BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Review Petition No: 15 of 2025
Date of Institution: 09.10.2024
Arguments Heard on: 19.12.2025
Decided on: 26.02.2026

CORAM

Yashwant Singh Chogal
MEMBER (Law)-cum- CHAIRMAN

Shashi Kant Joshi
MEMBER

In the matter of:-

The Himachal Pradesh Power
Transmission Corporation Limited (HPPTCL)
Himfed Bhawan, Below Old MLA's Quarters,
Tutikandi (Panjiri), Shimla, HP-171005. ………**Petitioner**

Versus

The Himachal Pradesh State
Electricity Board Limited (HPSEBL)
Vidyut Bhawan, Shimla, HP-171004. ……….**Respondent**

Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 seeking review of order dated 12.06.2024 in Petition No. 01 of 2024.

Present:

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

ORDER

This Petition has been filed by the Himachal Pradesh Power

Transmission Corporation Limited (Petitioner/ HPPTCL for short) 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, seeking review of the Order dated 12.06.2024 passed by the Commission in Petition No. 01 of 2024 for the approval of Capital Cost and Determination of Tariff for the Period starting from CoD (20.05.2022) to FY 2023-24 for 66kV GIS Switching Sub-station at Urni (Asset-1) and for the period from COD (20.05.2022) to FY 2023-24 for 66kV D/C Transmission Line from Urni Switching Station to Wangtoo Sub-station (Asset-2) under the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011, as amended from time to time, (Transmission Tariff Regulations, 2011 for short).

2. It is averred that the Petitioner had filed Petition No. 01 of 2024 seeking approval of the Capital Cost and Determination of Tariff for the Period starting from CoD (20.05.2022) to FY 2023-24 for 66kV GIS Switching Sub-station at Urni (Asset-1) and for the period from COD (20.05.2022) to FY 2023-24 for 66kV D/C Line from Urni Switching Station to Wangtoo Sub-station (Asset-2). During the

course of proceedings in the matter, the Petitioner filed additional submissions and clarifications as sought by the Commission from time to time. The Commission vide Order dated 12.06.2024 disposed off the Petition No. 01 of 2024. The summary of the capital cost as claimed vis-à-vis as approved by the Commission in the Order dated 12.06.2024 has been reproduced as under:-

Particulars	**Claimed (Rs. Crore)**	**Approved (Rs. Crore)**
Approved Capital Cost as on CoD approved by Commission: 10.03.2023		
66kV GIS Switching Sub-station at Urni (Asset-1)		
Supply	19.35	19.35
Services	7.09	7.03
Entry Tax	0.73	0.73
Cost of Land	0.86	0.86
Testing Charges	0.10	0.10
Other Expenses	0.10	0.10
Payment released to additional contractor for Civil Works i.e., M/s Rajesh Kumar	-	0.06
Departmental Charges	*1.89*	*1.59*
IDC	*5.31*	*3.40*
Total	**35.43**	**33.22**
66kV D/C Transmission Line from Urni Switching Station to Wangtoo Sub-station (Asset-2)		
Supply	9.44	9.44
Services	10.48	10.47
Land	0.48	0.48
Diversion of Forest Land	2.63	2.63
Fruit Tree Compensation	0.17	0.17
Others	0.12	0.12
Payment released to Tapri Sub-Contractor i.e., M/s Hempower Construction	-	0.01
Departmental Charges	*1.42*	*0.71*

Particulars	Claimed (Rs. Crore)	Approved (Rs. Crore)
IDC	*4.81*	*3.00*
Total	**29.54**	**27.02**

3. A summary of Additional Capitalisation as claimed during FY 2022-23 and FY 2023-24 vis-à-vis as approved by the Commission in the Order dated 12.06.2024 has been reproduced as under:-

Particulars	Financial Year	Claimed (Rs. Crore)	Approved (Rs. Crore)
Asset-1			
Furnishing of Rest Camp at 66kV Switching Station at Urni	2022-23	0.20	0.13
External Water Supply at 66 kV Switching Station at Urni		0.05	-
Providing Hill Side Protection for the Safety of Sub-station	2023-24	0.05	-
Supply of Spares for 66kV Switching Station Urni		0.06	-
Total Additional Capitalisation		**0.36**	**0.13**
Asset-2			
Providing protection wall at Pit B of Tower No. 5	2023-24	0.02	0.02
Providing protection wall at Pit B of Tower No. 37 (Near Kaksthal)		0.05	0.05
Providing protection wall at Pit A & B of Tower No. 8		0.06	0.06
Providing T&P and spares for 66 kV D/C UWTL		0.10	0.10
Providing protection wall at Pit D of Tower No. 35A		0.05	0.05
Total Additional Capitalisation		**0.28**	**0.28**

4. As per the Petition, while the Commission has approved the Capital Cost and determined the transmission tariff for the Urni Switching Substation and D/C Transmission Line but the Commission

has not fully allowed the claims made in the Petition. According to the Petition, the order suffers from errors apparent on the face of record and requires to be reviewed.

