisions of Regulations unilaterally causing financial loss to HPSEBL.

The Petitioner has submitted that around 90% of the power availability of the HPSEBL is from hydro sources where the dependability of this generation is quite high on the weather variations which may result in under forced outages due to flood/silt even during peak months. During FY 2022-23, the availability of power from various sources remained fluctuating due to lesser snowfall in the catchment area and changing weather parameters on the one hand but on the other hand, during June, 2022, all-time high demand of 362 LUs in a day was seen. A demand growth of around 15% was noticed in June, 2022 as compared to previous year and the hydro generators were running at around 40-50% PLF only.

Similarly, due to natural calamities in July, 2023, availability from many of the generating stations having PPA with the HPSEBL reduced drastically. During the peak summer/monsoon months there were sudden outages of generating stations due to flood/trash, resulting in deviations of the HPSEBL from its schedule. Also, the HPSEBL owned 126 MW Larji HEP got submerged during the floods and remained un-available during FY2023-24. In such cases, the HPSEBL could take steps only after lapse of $7^{th}/8^{th}$ time block by arranging power from URS and RTM purchase and has no option for the intervening period.

Further, the HPSEBL has also submitted that out of around 2500 MW hydro availability with HPSEBL, around 2100 MW capacity is from IPPs and ISGS/BBMB/Shared Generation Projects where the scheduling of generation is with the NRLDC/BBMB/other States. As per the prevalent Regulations, generating stations are allowed numerous revisions and HPSEBL is left with limited options.

Besides the above, the purchase of power by the Open Access Consumers within the State is quite uncertain and as per the prevalent Regulations, these consumers are not charged for any over drawl but the same is treated as the energy availed from the HPSEBL. This results into the sudden change in the energy requirement by Open Access consumers from the HPSEBL.

The Petitioner has claimed that the data in respect of net schedule as provided by the HPSLDC through its website is also quite intermittent and there is latency in updation of schedules. It has also been noted that a number of revisions are missed at the HPSLDC website as compared to the revisions issued by the NRLDC. Further, there is huge difference in real time schedule as prepared by the HPSLDC and actual schedule as per the DSAs prepared and issued by the HPSLDC. During real time operations, the HPSEBL is trying to control its deviations to minimum possible, but such difference in deviations is noticed when the DSA is issued by the HPSLDC.

The Petitioner has also submitted that additional charges for deviation are also based on deviation volume which is normally beyond permissible limits in case of sudden loss on account of load and generation or non-availability of power in the market and is not in the control of the HPSEBL.

Besides the above, the Petitioner has also submitted that the applicability of additional deviation charges, sustained deviation charges, etc. was discontinued by the Hon'ble CERC in the DSM Regulations Order dated 14.03.2022. However, the same Regulations have come into force in Himachal Pradesh w.e.f. 01.07.2024. Due to this difference in Regulations, issued by Hon'ble CERC and the HPERC, the HPSEBL has claimed that it has paid Rs.22 Crore (approx.) as adjustment amount to the HPSLDC.

In view of above, the HPSEBL has submitted that since, the HPERC has not mentioned Additional deviation and Sustained deviation as penalty in HPERC (Deviation Settlement & Related Matters) Regulations, 2018 and amendment(s) thereof, the same may not be considered as penalty.

(ii) Non tariff Income

The Petitioner has submitted that in the True-up Petition, the HPSEBL had prayed to allow to retain 20% of the pole rental charges for FY2022-23 in pursuance to the Regulation 5(4) of the HPERC (Treatment of Income of Other Business of Transmission and

Distribution Licensee) (First Amendment) Regulations, 2023.An amount of Rs 4.05 Cr has been booked as income from other business and the submissions of the HPSEBL in the True-up Petition has although been acknowledged yet 20% of the income has not been allowed to HPSEBL. The Petitioner has prayed to allow an amount of Rs. 0.81 Cr in the True up of FY2023-24.

Further, the Petitioner has submitted that the Commission has not allowed the expenses (Employees Expenses, R&M Expenses and A&G Expenses) by S&I and Projects Division of the HPSEBL and on similar analogy, the income from this division amounting to Rs. 0.13 Cr ought not to be deducted from Non-Tariff Income since the HPSEBL had claimed both income as well as expenses. The Commission has, however, disallowed the expenses but not deducted the income.

Additionally, at Table No. 3-24 in the True-up Petition, the HPSEBL had proposed for deduction of Rs. 10.18 Cr which has been paid as GST and other fee booked, under Note No. 2.31-Finance Cost, under nomenclature Cost of raising Finance of the P&L

statement for the FY2023-24 against the sale of the RECs of Rs. 149.06 Cr during FY2023-24 which has been shown as income under Miscellaneous receipts and had prayed to adjust the same against the Non Tariff income since the income from Sale of REC had been adjusted under Non Tariff Income and, therefore, the expenses for such sale should also be adjusted. However, the Commission has not discussed the same in the True-up and has disallowed the expenditure which may be reviewed and allowed.

Besides the above, the HPSEBL had also claimed the following deductions in Non Tariff income with proper justification during various replies but the same have been disallowed by the Commission and may be reviewed:-

Particulars	**Amount(FY 2023-24)**	**Remarks**
Interest Income from Investments	0.05	Amount represents interest on mandatory margin to be maintained with the energy exchanges. The said item has been excluded from the Non Tariff income as working capital of the company is blocked for maintaining margin money for which no working capital is being allowed by the Commission. Hence any income on this

Particulars	Amount(FY 2023-24)	Remarks
		account should be allowed to the petitioner.
Interest on Fixed Deposit	6.27	The amount represents interest accrued and due against the FDRs maintained as a lien with banks against PPAs of CPSUs/IPPs. The said item has been excluded from Non-Tariff Income in the True Up Petition as working capital of the Company is blocked for maintaining margin money for which no working capital is being allowed by the Commission. It is prayed to review the decision and allow the income to the petitioner.
Interest on Banks (Other than fixed Deposit)	1.72	This amount represents interest earned on saving accounts maintained with banks. The said item has been excluded by the petitioner in the True Up petition from non-Tariff income since working capital of the company is blocked for maintaining the margin money for which no such amount of working capital is being allowed by the Commission and therefore any income earned should have been passed to the petitioner. It is prayed to review and allow the petitioner to retain the income.
TOTAL	**8.04**	

