The HPPTCL Versus the HPSEBL

Review Petition No.206 of 2025

18.11.2025

Present: Sh. Vikas Chauhan, Ld. Counsel for the Petitioner.
Sh. Sumit Dhiman, Authorized Representative for the Respondent alongwith Sh. Mandeep Singh, Chief Engineer (System Operation).

DAILY ORDER

This order would dispose of an application filed under Regulation 75 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 read with Order 6 Rule 17 of the Code of Civil Procedure for amendment of the Review Petition that post filing the Review Petition, it was gathered that the terms and conditions of the loan agreement, project agreement and On-lending agreement and provisions of Tariff Regulations were inadvertently skipped from the averments in the Review Petition which have direct bearing on the Petition. Therefore, it is necessary to amend the Review Petition for completion of facts and adjudication of the matter.

Therefore, after para 8.40 under heading (a) ADB Loan, the following paras are sought to be inserted by adding:-

> *"8.40.01 The review of the Order dated 22.01.2025 has been sought on account of the error apparent on the fact of the record, in terms of the following:*
>
> *That, the Hon'ble HERC vide its order dated 22.01.2025 in Petition No. 30/2024 has held vide Paras:*
>
> *"Para 5.6.5.23 As per the terms and conditions of the loan, 75% of the total project cost is funded by the Asian Development Bank and the remaining 25% would be available as Equity.*

Subsequently, the GoHP has amended the terms and conditions of the financial assistance for extending it to the HPPTCL. While the entire multilateral funds were received by the State in the ratio of 90% grant and 10% loan from the Govt. of India but the same was extended by GoHP to the Petitioner as loan carrying interest rate of 10% per annum.

Para 5.6.5.24 The Commission, in its previous Orders, had directed the Petitioner to re-negotiate with GoHP and align the terms and conditions of the Loan Agreements in line with the tripartite agreement among Govt. of HP, ADB and HPPTCL. In compliance, the Petitioner has provided a GoHP letter dated 04.03.2023 where the GoHP has conveyed approval for restructuring of the ADB loan as 80% of disbursed loan to be converted into interest free loan, 10% of disbursed loan to be kept as interest bearing loan @10% and remaining 10% of disbursed loan to be converted to equity. It is observed that as per the GoHP letter, while partial relief has been provided to the consumers but relaxation of interest on 80% of the loan amount, the entire terms and conditions have not been adopted.

Para 5.6.5.25 The Commission has provisionally considered the capital availed from the GoP under the ADB scheme as 90% grant and 10% debt. Further, after reducing such amount of grant from the total approved capital cost, the Commission has considered debt:equity ratio as 70% debt and 30% equity for the balance amount in line with <u>Regulation 31(2)(b) of the HPERC Tariff Regulations, 2023</u> which specify the following: "(b) the debt:equity ratio shall be considered in accordance with Regulation 32, after deducting the amount of financial support received;

Para 5.6.5.26 Based on this restructuring, the Commission has evaluated 67.5% of the total funding as a grant (i.e., 90% of 75%), with the balance classified in a 70:30 debt-equity structure.

Para 7.6.2 In its previous Orders, the Commission had directed the Petitioner to renegotiate the terms of the loan with GoHP to align them with the tripartite agreement between the Government of Himachal Pradesh, ADB and HPPTCL. In response, the Petitioner submitted that GoHP, through a letter dated 04.03.2023, approved the restructuring of the ADB loan. As per this restructuring, 80% of the disbursed loan would be *converted into an interest-free loan, 10% would remain as an interest-bearing loan at 10%, and the remaining 10% would be converted into equity. While the letter from GoHP provides some relief by converting the majority of the loan into an interest-free amount, but the complete terms and conditions, as outlined in the tripartite agreement, have not been fully implemented. This has led to additional equity requirements for the project. The Commission is of the view that the GoHP cannot use the grant money given by the GoI to GoHP for earning any profit/ return on this capital. This grant has been given to the HP, being a special category State and the hardship being faced by the people of the State due to difficult terrain etc. The Commission believes that the debt-equity ratio established at the time of funding each scheme should be maintained, reflecting the special category status of the State."*