5. The Petitioner has sought review of order dated 12.06.2024 in Petition No. 1 of 2024 on the following issues:-

<u>Point 1: Review of the methodology adopted to derive funding of the Project.</u>

(i) The Commission has discussed this point in the order dated 12.06.2024 as under:-

> "*3.7.14 In this specific instance, it is noted that the multilateral agency i.e. the ADB, is funding this project in collaboration with the GoI and the GoHP. However, the GoHP has amended the terms and conditions of the financial assistance for extending it to the HPPTCL.*
>
> *3.7.15 While the entire multilateral funds were received by the State in the ratio of 90% grant and 10% loan from the Govt. of India, the entire loan proceeds were extended by GoHP to the Petitioner as loan carrying interest rate of 10% per annum.*
>
> *3.7.16 The Commission takes serious note against consideration of the amount as loan which was available as grant (90% of overall amount) to the State shall result in unnecessarily burdening the consumers of the State due to such treatment. It is also observed that the Petitioner is already facing financial challenges. The Commission feels that it would be prudent that the Petitioner takes up the matter with the GoHP regarding restructuring of the loan amount availed against the project on same terms and conditions as envisaged under the original scheme of funding i.e., 90% of the amount to be converted to grant. This would be in interest of the consumers of the State who would have to bear the burden of the*

> *additional interest cost and repayment of such loan that is being provided as grant.*
>
> *3.7.17 Accordingly, the Commission has provisionally considered the debt amount availed 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 Regulation 10(C) of the HPERC Transmission Tariff Regulations, 2011' which specify the following:*
>
> *"(b) the debt-to-equity ratio shall be considered in accordance with regulation 16, after deducting the amount of financial support provided through consumer contribution, deposit work, capital subsidy or grant;"*

(ii) As per the Petitioner, the aforesaid observations in the order of the Commission are in complete variance to the HPERC Transmission Tariff Regulations, 2011 (as amended upto date) for the reason that the Regulation 17-A of the above Regulations, as inserted vide Second Amendment in the year 2017, 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 Onlending Agreement(s) (dated 21.04.2012, 03.12.2014 & 04.07.2024) executed between the Govt. of H.P & the HPPTCL shall not fall under the above Regulation 17-A (4)(b) as it states that the debt to equity ratio shall be considered in accordance with regulation 18, after deducting the amount of financial support provided through consumer contribution, deposit work, capital subsidy or grant meaning thereby in the given case, the Loan amount received from the GoHP should not have had been deducted by the Commission while considering the debt to equity ratio in accordance with the Regulation 18 of the Transmission Tariff Regulations, 2011 for the purposes of determination of the tariff. Therefore, the Order of the Commission treating the Loan received by the HPPTCL from the GoHP as grant is contrary to its own Regulations which nowhere allow the HPERC to treat the Loan amount as a grant and that too in absence of any such Regulation in this regard.

(iii) The Petitioner has further submitted that the Commission, in the impugned order has erred in not taking into account the terms of the initial Onlending Agreement(s) dated 20.04.2012 & 03.12.2014 executed between the GoHP and the HPPTCL and also the subsequent restructured Onlending Agreement dated 04.07.2024 signed between the HPPTCL with the GoHP. The initial Onlending Agreement(s) dated 20.04.2012 & 03.12.2014 specifically stipulate 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."

(iv) Further, the restructured Onlending 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 installments 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."