(iii) <u>Error in Carrying /Hold interest rate calculations</u>

The Petitioner has submitted that the interest rate on Carrying cost in Table No. 225 (Page 286) of Order dated 28.03.2025 has been taken as 11.84% for FY2024-25, whereas as per Regulation 17 of HPERC

(Multi Year Wheeling Tariff and Retail Supply Tariff) Regulations, 2023, the Carrying or Holding Cost on admissible amount ought to be at the Weighted Average one year Marginal Cost of Fund based Lending Rate (MCLR) prevailing during the concerned Year as declared by the State Bank of India from time to time , plus 150 basis points which work out to be 10.38%. Accordingly, the surplus/gap as calculated in Table No. 224 of the Order dated 28.03.2025, may be modified as under:-

Particulars	**FY 24**	**FY 25 (as per the Order dated 28.03.2025)**	**FY 25 (as per Actual interest rate)**
Opening Gap	-	182.71	182.71
Surplus/ (Gap) on account of True up of uncontrollable parameters for FY24 (Provisional True Up)	172.72		
Closing	172.72	182.71	182.71
Interest Rate for Carrying Cost	11.57%	**11.84%**	**10.38%**
Carrying Cost	9.99	21.63	18.97
Total (Gap)/Surplus	**182.71**	**204.34**	**201.68**

As per the HPSEBL, the above calculations are subject to final outcome of Appeal No. 892 of 2023 before Hon'ble APTEL regarding carrying cost.

<u>Determination of Tariff and ARR for FY2025-26</u>

(i) <u>Power Purchase Cost- Enhancement of Power Purchase quantum due to non consideration of ISTS losses for the winter deficit</u>.

The Petitioner has submitted that at Para No. 12.7.2 of the Order dated 28.03.2025, the Commission has mentioned the monthly demand and supply of the HPSEBL for FY2025-26. It is quite evident therein that the HPSEBL has 2730 MUs surplus in summer and 2908MUs deficit in winter at HP periphery and is required to dispose of the surplus in the form of banking or market sale. In order to meet the deficit, the HBSEBL will either receive back the banked energy or shall have to purchase the power from market. Therefore, the deficit of 2908MUs will be arranged from the ISTS network, as there is no alternative available within the State. To arrange the 2908MUs at HP periphery, the HPSEBL would be incurring ISTS losses of approximately 105MUs considering ISTS losses as 3.6%. Thus, the market purchase will effectively be more on account of the ISTS losses and it has been prayed to consider the same for FY2025-26.

(ii) Impact of Revenue Surplus of Generation Business

The Commission, in the Order dated 28.03.2025 at Clause Nos. 12.22.5 and 12.22.6 (Table Nos. 257, 258 & 259), has adjusted the revenue surplus of the Generation True-up for the 2nd Control Period FY12 to FY14 (3 years) determined vide Order dated 11.11.2021 and the True-up of 3rd Control Period of FY15 to FY19 (5 years) determined vide Order dated 26.02.2024 with the carrying cost/ holding cost as per the provisions of the HPERC(Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2011, as amended from time to time (applicable w.e.f. FY 12 to FY 24) and HPERC (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2024 (as applicable w.e.f. FY25 onwards).

The Petitioner has submitted that the computation of refund of excess amount with the interest has not been as per the provisions of applicable/relevant Regulations and the interest rates has not been taken as per the rates notified by SBI in respect of the Short Term Prime Lending rate, Base rate and MCLR resulting in excess amount of recovery from the generation business and adjustment/Credit to Distribution Business.

The Petitioner has also mentioned that it has filed an appeal against the levy of compound interest which is under consideration with the Hon'ble APTEL. The Petitioner has prayed that the adjustment of revenue may be amended to Rs. 163.73 Cr in the Table No. 257 and 258 of the Order dated 28.03.2025 after correction of the interest rates as under:-

Table R8: Carrying /Holding Cost for Generation Business-True Up 2nd Control Period (Part-I)

Particulars	**FY12**	**FY13**	**FY14**	**FY15**	**FY16**	**FY17**	**FY18**
Opening Balance	0.00	27.96	38.67	49.30	55.96	63.51	71.64
Addition	26.25	6.14	4.7				
Closing Balance	26.25	34.10	43.37	49.30	55.96	63.51	71.64
Average Gap/Surplus	13.13	31.03	41.02	49.30	55.96	63.51	71.64
Interest Rate	13%	14.75%	14.45%	13.50%	13.50%	12.80%	12.60%
Carrying Cost	1.71	4.58	5.93	6.66	7.55	8.13	9.03
Closing	**27.96**	**38.67**	**49.30**	**55.96**	**63.51**	**71.64**	**80.67**

Table R9: Carrying /Holding Cost for Generation Business-True Up 2nd Control Period (Part-II)

Particulars	**FY19**	**FY20**	**FY21**	**FY22**	**FY23**	**FY24**	**FY25**
Opening Balance	80.67	90.21	100.63	111.45	122.59	134.85	148.33
Addition							
Closing Balance	80.67	90.21	100.63	111.45	122.59	134.85	148.33

Average Gap/Surplus	80.67	90.21	100.63	111.45	122.59	134.85	148.33
Interest Rate	11.83%	11.55%	10.75%	10.00%	10.00%	10.00%	10.38%
Carrying Cost	9.54	10.42	10.82	11.14	12.26	13.48	15.40
Closing	**90.21**	**100.63**	**111.45**	**122.59**	**134.85**	**148.33**	**163.73**

Table R11: Carrying /Holding Cost for 3rd Control Period of Generation Business (Part-I)