That the said observation/ order of the Hon'ble HPERC is in complete variance to the HERC Tariff Regulations, 2023 for the reason that the Regulation 30 (1) and 30(2) (b) only refers to the "Consumer Contribution, Deposit Work, Grant and Capital Subsidy". Therefore, the funds as received by the HPPTCL from the Government of H.P as Loan amount in terms of the On-Lending Agreements [dated 20.04.2012 at page 451 to 453 of the Review Petition, 03.12.2014 at page 454 to 456 of the Review Petition & 04.07.2024 at page 458 to 467 of the Review Petition-all these agreements are attached collectively at Annexure-9] executed between the Govt. Of H.P & the HPPTCL shall not fall under the said Regulation 30(1) and 30(2)(b) <u>[wrongly stated as Regulation 31(2)(b) in Para 5.6.5.25 of the impugned order dated 22.01.2025 of the Hon'ble HPERC]</u> as it states "the debt to equity ratio shall be considered in accordance with Regulation 31, after deducting the amount of financial support received;". Meaning thereby in the given case of HPPTCL the Loan amount received from the GoHP should not have had been deducted by the Hon'ble Commission while considering the debt to equity ratio in accordance with the Regulation 31 for the purposes of determination of the tariff. Therefore, the order of the Hon'ble Commission treating the Loan received by HPPTCL from the Govt. of H.P as grant is in divergence to its own regulations which nowhere allows the HPERC to treat the Loan amount as a grant and that too in absence of any such regulation in the said regard.

8.40.02 The Hon'ble Commission vide is order dated 22.01.2025 has erred to not take into account the terms of the initial On-Lending Agreements) executed [dated 20.04.2012 at page 451 to 453 of the Review Petition, 03.12.2014 at page 454 to 456 of the Review Petition - all these agreements are attached collectively at Annexure-9] between the GoHP & HPPTCL and also the amended On-Lending Agreement dated 04.07.2024, the copy whereof is already attached collectively at Annexure-9, specifically at page 458 to 467 of the Review Petition.

The initial On-Lending Agreements) dated 20.04.2012 & 03.12.2014 specifically stipulates the following terms & conditions: -

"3. The second party hereby agrees that:-

i) Rate of Interest shall be 10% per annum for all disbursements.

ii) Interest on 10% of the total disbursed amount will start immediately from the date of disbursement which will be payable by second party to the First Party annually.

iii)The Second Party will be given a grace period of 5 years in case of interest on the 90% of the total disbursed amount. Interest on this amount will start immediately at the end of 5th year which will be payable annually thereafter:

iv) Principal repayment will be made in 15 equal annual installments with a moratorium of 5 years."

Further, the restructured On-Lending Agreements) specifically stipulates as under:-

-"The second party hereby agreed that:-

i. Rate of Interest shall be 10% per annum for 10% of all disbursements.

ii. Interest on 10% of total disbursed amount shall start immediately from the date of disbursement which will be payable by HPPTCL to the GoHP.

iii. 10% of all disbursement shall be infused as equity by GoHP.

iv. 80% of all disbursement shall be interest free loan.

v. Principal repayment for 90% of total disbursed amount will be made in 15 equal annual instalments with a moratorium period of 5 years.

vi. The interest will be repaid as due in January of each financial year. The amount of the interest will be calculated on the above rate and terms up to last day of the preceding month in which the payment is due i.e. 31st December."

8.40.03 The Hon'ble Commission also erred to not take into

Consideration the terms and conditions of the Loan Agreements) executed between the GoI and the ADB more specifically Article III - Use of Proceeds of the Loan under Section 3.01 (b) which is as under:

> *"Subject to the provisions of the FFA, the Borrower shall cause the State to make the proceeds of the Loan available to HPPTCL under an Onlending Agreement on terms and conditions mutually acceptable to ADB. The Borrower shall submit, or cause the State to Submit, the Onlending Agreement to ADB within one month from the Effective Date."*

8.40.04 The Hon'ble Commission again erred to not acknowledge the terms of the Project Agreements) executed between the ADB on the one Part and the State of H.P & HPPTCL on the other part, wherein the terms categorically state that the loan be made available to the State and HPPTCL and the same agree to undertake certain obligations towards the ADB as mentioned in the said Project Agreement(s). Moreso, the Clause 2.13 & 2.14 categorically stated:

"Section 2.13 Except as ADB may otherwise agree, the State and HPPTCL shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the project.