(v) Moreover, the restructured Onlending Agreement for Tranche-II specifically stipulates as under: -

"*1. The second party hereby agrees to amend the Sr. No. 3 of existing agreement as under -*

(i) Principal repayment due till Calendar Year (C. Y) 2021 as per original onlending agreement is deferred till C. Y 2023 and shall be

repaid in 9 equal instalments w.ef C.Y. 2024 (paid w.e.f Jan, 2025 to Jan, 2035),

(ii) Interest on 90% portion of loan accrued up to Calendar Year 2021 as per original onlending agreement is deferred till calendar Year 2023. The interest shall be repaid w.e.f CY 2024 in 11 years i.e. (paid w.e.f Jan., 2025 to 2035),

(iii) Interest on 10% portion of the total disbursed amount will continued to be paid by second party to the First Party Annually.

(iv) Restructuring of Loan w.e.f Calendar year 2022 shall be as under:-

(a) 80% of disbursed loan will be converted in to interest free loan

(b) 10% of disbursed amount will be kept as interest bearing loan @10% rate of interest

(c) 10% of disbursed loan will be converted into equity by GoHP

(v) Principal repayment on 90% portion of disbursed loan due w.e.f C.Y. 2022 is deferred till calendar Year 2023. The Principal shall be repaid w.e.f C.Y. 2024 in eleven equal installments i.e. (paid w.e.f Jan. 2025 to 2035)."

(vi) It is further averred that the Commission has also erred in not taking into Consideration the terms and conditions of the Loan Agreement(s) executed between the GoI and the ADB, more specifically Article III- Use of Proceeds of the Loan under Section 3.01 (b) which reads 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*."

(vii) The Petitioner has also averred that the Commission has again erred in not acknowledging the terms of the Project Agreement(s) executed between the ADB on the one Part and the State of H.P and the HPPTCL on the other part which categorically state that the loan be made available to the State and HPPTCL and the parties agreed to undertake certain obligations towards the ADB as mentioned in the said Project Agreement(s). Moreso, the Clauses 2.13 and 2.14 of the aforesaid agreement contain as under:-

> "*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*."

(viii) It is further averred that the impugned order dated 12.06.2024 passed by the Commission is in complete variance to the material on record as well as the HPERC Transmission Tariff Regulations, 2011, as amended upto date, the Onlending Agreement(s), Loan Agreement(s) and the Project Agreement(s) and thus, there was no occasion for the Commission to treat the funds as received by the HPPTCL as grant instead of a loan.

(ix) It has been further submitted that while submitting the response to the query raised in the 3rd deficiency note dated 10.04.2024, it was mentioned that the HPPTCL had claimed the actual loan drawn from the GoHP i.e. Rs. 2682.93 Lakh and Rs. 1982.79 Lakh, which is 75.73% and 67.13% of project cost as on COD for Asset-1 and Asset-2 respectively (as per Auditor Certificate). Further, the equity infused was Rs. 859.75 Lakh and Rs. 971.07 Lakh, which is 24.27% and 32.87% of the project cost, as on COD for Asset-1 and Asset-2 respectively (as per Auditor's Certificate). The actual debt: equity ratio utilised for both the assets, was claimed by HPPTCL subject to conditions as per the HPERC Transmission Tariff Regulations, 2011.

(x) It is further submitted that the Petitioner, vide letter No. HPPTCL/C&M/HPERC Correspondence/207413/2023 dated 19.06.2023 had apprised the Commission regarding the restructuring of ADB loan and provided the GoHP approval letter dated 04.03.2023.

(xi) According to the Petitioner, the Commission, taking into cognizance of the revised terms of the Onlending agreement vide Interim Order dated 19.07.2023 in Petition No. 41 of 2023 (**Annexure-2**) had directed the Petitioner to restructure the loan received from KfW in line with the restructured loan agreement with ADB. The Commission, however, while computing the annual transmission charges under the Impugned Order in Petition No. 1 of 2024 has not considered the terms of debt as per the restructuring of ADB loan which it had directed to be emulated in case of KfW vide its interim order dated 19.07.2023(in Petition No. 41 of 2023). Instead, the Commission has directed the Petitioner to take up the matter with GoHP to restructure the loan amount availed against the project on same terms and conditions as envisaged under the original scheme of funding.

(xii) It is also averred that in compliance to the directions of the Commission, the Petitioner has already taken up the matter with the GoHP and has attached copy of the letter dated 12.08.2024 (**Annexure-3)** but no response has been received.

(xiii) It is further averred that till the time any restructuring is done, the Petitioner has to repay its debt as per the terms of lending and if such costs are not included in the transmission charges, the

Petitioner will not be able to discharge its liabilities which include debt repayment and upkeep of its transmission assets. It is averred that the approach adopted by the Commission is in contravention to the terms of loan as per the agreement dated 04.07.2024 and has caused grave prejudice to the financial health of the HPPTCL.