Particulars	**FY15**	**FY16**	**FY17**	**FY18**	**FY19**
Opening Balance	0.00	19.14	19.13	25.36	25.03
Addition	17.93	-2.43	3.55	-3.31	-6.43
Closing Balance	17.93	16.71	22.68	22.05	18.60
Average Gap/Surplus	8.97	17.93	20.91	23.70	21.82
Interest Rate	13.50%	13.50%	12.80%	12.60%	11.83%
Carrying Cost	1.21	2.42	2.68	2.99	2.58
Closing	**19.14**	**19.13**	**25.36**	**25.03**	**21.18**

Table R12: Carrying /Holding Cost for 3rd Control Period of Generation Business (Part-2)

Particulars	**FY20**	**FY21**	**FY22**	**FY23**	**FY24**	**FY25**
Opening Balance	21.18	23.63	26.17	28.79	31.67	34.83
Addition						
Closing Balance	21.18	23.63	26.17	28.79	31.67	34.83
Average Gap/Surplus	21.18	23.63	26.17	28.79	31.67	34.83
Interest Rate	11.55%	10.75%	10.00%	10.00%	10.00%	10.38%
Carrying Cost	2.45	2.54	2.62	2.88	3.17	3.62
Closing	**23.63**	**26.17**	**28.79**	**31.67**	**34.83**	**38.45**

(iii) Errata in the Cross Subsidy for EHT Consumers for Short Term Open Access

The Petitioner has submitted that in Table No. 299 of the Order dated 28.03.2025 indicating the Cross Subsidy Surcharge for Short Term Open Access Consumers during Time of the Day under EHT, only “220 kV and above” has been mentioned, whereas, the Large Industrial Consumers are also released connection at 66 kV and 132 kV which needs to be incorporated in the table. The Petitioner has further submitted that the short form of Large Industrial Consumers at Table 299 and Table 298 has been inadvertently typed as “MIP” which may be corrected to “LIP”.

(iv) <u>Clarification on Directive No. 14.2.6</u>

In the Order dated 28.03.2025, the Commission has issued the following directive:-

> *“14.2.6 The Petitioner has submitted that it is not receiving the subsidy amount in advance from the GoHP as per the provisions of the Electricity Act, 2003, rather the amount is being received too late. Accordingly, the Petitioner has to arrange for working capital loan from the Banks/ Financial Institutions due to the delayed receipt of the GoHP subsidy amount. This additional working capital loan raised by the Petitioner attracts interest amount as well. Therefore, with a view to compensate the Petitioner on this account, the Commission decides that the Petitioner must levy interest on the delayed payment of subsidy to the GoHP at the rate of interest on working capital loan subject to True up. The Petitioner must during the truing up exercise submit to the Commission the detail of date wise subsidy amount received from the Govt. of HP and calculation of Interest on the delayed payment of subsidy for FY 2024-25.”*

To implement the directive, the Petitioner has sought the following clarifications:-

i) Whether amount payable to State Govt. i.e. ED/ CESS to be adjusted at the time of interest calculation.

ii) Whether to charge interest on delayed payment of subsidy for the FY 2024-25 as no such directive exists for the Tariff order for FY 2024-25.

(v) Request to maintain the old slabs in Domestic Category for disbursement of Subsidy by HP Government

The State Government has allowed the subsidy for the domestic consumers for FY2025-26 based on the old slabs. The Petitioner has been, accordingly, directed by the State Government to take up matter with the Commission for keeping the old Slabs for the purpose of allowing subsidy under various Slabs in respect of Domestic Category of consumers. However, this will not have any impact on the tariff approved by the Commission.

4. The Petition has been resisted by the Baddi, Barotiwala and Nalagarh Industries Association (BBNIA), the Consumer Representative, Jal Shakti Vibagh, Confederation of Indian Industries (CII), Parwanoo Industries Association (PIA) and Kala-Amb Chamber of Commerce and Industry (KACCI).

5. The BBNIA in its reply has averred that the Petition lacks new evidence or any legal infirmity in the earlier order and is not

maintainable. Further, the Petitioner has not brought any credible explanation to revise the Administrative & General (A&G) expenses which are controllable in nature and must be benchmarked against past performances and inflation indices. Further, the DSM Charges are incurred due to deviation from the approved schedules, often due to poor forecasting or grid discipline which are avoidable cost and the disallowance is consistent with the regulatory principles not rewarding the inefficiency.

Regarding review of non-tariff income for FY 2022-23 & 2023-24, it is averred that the Commission has rightly considered the actual and anticipated non-tariff income.

On review of miscellaneous write offs, it is averred that the write offs, if not prudently incurred or accounted with due diligence should not be passed through to the consumers and such claims need complete transparency and audit trail which is lacking.

Regarding carrying cost for FY 2023-24, it is averred that the same is not an automatic entitlement and should only be allowed when the delay is attributable to the Commission and not the entity.

On the aspect of review of Power Purchase Expenses for ARR FY 2025-26, it is averred that the review for a future purchase expenditure period is premature and outside the scope of Review

Petition. Regarding the carrying cost for the earlier control period (Generation Business), it is averred that it should be based on actual financial loss due to regulatory lag and not on theoretical assumptions and any approved carrying cost must be subject to prudence check and actual interest burden.

Regarding review of Cross-Subsidy Surcharge for EHT Open Access Consumers, it is averred that the Review Petition does not cite any computational error or new facts and the surcharge must be computed as per the National Tariff Policy and allowing revision would adversely affect the open access consumers and discourage competition.

On clarification on Clause 14.2.6 i.e. Interest on Late Payment of Subsidy, it is averred that the directive is clear and aligned with the provisions of Section 65 of the Electricity Act and any delay in subsidy disbursement must attract interest to prevent utility from passing on the burden to the consumers.

On the issue of review regarding the request to Maintain Old Slab for Subsidy Disbursement, it is averred that the same is a policy issue between the GoHP and the HPSEBL and is beyond the purview of the review under Section 94 of the Electricity Act.