Section 2.14 Except as ADB and the Borrower may otherwise agree, the State and HPPTCL shall duly perform all their obligations under the Onlending Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Onlending Agreement."

The copy of ADB Project Agreements) dated 15.12.2011, 29.09.2014 and 16.11.2018 are annexed as Annexure 11/A (Colly) respectively for the kind perusal of this Hon'ble Commission.

8.40.05 That the impugned order dated 22.01.2025 passed by the Hon'ble Commission is in complete variance to the material on record as well as the "HPERC (Terms and Conditions for Determination of Transmission Tariff Regulations, 2023 as amended upto date, the Onlending Agreements), Loan Agreements) and the Project Agreements). Keeping into consideration the above, there was no occasion for the Hon'ble Commission to treat the funds as received by the HPPTCL as grant instead of a Loan.

Further after para 8.2 under heading (b) World Bank Loan, the following paras is sought to be inserted by adding:-

(B) After Para 8.2 under heading (b) World Bank Loan, the following paras are to be added:

8.2.01 The review of the Order dated 22.01.2025 has been sought on account of the error apparent on the face of the record, in terms of the following:

That, the Hon'ble HER vide its order dated 22.01.2025 in Petition No. 30/2024 has held vide Paras:

"Para 5.6.5.4 : The Commission is of the firm view that the GoHP cannot change the status of Grant into equity as the GoHP has received 90% of the Capital as grant from the GoI since Himachal Pradesh is a special category State. Therefore, for the purpose of assessing the funding pattern with respect to schemes funded by the World Bank, the Commission after reducing the amount of grant from the total approved capital cost, has considered debt:equity ratio as 70% debt and 30% equity for the balance amount in line with Regulation 31(2)(b) of the HPERC Tariff Regulations, 2023 which specify the following:

"(b) the debt:equity ratio shall be considered in accordance with Regulation 32, after deducting the amount of financial support received;

Para 5.6.5.5: Based on the said regulation, the Commission has evaluated 72% of the total funding as a grant (i.e., 90% of 80%). The remaining project cost has been structured as a typical financing mix, with 70% funded through debt and 30% through equity contributions."

That the said observation/order of the Hon'ble HERC is in complete variance to the HERC Tariff Regulations, 2023 for the reason that the Regulation 30 (1) and 30(2)(b) only refers to the "Consumer Contribution, Deposit Work, Grant and Capital Subsidy". Therefore, the funds as received by the HPPTCL from the Government of H.P in terms of Loan Agreement (Annexure-12); Program Agreement (Annexure-13) and Letter dated 20.06.2022 (Annexure-14) shall not fall under the said Regulation 30(1) and 30(2)(b)[wrongly stated as Regulation 31(2)(b) in Para 5.6.5.25 of the impugned order dated 22.01.2025 of the Hon'ble HPERC] as it states "the debt to equity ratio shall be considered in accordance with Regulation 31, after deducting the amount of financial support received;". Meaning thereby in the given case of HPPTCL the Loan amount received from the GoHP should not have had been deducted by the Hon'ble Commission while considering the debt to equity ratio in accordance with the Regulation 31 for the purposes of determination of the tariff. Therefore, the order of the Hon'ble Commission treating the Loan received by HPPTCL from the

Govt. Of H.P as grant is in divergence to its own regulations which nowhere allows the HER to treat the Loan amount as a grant and that too in absence of any such regulation in the said regard.