(xiv) According to the Petitioner, it is evident from the Onlending agreement that out of the total loan disbursements, 80% of the loan has been transferred by GoHP as interest free loan, however, the same needs to be paid back. 10% of the loan is to be converted to equity and the balance 10% of the debt is to be repaid along with 10% rate of interest.

(xv) It is further averred that the Petitioner has executed the agreement with GoHP and, therefore, it is bound by the terms & conditions of the said agreement.

(xvi) It is further averred that non-consideration of actual loan terms is not in accordance with Regulation 20(1) of the HPERC Transmission Tariff Regulations, 2011 which mandates consideration of actual terms of loans. Regulation 20(1) of the HPERC Tariff Regulations, 2011 as amended specifies as follows:

> *" 20. Interest and Finance Charges*
>
> *(1) Interest and finance charges on loan capital shall be computed on the outstanding loans, duly taking into account the schedule of repayment in accordance with the terms and conditions of relevant agreements of loan, bond or non-convertible debentures. Exception can be made for the existing or past loans which may have different terms as per the agreements already executed if the Commission is satisfied that the loan has been contracted for and applied to identifiable and approved projects.*
>
> *……………….."*

(xvii) It has been prayed to reconsider the approach and revise the cost of funding based on the restructured loan agreement dated 04.07.2024 as considering 90% of the loan as grant shall severely affect the finances of the Petitioner. Further, the Petitioner is bound by the "Onlending Agreement" to pay 10% interest on 10% of the loan disbursement and has to repay 80% of the loan.

(xviii) It is also averred that by considering the grant at 90% of the Debt, the Commission has also reduced the equity component leading to double impact on the Petitioner. Further, the Petitioner, while submitting the response to the query raised in the 3rd deficiency note dated 10.04.2024 had given the detail of actual loan drawn from the GoHP by attaching Audited Certificate (Annexure – 4 of the Petition).

(xix) Hence, it has been prayed to reconsider the approach in line with the HPERC Transmission Tariff Regulations, 2011.

<u>Issue 2: Review of the COD approved by the Commission.</u>

(i) The Commission has discussed this issue in the Order dated 12.06.2024 as under:

> *"3.3.7 It is observed that while the Asset-1 and Asset-2 were commissioned on 20.05.2022, the actual flow of power through these transmission assets started from 10.03.2023 only.*
>
> *3.3.8 In view of the definition as per the Regulation as discussed above, the Commission feels appropriate to consider the COD for both Asset-1 and Asset 2 as 10.03.2023 based on the actual utilization of the assets …………………."*

(ii) According to the Petitioner, the Commission has erroneously approved the COD as 10.03.2023 (instead of claimed COD as 20.05.2022) stating that the Asset was put to use only from 10.03.2023. It is further averred that the said approach is in contradiction to Regulation 2 (18) of the HPERC Transmission Tariff Regulations, 2011, which clearly states that the Commission has the power to approve COD in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, its suppliers or contractors. The relevant Regulation is reproduced below:

> *"(18) "date of commercial operation" or "COD" means the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful charging and trial operation:*
>
> *Provided that the date shall be the first day of a calendar month and transmission charge for the element shall be payable and its availability shall be accounted for, from that date:*
>
> *Provided further that in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, its suppliers or contractors, the Commission may approve the date of commercial operation prior to the element coming into regular service;"*

(iii) It is submitted that by considering the COD as 10.03.2023 instead of 20.05.2022, the tariff recovery of the subject assets has got delayed and further there is an increase in IDC burden on HPPTCL, which has not been considered by the Commission while approving the capital cost as on the revised COD.

(iv) It is averred that the Commission, in Paragraph Nos. 3.4.3 to 3.4.10 of the Impugned Order, has itself recorded that the delay was due to ongoing litigation (stay by the Commission regarding payment of Bay Charges and Order by Hon'ble APTEL to allow the Generators for connectivity subject to partial payment of demand) which was beyond the control of the Petitioner.

(v) Hence, it has been prayed to accept the review by considering the COD as 20.05.2022 in line with the provisions of Regulation

2 of the HPERC Transmission Tariff Regulations, 2011.

Issue 3: Review of the methodology adopted for adjustment of Consumer Contribution.