6. The Consumer Representative in its reply has averred that the HPSEBL has also filed an appeal being Appeal No. 395 of 2024 before the Hon'ble APTEL against disallowance of certain expenses which is sub-judice and the same/ similar issue has been raised in the present Review Petition which is against the settled principles of law. It is averred that in case it is deemed necessary to consider the review by the Commission, the additional burden be not passed on to the consumers.

7. The Jal Shakti Vibagh in its reply has mentioned that in case the prayer made in the review is granted, the same shall be prejudicial to it as Jal Shakti Vibagh shall have a cumulative financial burden of about Rs. 170 Crore per annum. Further, the power supply for drinking water, sewerage and irrigation is a welfare activity, integral to Substantial Development Goal and profitability considerations must be secondary. The IDWPS consumers already subsidise the system and any further loading contravenes the trajectory of reducing cross-subsidies. According to it, the acceptance of the prayer of the Petitioner will compromise the Jal Shakti Vibagh's ability to run water supply and irrigation schemes and meet energy costs of sewage-treatment plants ordered by the NGT, exposing the State to contempt. Further, if the Commission

still deems additional recovery necessary, it should firstly, direct the GoHP to provide subsidy under Section 65 of the Act and secondly, ring-fence IDWPS from the proposed CSS. Also that all the outstanding energy dues issues can be addressed through a mutually agreed payment plan between the Jal Shakti Vibagh and the HPSEBL, rather than tariff escalation.

8. The CII, PIA and KACCI in its combined reply has averred that the Petitioner has failed to adhere to the Himachal Pradesh Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011 and 2023 regarding the submissions of accurate and auditable financial data and justification and despite numerous directives, there was a delay in submission of complete information. According to them, the true-up for FY 24 for uncontrollable parameters remained provisional for want of CAG audited accounts for FY 24. Similarly, the true-up for the controllable parameters for the 4th control period (FY 20- FY 24) was also deffered due to CAG audited accounts and as a result, several aspects have resulted in unreasonable claim amount by the Petitioner. Further, the fixed asset register was neither approved by the Board of Directors nor signed by the statutory auditors nor reconciled with the audited Balance Sheet. Further, the Petitioner has not separated audited

accounts for its different business wings despite explicit directions of the Commission. Also the Petitioner was unable to submit necessary detail for capital works and capitalisation, lacking commissioning certificates, physical/ financial completion certificates and reconciliation with audited accounts. Further capitalisation of works without prior approval and inadequate justification for time and cost overruns were also noted by the Commission.

9. Regarding Miscellaneous Written-off Expenses of Rs. 80.64 Crore for FY 23, it is averred that the same was disallowed by the Commission due to lack of regulatory provisions and insufficient justification. The loss on sale of scrap and fixed assets has been disallowed by the Commission due to lack of regulatory provisions and negligence on part of the Petitioner. Similarly, the disallowance in Stock Shortages, Pilferage, Obsolescence and Price Differentiation should not be passed on to the consumers and the Petitioner need to adopt and maintain prudent inventory management practices. The Infructuous Capital Expenditure of Rs. 1.97 Crore was disallowed by the Commission due to lack of detail and no regulatory provision for write-offs. On other charges like high deviation, it is averred that the same had occurred due to poor power purchase planning. With respect to high employee cost, it is

averred that despite directions, the expenses on such expenditure remained a concern and, as such, the Commission was constrained to cap the employee cost.

10. It is also averred that the Petitioner has consistently failed to meet up the T&D losses target and the underachievement is duly penalized as per the Regulations. Further, the Commission has highlighted the HPSEBL's inability to utilize its approved CAPEX raising concerns about potential fund mismanagement and the risk of Government of India (GoI) converting grants to loans. According to the Replying Respondent, the Return on Equity calculation was not reconciling with the approved closing balance of previous year and the Petitioner had been asked to reconcile the same with audited accounts. Regarding Non-tariff Income reporting, it is averred that there are discrepancies on reporting of the same and such disallowance has been made to avoid double deduction. On maintainability, it is averred that the Review Petitioner has also filed an Appeal before the Hon'ble APTEL being Appeal No. 395 of 2024 and cannot seek review on account of the same cause of action.

11. On merits, the contents of the Review Petition have been denied by reiterating the averments made by way of key observations (Preliminary submissions) that the final true-up for FY

23 is already done and, therefore, the review cannot be allowed. In so far as the true up for FY 23-24 is concerned, the Commission should entertain the true-up only if the same is not trued-up in future for the same and the opportunity for truing-up should be limited as per the Regulations. Further, there is an error in computation of Interest rate in carrying cost in Table 225 when compared with Regulation 17 of the HPERC (Multi Year Wheeling Tariff and Retail Supply Tariff) Regulations, 2023 and the contention of the Petitioner be prudently examined and taken up at the time of final true-up. Regarding determination of tariff for FY 25-26, it is averred that most of the contentions can be taken up at the time of true-up and there is no need for amending the tariff order.

12. In rejoinder, the contents of the replies have been denied and those of the Petition have been re-affirmed.

13. 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 28.03.2025 in Petition No. 156 of 2024 in respect of True-up for FY 2022-23 as claimed?

<u>Point No. 2</u>: Whether there are sufficient reasons for reviewing the Order dated 28.03.2025 in Petition No. 156 of 2024 in respect of True-up for FY 2023-24 as claimed?

<u>Point No. 3</u>: Whether there are sufficient reasons for reviewing the Order dated 28.03.2025 in Petition No. 156 of 2024 regarding Determination of Tariff and ARR for FY 2025-26 as claimed?

<u>Point No. 4</u>: Final Order

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

Point No. 1: Partly Yes.

Point No. 2: Partly Yes.

Point No. 3: Partly Yes.

Point No. 4: The Petition partly allowed per operative part of the Order.