Further after para 8.5 under heading (c) KfW Loan, the following paras is sought to be inserted by adding:-

(C) After Para 8.5 under heading c) KJW Loan, the following paras are to be added:
8.5.01 It is submitted that for the preparation of DPR of GEC-I Schemes, funding was considered on estimated basis i.e. 40:20:40 (Debt:Equity:Grant) wherein actual funding of the project depends upon the project execution and actual fund available from various sources which may not be necessarily always in line with DPR. Further it is submitted that under GEC-I Scheme, as per MNRE guidelines, HPPTCL is eligible for grant for 11 Nos. transmission assets on.. the basis of criteria that eligible grant shall be 40% of minimum of DPR cost or Award cost (maximum ceiling up to 110% of original award cost) and not as envisaged in the DPR. The total grant to HPPTCL under GEC-I scheme, is on the basis of said criteria Pahle thus leading to variation w.r.t. that had been envisaged in the DPR. Further since the grant is not received as per requirement of project execution and thus there is variation of grant usage in each transmission asset against eligibility criteria. However consolidated grant under GEC-I Scheme is being utilized towards the above-mentioned 11 Nos. transmission assets only which form the part of intrastate transmission system of HPPTCL and petitions for the same shall be filed/ or have been filed before Hon'ble commission for tariff determination and approval. Thus, the grant is to be allowed on an actual utilization basis at the time of petition filing, rather than as per the approach adopted in earlier tariff orders, as said approach of Hon'ble Commission is resulting loss of capitalization/ARR (Aggregate Revenue Requirement) due to reduction in the capital cost.
It is further submitted that the grant actually utilized by HPPTCL in respect of a particular GEC-I Scheme may differ from the eligible grant, as part of the grant has been deployed across other GEC-1 funded assets in the larger public interest. Accordingly, the actually utilized grant for each of the GEC-I Schemes may be considered, noting that all these transmission assets form part of HPPTCL's intra-state transmission system and the approved ARR towards the same is to be shared among intra-state beneficiaries in accordance with Regulation 45 of the HPERC Transmission Regulations, 2023.

8.5.02 Further, the review of the Order dated 22.01.2025 has been sought on account of the error apparent on the face of the record, in terms of the following:

That, the Hon'ble HERC vide its order dated 22.01.2025 in Petition No. 30/2024 has held vide Paras:

"Para 5.6.5.30 The KfW funding is classified as an externally aided project, which is similar to the other multilateral funding agencies like ADB etc as discussed above in this Order. The funds are made available through GoI, which are first routed to the GoHP and thereafter to the Petitioner. HP being a special category State, 90% of the funding is available as grant and the remaining 10% as loan to the State Government. However, the GoHP has extended the grant component also as loan to the Petitioner. The Commission is of the firm view that the GoHP cannot change the funding pattern as sourced from GoI. Accordingly, for computing the funding of schemes financed through KfW, the Commission has considered the grant component to be 76% of the total project cost, comprising of 40% grant from NCEF and the remaining 36% (90% of the 40% of KfW Funds, The treatment of the remaining 24% of the funding has been considered as per the regulatory guideline of a 70:30 debt:equity ratio, with 70% raised as debt and 30% contributed as equity:"

That the said observation/order of the Hon'ble HPERC is in complete variance to the HPERC Tariff Regulations, 2023 for the reason that the Regulation 30 (1) and 30(2)(b) only refers to the "Consumer Contribution, Deposit Work, Grant and Capital Subsidy". Therefore, the funds as received by the HPPTCL from the Government of H.P in terms of Loan Agreement dated 05.10.2015 (Annexure-15); Project Agreement dated 05.10.2015 (Annexure-16); On-Lending Agreement dated 26.11.2016 (Annexure-17); Separate Agreement to the Project Agreement dated 05.10.2015 (Annexure-17) shall not fall under the said Regulation 30(1) and 30(2)(b) /wrongly stated as Regulation 31(2)(b) in Para 5.6.5.25 of the impugned order dated 22.01.2025 of the Hon'ble SHPERC as it states "the debt to equity ratio shall be considered in accordance with Regulation 31, after deducting the amount of financial support received;" Meaning thereby in the given case of HPPTCL the amount of grant received from MNRE should only have had been deducted by the Hon'ble Commission while considering the debt to equity ratio in accordance with the Regulation 31 for the purposes of determination of the tariff and not the loan which HPPTCL has received from GoHP in consonance to agreements at Annexure-15, Annexure-16 and Annexure-17. Therefore, the order of the Hon'ble Commission treating the Loan received by HPPTCL from the Govt. Of H.P as grant is in divergence to its *own regulations which nowhere allows the HPERC to treat the Loan amount as a grant and that too in absence of any such regulation in the said regard. As per HPERC Tariff Regulations, 2023 Regulation 30(2)(b) the debt:equity ratio should be considered in accordance with Regulation 31 after deducting the amount of financial support received.*