(i) The Commission has discussed this issue in the order dated 12.06.2024 in para 3.7.11 as under:

> *"3.7.11 In addition to the debt and equity, the Petitioner has received payments towards bay charges amounting to INR 1.67 Cr. from M/s DLI Power, INR 85.71lakh from Brua HEP and INR 35.00 lakh from Shaung HEP as per the directions of the Hon'ble APTEL judgment as mentioned in the preceding section. Therefore, the Commission has reduced the total amount of bay charges from the capital Cost amounting to INR 2.88 Cr. (INR 1.67 Cr. + INR 0.35 Cr. + INR0.8571 Cr.) recovered towards Asset-1."*

(ii) The Petitioner has submitted that the Capital Cost as on COD has been funded only through Equity & Debt as consumer contribution of Rs. 2.88 Crore was received by the Petitioner only in FY 2022-23 after claimed COD of assets i.e. 20.05.2022. It is submitted that as against the proposed funding, the Commission has erred by considering the consumer contribution received from M/s DLI Power, Brua HEP and Shaung HEP as on COD i.e., prior to receipt of such amount. It is averred that considering consumer contribution as on COD of the Asset, the annual transmission charges get understated, thereby impacting the tariff recovery.

(iii) Hence, it has been prayed to accept the review and consider the Consumer Contribution funding in the year it was received and not as on COD.

REPLY OF THE RESPONDENT

6. The Review Petition has been resisted by the HPSEBL by filing the reply, inter-alia, that the Review Petition is not maintainable as a Review Petition is restricted to correcting errors apparent on the face of the record on discovery of new evidence that could not have been produced earlier or other sufficient reasons as the grounds raised by the Petitioner do not meet said criteria and also that the Petitioner has attempted to reopen issues already considered and decided upon. According to the HPSEBL, such an approach violates the principle of finality of judicial and quasi-judicial orders.

7. It is averred that the Review Petitioner has failed to establish any error apparent on the face of the record and that the Petitioner/ HPPTCL is seeking to re-argue the merits of the original case, which is impermissible in a Review Petition.

8. On the point of review of the methodology adopted to derive funding of the project it is averred that the revision of the funding

pattern as prayed by the Petitioner is completely misplaced and misconceived as the Commission has categorically dealt this aspect by noting that the multilateral agency i.e. ADB is funding the project in collaboration with the GoI and the GoHP, and the GoHP has amended the terms and conditions of the financial assistance for extending it to the HPPTCL. It has been made clear in the order by the Commission that the entire multilateral funds were received by the State in the ratio of 90% grant and 10% loan from the GoI. According to the HPSEBL, neither there is any error apparent on the face of the record nor any new material has been brought by the Petitioner, which could not be placed before the Commission at the time of the determination of the capital cost of the assets.

9. According to the Respondent, disbursements, which should have been grant, need to paid back by the Petitioner and the same will be recovered from Consumers of the State through ARR. Thus, granting the review would undermine consumers interest, as higher capital costs would lead to increased transmission charges which will directly impact retail tariffs for the electricity consumers in the State as regulatory decisions must prioritize efficiency and affordability for consumers, and the Petitioner's request contradicts these principles.

It is also averred that that the Commission has considered each and every aspect of the matter and has passed the impugned order after due consideration of the material on record and there are no reasons to allow the review which is liable to be dismissed.

10. On the point of review of the COD as approved by the Commission, it is averred that the Commission has already considered this aspect in the order dated 12.06.2024 based on the actual utilization of said assets which is in favour of the consumers of the State.

11. On the point of Review of the methodology adopted for adjustment of Consumer Contribution, it is averred that the Commission has considered this aspect in the order dated 12.06.2024 as per the COD approved by the Commission i.e. 10.03.2023 as the consumer contribution was received by the Petitioner well before the approved COD.

12. It has been averred that the review Petition is devoid of merits, legally untenable, and contrary to public interest and is liable to be dismissed in the interest of justice and fair play.

SUBMISSIONS OF THE PARTIES

13. We have heard Sh. Vikas Chauhan, Ld. Counsel for the Petitioner and Sh. Kamlesh Saklani, Authorised Representative for the Respondent and have perused the record carefully.