<u>REASONS FOR FINDINGS</u>

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

15. It is well settled that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise

of power. The review cannot be treated like an appeal in disguise. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced at the time when the order was made. It may also be exercised where some mistake or error apparent on the face of the record is found but may not be exercised on the ground that the decision was erroneous on merits which is the domain of a court of appeal. While exercising the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. In this regard, reliance may be placed in *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715 wherein it is held as under:-

> ***"9.*** *Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise"."*

16. Similarly in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170 it has been held by the Hon'ble Supreme Court that the review proceedings are not by way of appeal and have to be strictly

confined to the scope and ambit of Order 47, Rule 1, CPC. Para 8 of the aforesaid law is reproduced as under:-

> ***"8.*** *It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389 : AIR 1979 SC 1047] , speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)*
>
> *"It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909] , there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."*

17. A similar view has been taken by the Hon'ble Supreme Court in Ram Sahu v. Vinod Kumar Rawat, (2021) 13 SCC 1.

18. In view of the above settled position of law, we now proceed to discuss each of the above three issues, separately on which the review has been sought as under :-

Issue No. 1 - True Up of FY2022-23

(i) Power Purchase Cost -Disallowance of sustained DSM Charges.

19. As per the Himachal Pradesh Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2018 (DSM Regulations, 2018), as amended from time to time, the DSM charges comprise of the following:

(a) Normal Deviation Charges

(b) Additional DSM Charges

(c) Additional charges for sustained deviation

(d) Adjustment amount

20. The DSM charges are computed based on frequency of the grid. A range of frequency is set for injection and drawl of power. However, beyond a certain limit of frequency, under injection/over drawl and over injection/under drawl of power is not allowed for market participants. Additional charges for sustained deviation are applicable for sudden change of drawl and these charges are levied to maintain grid discipline and security. A careful perusal of the

record shows that in the provisional True-up for FY2022-23 carried out vide order dated 15.03.2024 in Petition No. 14 of 2024 and Petition No. 15 of 2024, the Commission had disallowed 25% of the additional DSM charges whereas, at the time of final true up vide order dated 28.03.2025, the additional charges towards Sustained Deviation have been disallowed at the rate of 50%.

21. The Petitioner, in fact, has not correctly interpreted the order dated 28.03.2025 and has not appreciated that both the orders are different in nature. Though the Petitioner has emphasised that the HPERC Regulations in vogue do not provide for disallowing the DSM charges as pass through in the tariff but the Commission is of the view that the DSM as a power procurement source has never been considered by it in forecasting for meeting the demand of the consumers of the State. It is true that there will always be some deviation from the schedule and that is why the normal deviation charges, additional deviation charges and even the 50% of the sustained deviation charges have been approved. But, allowing the full amount of sustained deviation charges shall amount to promoting the inefficiency in the system. The Petitioner cannot run away from its prime responsibility to serve the consumers in the economical and cost efficient manner and also to maintain the grid

discipline at the same time. The Commission is of the firm view that the sustained deviation charges are disciplinary in nature and cannot be passed on to Consumers.

22. Actually, the Petitioner should have procured power from the sources approved by the Commission and if these sources approved by the Commission were not sufficient to meet the demand, the Petitioner could have arranged for sufficient capacity in advance instead of going for DSM purchases. Further, in case of exigency, the Petitioner can procure power from the power exchanges without violation of the DSM Mechanism. Furthermore, the Commission believes that some deviations will always occur in the system as mismatch happens in demand and supply. Therefore, the Commission has allowed normal DSM charges as well as additional charges. As a prudent measure, in order to maintain stable supply, the Petitioner could have undertaken proper power purchase planning. It is relevant to mention that for forecasting the demand, the HPSEBL had been directed in the past by the Commission to use better tools for the same to avoid deviation charges. As also recorded in the tariff order dated 28.03.2025, the Commission has observed that no serious steps have been taken by the HPSEBL in this regard. As mentioned above, the burden of

inefficiency on part of the Petitioner cannot be passed through in the Tariff. It is also relevant to mention that in view of the distress financial condition of the HPSEBL, the Commission has taken a lenient view by disallowing only 50% of additional charges towards sustained deviation.

23. Thus, the claim of the Petitioner regarding disallowance of sustained deviation is devoid of any merits and there is no error apparent on the face of record to this extent.

(ii) Administrative and General Expenses.

24. The Commission has considered the total A&G expenses as per audited accounts and thereafter the expenses related to the Generation Business were subtracted from the resulting figure. The Commission observed that the Business wing wise bifurcation (MS-Excel) submitted by the HPSEBL had a negative entry of (Rs. 0.80 Cr.) towards A&G expenses of S&I and Project wing. By including the above negative entry in total expenses, A&G expenses would be greater than the A&G expenses reflected in the Audited Accounts.

25. Thus, while proceeding with the True-up for FY2022-23, the following expenses were not considered:

- Cost related with project and S&I Division which was a negative entry of (Rs. 0.80 Cr.), so that the total expenses allowed do not go beyond the audited accounts.

- Rs. 0.47 Cr. under legal expenses were disallowed, as these expenses were interest expenses.
- Under Arbitration Charges Rs. 0.01 Cr. were disallowed, as these were pertaining to interest expenses.

26. The Commission has further observed that the detailed A&G cost submitted by the HPSEBL in the present Review Petition is not matching with the A&G expenses submitted in the final True-up Petition as under:-

Particulars	Petition	Approved in Trued-up	Review Petition
A&G Expenses towards Distribution business	51.49	51.19	52.40
Rental charges against smart metering project	17.77	17.77	17.77
Legal Charges	5.93	5.35	5.82
Arbitration Charges (booked under GL 78.862)	0.68	0.67	0.68
Statutory Dues payable (booked under GL 78.867)	0.25	0.25	0.25
Mis. Writ: Provisions for contingency		2.07	
Mis. Writ: Compensation for Injuries, death and damages		1.56	
Total A&G Expense	**76.12**	**78.86**	**76.92**

27. The A&G expenses approved by the Commission in the final true-up for FY 2022-23 are based on prudence check of element wise A&G expenses submitted by the HPSEBL in MS-Excel format. It is relevant to mention that the HPSEBL in the past has also been directed to submit business segment wise audited accounts or allocation statement depicting the expenses and revenue of the company into different business wings i.e. Distribution, ES,

Generation, Project and S&I wings duly approved by its Board of Directors or Statutory Auditor, which has not been submitted by the HPSEBL. Therefore, in the absence of proper justification, the Commission was not in a position to consider the negative entry under expenses relating to S&I and Project wings. The Petitioner therefore, has not been able to substantiate any error apparent on the face of record that A&G expenses have been wrongly disallowed.