It is further humbly submitted that financial support received in the present case is grant from MNRE.

It is averred that the proposed amendment neither sets up a new case nor the proposed amendments were intentionally left out and are necessary for adjudication of the controversy in the matter.

The application has been resisted by filing reply that the Petitioner intends to introduce new documents at a very advanced stage of pleadings, therefore, the application is required to be rejected being without any valid or sufficient reasons as to why the same were not introduced earlier. Also averred that the scope of Review Petition is very limited to rectify the errors apparent on the face of the record on discovery of new and important matter of evidence which despite due diligence could not have been produced earlier but in the present case, the HPPTCL has sought to produce the documents which were in its possession and knowledge at the time of filing of the Review Petition. Therefore, the amendment does not fall within the legal scope of review. Also averred that permitting the documents at the advance stage of proceedings would result in opening the entire case which is not permissible. Also averred that the application is an after thought and is liable to be rejected.

Sh. Vikas Chauhan, Ld. Counsel for the Petitioner has submitted that no prejudice will occur to the Respondent in case the amendment is allowed. Sh. Sumit Dhiman, Authorised Representative for the HPSEBL has submitted that the documents were well within the knowledge of the Petitioner and could have been produced earlier and admitting new documents at this belated stage would defeat the very purpose of the Review Petition and delay the disposal of the Review Petition.

We have carefully gone through the submissions and record.

The entire claim of the Petitioner regarding the Approval of Five Year Business Plan and MYT Petition for the 5th Control Period from FY 2024-25 to FY 2028-29 was based on the terms and conditions of loan, project agreement and On-lending agreement amongst others. It is apparent from the application that despite exercise of due diligence, the details of documents in question could not be mentioned in the Review Petition and thus, the necessity has arisen to amend the Review Petition.

The Petitioner intends to add Para 8.40.01, 8.40.02, 8.40.03, 8.40.04, 8.40.05 after para 8.40. Similarly, after para 8.2, the Petitioner intends to add para 8.2.01. The Petitioner also intends to add para 8.5.01, 8.5.02 after para 8.5 of the Petition with new para as mentioned above. Though, the proceedings are at a very advanced stage but the documents in question and its relevance which are being sought to be introduced are material for adjudicating the controversy in the matter. Since, the Review Petition has been filed pursuant to order dated 22.01.2025 for the Five Year Business Plan and MYT Petition for the 5th Control Period from FY 2024-25 to FY 2028-29, the explanation of loan and funding based on the agreement(s), is necessary for adjudication of the controversy in the Review Petition. The proposed amendment nowhere sets up a new case. On the contrary, no prejudice whatsoever would occasion to the

Respondent if the proposed amendment is allowed. Therefore, the application under Regulation 75 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 read with Order 6 Rule 17 of the Code of Civil Procedure for amendment of Review Petition is allowed subject to costs of Rs. 5,000/-. The Review Petition is allowed to be amended as prayed. The application under Regulation 75 of the HEPRC (Conduct of Business) Regulations, 2024 read with Order 6 Rule 17 of the Code of Civil Procedure is disposed off. Be tagged to the Review Petition for record.

Let amended Review Petition be filed within 7 days with advance copy to the opposite party. The HPSEBL/ Respondent is directed to file reply to the amended Review Petition within 10 days.

List on 19.12.2025 at 11:00 AM for completion of pleadings.

-sd-
(Shashi Kant Joshi)
Member

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