14. Sh. Vikas Chauhan, Ld. Counsel for the Petitioner has submitted that the impugned order suffers from errors apparent on the face of the record as the Commission has not considered the documents which were submitted along with the original Petition which has resulted in adoption of wrong methodology with respect to funding of the Project and thus, the order is required to be reviewed as prayed. According to him, in case the impugned order is not reviewed, the same would cause great prejudice to the Petitioner. He has also submitted that the CoD is required to be considered as 20.05.2022 and that the methodology regarding the adoption of consumer contribution is required to be revisited as the Commission has erred in considering the Consumer contribution received from M/s DLI Power, Brua HEP and Shaung HEP as on COD i.e. prior to actual receipt of the same.

15. Sh. Kamlesh Saklani, Authorised Representative for the

Respondent on the other hand has submitted that the Commission has considered each and every aspect of the matter and there are no errors apparent on the face of record and Petition is liable to be dismissed.

POINTS FOR DETERMINATION

16. We have carefully gone through the submissions of the parties and the entire record. On the basis of pleadings and submissions, the following points arise for determination in the present Petition:-

Point No. 1: Whether the Order dated 12.06.2024 in Petition No. 28 of 2024 regarding disallowance of methodology adopted to derive funding of the Project in accordance with Onlending agreement dated 04.07.2024 suffers from errors apparent on record and is liable to reviewed?

Point No. 2: Whether the Order dated 12.06.2024 in Petition No. 28 of 2024 regarding review of COD as approved by the Commission suffers from errors apparent on record and is liable to reviewed?

Point No. 3: Whether the Order dated 12.06.2024 in Petition No. 28 of 2024 regarding disallowance of methodology adopted for adjustment of Consumer contribution also suffers from errors apparent on record and is liable to reviewed?

Point No. 4: **Final Order**

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

Point No. 1: No.

Point No. 2: No.

Point No. 3: No.

Point No. 4: (Final Order) The Petition dismissed per operative part of the Order.

REASONS FOR FINDINGS

18. It is well settled law 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."*

19. 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."

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

21. The main Petition had been filed for the approval of the capital cost and determination of the tariff for the period starting from COD to FY 2023-24 in respect of 66kV GIS Switching Sub-station at Urni (Asset-1) and for 66kV D/C Line from Urni Switching Station to Wangtoo Sub-station (Asset-2). In the present review Petition, the Petitioner has raised several grounds of challenge as that of Appeal by raising several new pleas and highlighting discrepancies in the

order under review which are not permissible in a Review Petition as the scope of the Review Petition is quite limited to the extent of what is pleaded in the original Petition and for correcting the errors apparent on the face of record in the order made on the basis of averments made in the main Petition. While considering an application for review, the Commission must confine its adjudication with reference to material which was available at the time of initial decision and the party cannot be permitted to re-agitate the issues which have already been addressed. The review Petition can't be on the grounds that the decision is erroneous on merits and can't be allowed to be an appeal in disguise as held by the Hon'ble Apex Court in the case of *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715 and Ram Sahu v. Vinod Kumar Rawat (2021) 13 SCC 1. In the review Petition, the Review Petitioner has travelled beyond the scope and ambit of the review as mentioned under Order 47, Rule 1, CPC and has highlighted several discrepancies and infirmities in the order which are not permissible under review. Therefore, the Petitioner may assail the order under review in an Appeal in so far as the averments made in the order is erroneous on merits.

22. However, the Commission has examined the Review Petition

on the errors pointed out qua the methodology adopted with respect to the funding of the Project, approval of wrong COD of the Project and adopting the wrong methodology with respect to the adjustment of Consumer Contribution for the Project while approving the capital cost as under:-

Point No. 1.

Review of the methodology adopted to derive funding of the Project

23. The Commission while deciding the main Petition No. 1 of 2024 has dealt the aspect of funding of the Project and the methodology adopted in detail in paras 3.7.13, 3.7.14, 3.7.15, 3.7.16, 3.7.19 and 3.7.20 in the Order dated 12.06.2024 in Petition No. 1 of 2024 as under:-

"3.7.13 The Commission observes that ADB has sanctioned a multi tranche financing facility (MFF) of $350 million to the Government of India (GoI) under the Himachal Pradesh Clean Energy Transmission Investment Programme (HPCETIP) which was further channelized to HPPTCL through Government of Himachal Pradesh (GoHP). The proposed Program was targeted for the construction of transmission infrastructure of 66kV and above along with Sub-stations for evacuation of power of upcoming hydro power projects. However, the scheme itself implies that the financing support by the ADB is to promote the generation as well as evacuation of clean energy in the State. Further, the Commission is of the view that the Himachal Pradesh being a special category state receives these multi tranche financing from the GoI as 90% grant and 10% loan. The Commission has noted this aspect while finalising the tariff orders of

the HPPCL hydro projects. However, no such information has been furnished by the Petitioner.