(iii) Non tariff Income.

(a) Sharing of Pole Rental Charges:-

28. With respect to sharing of pole rental charges, the Commission observes that the Himachal Pradesh Electricity Regulatory Commission (Treatment of Income of Other Businesses of Transmission Licensees and Distribution Licensees) (First Amendment) Regulations, 2023 were notified in May, 2023. Thus, these Regulations are not applicable for sharing of income received from other business for the period prior to the notification of these Regulations i.e. before FY 2023-24.

29. Further, as the entire income was realized by the Petitioner prior to the notification of the above amendment in the Regulations and since the entries now being made are pure notional entries

without any real cash flows, the Commission has decided to pass through the entire income as received from the telecommunication company as non-tariff income without any sharing. Thus, there is no error apparent on the face of record under this head.

(b) Interest Income from Investments, Fixed Deposits and Banks (other than Fixed Deposits):-

30. With respect to other components namely, interest from investment, interest on fixed deposits and interest on other bank deposits, the Commission has considered income towards above-mentioned head under non-tariff income in accordance with the provisions of Regulation 25 of the HPERC MYT Regulations, 2011, as amended from time to time. The relevant extract of the said Regulations is as under:-

> ***"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 statutory investments;*
> *(c) Income from interest on contingency reserve investment;*

(d) Interest on advances to suppliers/contractors;
(e) Rental from staff quarters;
(f) Rental from contractors;
(g) Income from hire charges from contactors and others;
(h) Income from advertisements, etc.;
(i) Meter/metering equipment/service line rentals;
(j) Service charges;
(k) Consumer charges;
(l) Recovery for theft and pilferage of energy;
(m) Rebate availed on account of timely payment of bills;
(n) Miscellaneous receipts;
(o) Deferred Income from grant, subsidy, etc., as per Annual Accounts;
(p) Miscellaneous receipts;
(q) Excess found on physical verification;
(r) Prior period income."

31. A careful perusal of the record shows that these incomes have been considered under non-tariff income in the past years as well. Significantly, the Petitioner in the original Petition No. 156 of 2024 and the instant Review Petition has failed to justify as to why these items should not be considered as part of non-tariff income. The Petitioner has submitted that the HPSEBL has to maintain margin money with Banks, Power Exchanges and maintain FDRs with banks for PPAs of PSUs/ IPPs, for which a portion of working capital is kept blocked and, therefore, the interest income from these components should not be considered under non-tariff income. In this regard, the Commission is of the view that normative working capital has been allowed in accordance with the provisions of Regulation 32 of the HPERC MYT Regulations, 2011, as amended

from time to time. The relevant extract of the said Regulation 32 reads as under:-

> *"**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."*

32. In case the approved normative working capital was insufficient for the Petitioner to meet its daily cash flow needs, it could have approached the Commission in this regard, but no steps have been taken. Accordingly, based on the approach adopted in the past years in the tariff orders and above mentioned applicable Regulations, the Commission has rightly considered these income as Non-Tariff Income. Hence, no error apparent on the face of record has been substantiated in this regard warranting review.

(iv) Miscellaneous Written Off.

33. With respect to Miscellaneous written off, the Commission has deliberated the concerned issue in the Tariff Order for FY2025-26 in detail. Mere submission of proofs for actual incurrence of expenses

do not merit pass through in tariff. Based on the prudence check, only legitimate expenses have been allowed to be passed through in tariff by the Commission. Hence, there is no error apparent on the face of record under this head.

(v) Non-tariff income from S&I and Project Wings, expenditure of Rs. 0.49 Cr. on account of Sale of RE Certificates

34. With respect to income from S&I and Project wings, the Commission finds merit in the submissions made by the Petitioner. Accordingly, the amount of Rs 0.08 Crore on this account will be accounted for and adjusted at the time of True-up for FY2023-24.

35. With respect to expenditure of Rs. 0.49 Cr. on account of Sale of RE Certificate, the Commission observes that these expenses pertain to exchange fee (IEX and PXIL) and GST as applicable on issuance of RECs. Therefore, the amount of Rs. 0.49 Cr. falls under expenses and not under income. This discrepancy had occurred because the HPSEBL had not reflected these amounts as expenses. Also, the HPERC MYT Regulations do not contain any provisions for consideration of net income. In fact, expenses and income are required to be booked separately in the audited accounts. Since, the final true up for the year 2023-24 is yet to be

done by the Commission, the Commission will consider these expenses at the time of final True-up for FY2023-24.

36. In view of the above, the Petitioner has not been able to substantiate that there is any error apparent on the face of record, in so far as disallowance of sustained DSM charges, AG expenses, Miscellaneous written off and non tariff income qua sharing pole rental charges, interest income and working capital are concerned, warranting review.

37. However, the Petitioner has substantiated that there is error apparent on the face of record regarding non-tariff income qua amount of Rs. 0.08 Crore in respect of income from S&I Projects, expenditure of Rs. 0.49 Crore on account of RECs which will be considered at the time of final true up for FY 2023-24. Point No. 1 is accordingly decided partly in favour of the Petitioner and partly against it.

Issue No. 2: True Up of FY2023-24

<u>(i) Power Purchase Cost -Disallowance of sustained DSM Charges.</u>

38. As per the Himachal Pradesh Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters)

Regulations, 2018 (DSM Regulations, 2018), as amended from time to time, the DSM charges comprise of the following:

(a) Normal Deviation Charges

(b) Additional DSM Charges

(c) Additional charges for sustained deviation

(d) Adjustment amount

39. The DSM charges are computed based on frequency of the grid. A range of frequency is set for injection and drawl of power. However, beyond a certain limit of frequency, under injection/over drawl and over injection/under drawl of power is not allowed for market participants. Additional charges for sustained deviation are applicable for sudden change of drawl and these charges are levied to maintain grid discipline and security. A careful perusal of the record shows that in the provisional True-up for FY2023-24 carried out vide order dated 28.03.2025 in Petition No. 156 of 2024, the additional charges towards Sustained Deviation have been disallowed at the rate of 50%.

40. Though the Petitioner has emphasised that the HPERC Regulations in vogue do not provide for disallowing the DSM charges as pass through in the tariff but the Commission is of the view that the DSM as a power procurement source has never been

considered by it in forecasting for meeting the demand of the consumers of the State. It is true that there will always be some deviation from the schedule and that is why the normal deviation charges, additional deviation charges and even the 50% of the sustained deviation charges have been approved. But, allowing the full amount of sustained deviation charges shall amount to promoting the inefficiency in the system. The Petitioner cannot run away from its prime responsibility to serve the consumers in the economical and cost efficient manner and also to maintain the grid discipline at the same time. The Commission is of the firm view that the sustained deviation charges are disciplinary in nature and cannot be passed on to Consumers.

41. Actually, the Petitioner should have procured power from the sources approved by the Commission and if these sources approved by the Commission were not sufficient to meet the demand, the Petitioner could have arranged for sufficient capacity in advance instead of going for DSM purchases. Further, in case of exigency, the Petitioner can procure power from the power exchanges without violation of the DSM Mechanism. Furthermore, the Commission believes that some deviations will always occur in the system as mismatch happens in demand and supply. Therefore,

the Commission has allowed normal DSM charges as well as additional charges. As a prudent measure, in order to maintain stable supply, the Petitioner could have undertaken proper power purchase planning. It is relevant to mention that for forecasting the demand, the HPSEBL had been directed in the past by the Commission to use better tools for the same to avoid deviation charges. As also recorded in the tariff order dated 28.03.2025, the Commission has observed that no serious steps have been taken by the HPSEBL in this regard. As mentioned above, the burden of inefficiency on part of the Petitioner cannot be passed through in the Tariff. It is also relevant to mention that in view of the distress financial condition of the HPSEBL, the Commission has taken a lenient view by disallowing only 50% of additional charges towards sustained deviation.

42. Thus, the claim of the Petitioner regarding disallowance of sustained deviation is devoid of any merits and there is no error apparent on the face of record to this extent.

<u>(ii) Non-tariff Income.</u>

(A) Sharing of Pole Rental Charges:-

43. With respect to sharing of pole rental charges, the Commission observes that the Himachal Pradesh Electricity

Regulatory Commission (Treatment of Income of Other Businesses of Transmission Licensees and Distribution Licensees) (First Amendment) Regulations, 2023 were notified in May, 2023. Thus, these Regulations are not applicable for sharing of income received from other business for the period prior to the notification of these Regulations i.e. before FY 2023-24.

44. Further, as the entire income was realized by the Petitioner prior to the notification of the above amendment in the Regulations and since the entries now being made are pure notional entries without any real cash flows, the Commission has decided to pass through the entire income as received from the telecommunication company as non-tariff income without any sharing. Thus, there is no error apparent on the face of record under this head.

(B) Interest Income from Investments, Fixed Deposits and Banks (other than Fixed Deposits):-

45. With respect to other components namely, interest from investment, interest on fixed deposit and interest on other bank deposits, the Commission considered income towards above-mentioned head under non-tariff income in accordance with the provision of Regulation 25 of HPERC MYT Regulations, 2011 as

amended from time to time. The relevant extract of the said Regulations reads as under:-

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

46. A careful perusal of the record shows that these incomes have been considered under non-tariff income in the past years as well. Significantly, the Petitioner in the original Petition No. 156 of 2024

and the instant Review Petition has failed to justify as to why these items should not be considered as part of non-tariff income. Though, the Petitioner has submitted that the HPSEBL has to maintain margin money with Banks, Power Exchanges and maintain FDRs with banks for PPA of PSUs/ IPPs, for which a portion of working capital is kept blocked, and therefore, interest income from these components should not be considered under non-tariff income. In this regard, the Commission is of the view that normative working capital has been allowed in accordance with the provisions of Regulation 32 of the HPERC MYT Regulations, 2011, as amended from time to time. The relevant extract of the said Regulation 32 reads as under:-

> ***"32. Working Capital for Retail Supply Business.-*** *The Commission shall calculate the working capital requirement for the wheeling business containing the following components:*
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> *(a) O&M expenses for one month;*
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> *(b) receivables for two months of revenue from sale of electricity;*
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> *(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."*

47. In case the approved normative working capital was in-sufficient for the Petitioner to meet its daily cash flow needs, it could have approached the Commission in this regard, but no efforts have

been taken. Accordingly, based on the approach adopted in the past years tariff orders and above mentioned applicable Regulations, the Commission has rightly considered these income as Non-Tariff Income. Hence, the claim of the Petitioner is devoid of any merits warranting review.

(iii) Non-tariff income from S&I and Project Wings, expenditure of Rs. 10.18 Cr. on account of Sale of RE Certificates

48. With respect to income from S&I and Project wings, the Commission finds merit in the submissions made by the Petitioner. Accordingly, the amount of Rs 0.13 Crore on this account will be accounted for and adjusted at the time of final True-up for FY2023-24.

49. With respect to expenditure of Rs. 10.18 Cr. on account of Sale of RE Certificate, the Commission observes that these expenses pertain to exchange fee (IEX and PXIL) and GST as applicable on issuance of RECs. Therefore, the amount of Rs. 10.18 Cr. falls under expenses and not under income. This discrepancy had occurred because the HPSEBL had not reflected these amounts as expenses. Also, the HPERC MYT Regulations do not contain any provisions for consideration of net income. In fact, expenses and income are required to be booked separately in the audited

accounts. Since, the final true up for the year 2023-24 is yet to be done by the Commission, the Commission will consider these expenses at the time of True-up for FY2023-24.

(iv) Error in Carrying /Hold interest rate calculations.

50. The Commission finds merit in the submissions of the HPSEBL as there is an error apparent on the face of record in the calculation which shall be considered during final true up exercise.

51. Also, as discussed in the preceding paras, there are some other parameters which need to be reviewed in the coming tariff proceedings. Thus, the rate of carrying cost along with other components will be reviewed and adjusted at the time of proceedings for determination of ARR/Tariff for FY2026-27.

52. In view of the above, the Petitioner has not been able to substantiate that there is any error apparent on the face of record, in so far as disallowance of sustained DSM charges, non tariff income qua sharing pole rental charges, interest income and working capital are concerned, warranting review.

53. However, the Petitioner has substantiated that there is error apparent on the face of record regarding non-tariff income qua amount of Rs. 0.13 Crore in respect of income from S&I Projects, expenditure of Rs. 10.18 Crore on account of RECs, error in

calculation and few other parameters as discussed in preceding paragraphs no. 48, 49, 50 and 51 which will be considered at the time of final true up for the FY 2023-24. Point No. 2 is accordingly decided partly in favour of the Petitioner and partly against it.

Issue No. 3: Determination of Tariff and ARR for FY2025-26

(i) Power Purchase Cost- Enhancement of Power Purchase quantum due to non-consideration of ISTS losses for the winter deficit.

54. The Commission observes that the monthly demand supply position has already been computed considering ISTS loss level shown in the Table 242 of the Tariff Order for FY 2025-26.

55. Further at Para 12.7.3 of the Tariff Order for FY2025-26, it has been explicitly mentioned that any variation in Power purchased from open market will be addressed at time of True up for FY2025-26 based on the actual and prudence check by the Commission.

(ii) Impact of Revenue Surplus of Generation Business.

56. The Commission observes that in the Tariff Order for FY2025-26, the Carrying Cost has been considered as per the revenue surplus determined by the Commission in the Generation Tariff Orders dated 26.02.2024 in Petition No. 40 of 2023 and 11.11.2021 in Petition No. 96 of 2020 for which no review has been sought. The

Commission has therefore taken these figures from said orders, the authenticity of which cannot be gone into in this Petition as the Petitioner under the garb of review of Tariff Order dated 28.03.2025 for its distribution business cannot agitate the above orders which is not legally tenable.

57. Hence, the claim of the Petitioner is devoid of any merit as there is no error apparent on the face of record as far as Tariff Order dated 28.03.2025 is concerned.

(iii) Errata in the Cross Subsidy for EHT Consumers for Short Term Open Access

58. The Commission finds merit in the submissions of the Petitioner. Certain typographical errors seem to have crept into the Order. Accordingly, the Commission directs that the words and symbols, namely “Large Industrial Supply (MIP)” appearing in Table 298 and Table 299 in Tariff Order dated 28.03.2025 may be read as “Large Industrial Supply (LIP)”.

59. Further, the words and number, namely “220kV and above” appearing in Table 299 in Tariff Order dated 28.03.2025 may be read as “66kV and above”.

<u>(iv) Clarification on Directive No. 14.2.6.</u>

60. The Commission feels that the petitioner is seeking a clarification in respect of the Directive No. 14.2.6 given under Tariff Order dated 28.03.2025. The HPSEBL have to make compliance in respect of Directive No. 14.2.6. as per the Electricity Act, 2003 and there is no error apparent on record in the impugned order.

<u>(v) Request to maintain the old slabs in Domestic Category for disbursement of Subsidy by HP Government.</u>

61. As far as accounting of subsidy being provided by the State Government to the domestic Consumers of the State is concerned, the same needs to be addressed by the HPSEBL at its own end and there is no error apparent on the face of record.

62. In view of the above, the Petitioner has not been able to substantiate that there is any error apparent on the face of record, in so far as disallowance of Power Purchase Cost- Enhancement of Power Purchase Quantum due to non-consideration of ISTS losses for the winter deficit, Impact of Revenue Surplus of Generation Business, Clarification on Directive No. 14.2.6 and Maintenance of Old slabs in Domestic Category for disbursement of subsidy by HP Government are concerned. However, the Petitioner has substantiated on record that there is an error apparent on the face of

record regarding errata in the Cross Subsidy for EHT Consumers for Short Term Open Access as “Large Industrial Supply (MIP)” appearing in Table No. 298 and 299 is required to be read as “Large Industrial Supply (LIP)” and words and number namely “220 kV and above” appearing in Table 299 in tariff order dated 28.03.2025 are required to be read as “66 kV and above”. Point No. 3 is accordingly decided partly in favour of the Petitioner and partly against it.

FINAL ORDER

63. In view of the above discussions and findings, the Review Petition partly succeeds and allowed partly.

64. The Petitioner has not been able to substantiate that there is any error apparent on the face of record, in so far as disallowance of Power Purchase Cost- Enhancement of Power Purchase Quantum due to non-consideration of ISTS losses for the winter deficit, Impact of Revenue Surplus of Generation Business, Clarification on Directive No. 14.2.6 and Maintenance of Old slabs in Domestic Category for disbursement of subsidy by HP Government are concerned.

65. However, there is an error apparent on the face of record regarding errata in the Cross Subsidy for EHT Consumers for Short Term Open Access as “Large Industrial Supply (MIP)” appearing in

Table No. 298 and 299 is ordered to be read as “Large Industrial Supply (LIP)” and words and number namely “220 kV and above” appearing in Table 299 in tariff order dated 28.03.2025 are ordered to be read as “66 kV and above”.

66. Since, the final true up exercise is yet to be done, any other error will be considered at the time of final true up exercise.

67. The Review Petition is accordingly disposed off.

68. The pending applications, if any, are also dismissed.

The file after needful be consigned to records.

Announced
27.10.2025

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