3.7.14 In this specific instance, it is noted that the multilateral agency i.e., the ADB, is funding this project in collaboration with the GoI and the GoHP. However, the GoHP has amended the terms and conditions of the financial assistance for extending it to the HPPTCL.

3.7.15 While the entire multilateral funds were received by the State in the ratio of 90% grant and 10% loan from the Govt. of India, the entire loan proceeds were extended by GoHP to the Petitioner as loan carrying interest rate of 10% per annum.

3.7.16 The Commission takes serious note against consideration of the amount as loan which was available as grant (90% of overall amount) to the State shall result in unnecessarily burdening the consumers of the State due to such treatment. It is also observed that the Petitioner is already facing financial challenges. The Commission feels that it would be prudent that the Petitioner takes up the matter with the GoHP regarding restructuring of the loan amount availed against the project on same terms and conditions as envisaged under the original scheme of funding i.e., 90% of the amount to be converted to grant. This would be in interest of the consumers of the State which would have to bear the burden of the additional interest cost and repayment of such loan that is being provided as grant.

………….…….

…………………...

3.7.19 In case of ADB loans availed by the HPPTCL, the Commission has been considering the same in the past tariff orders issued and therefore corresponding depreciation as well as interest for servicing of such loans were being allowed to the Petitioner. This treatment was undertaken in view of the limited information available to the Commission. However, the Commission had directed the Petitioner in these Orders to re-negotiate with GoHP and align the terms and conditions of the Loan Agreements in line with the tri-patriate agreement. But no information or update in this regard has been provided by the Petitioner. In this Order the Commission has preferred to consider the availability of loan through ADB funded projects as 90% grant considering the special category status to the State of Himachal Pradesh. The Commission shall also take appropriate decision with regard to the treatment of similar ADB loans for the previous projects during the truing-up.

3.7.20 The Petitioner is directed to take up this matter with the GoHP for extending the benefit of grant under the ADB funded projects and update *the same to the Commission. Also, the Commission is of the view that the GoHP shall consider the transfer of grant as availed from the Government of India to the Petitioner for the benefit of the Consumers of the State."*

24. As evident from the above, the Commission has considered each and every aspect of the matter in detail but the Petitioner has selectively picked up few paras highlighting that impugned order suffers from errors apparent on the face of record. Much reliance has been placed on the loan agreements dated 15.12.2011, 29.09.2014 and 16.11.2018 signed between the GoI and the ADB, project agreements dated 15.12.2011, 29.09.2014 and 16.11.2018 signed between the ADB and State of HP and the HPPTCL as produced with the additional submissions dated 25.04.2025. The Petitioner has also relied upon the Onlending agreements dated 20.04.2012, 03.12.2014 and 04.07.2024 signed between the GoHP and the HPPTCL. In so far as the agreements dated 15.12.2011, 29.09.2014 and 16.11.2018 are concerned, the same were already within the knowledge and possession of the Petitioner. However, only the loan and Project agreements dated 29.09.2014 pertain to the asset in question and have been duly considered by the Commission while passing the impugned order.

25. Similarly, the onlending agreements dated 20.04.2012, 03.12.2014 were also well within the knowledge and possession of the Petitioner. The terms and conditions of the onlending agreement dated 04.07.2024 do not in any manner ameliorate the sufferings of the Petitioner as the Commission vide daily order dated 22.04.2025 has clearly observed that the Asian Development Bank had advanced the loan to the GoI for carrying out transmission works in the State of H.P but the Petitioner has not given any detail or explanation about the terms and conditions of the finance provided by the GoI to the GoHP or the HPPTCL as to whether the same was grant or loan and the HPPTCL was directed to furnish such detail/ explanation on 25.04.2025. However, despite affording sufficient opportunities to the Petitioner, such information/ explanation has not come on record. Even the Review Petition was amended but the explanation regarding the terms and conditions of the finance extended by the GoI to the GoHP or the HPPTCL was not furnished. In the absence thereof, the Onlending agreement dated 04.07.2024 is not sufficient to infer and conclude that the order under review suffers from errors apparent on the face of record.

26. Further, as per Regulation 14 of the HPERC Transmission Tariff Regulations, 2011, as amended from time to time, the Commission is required to undertake a prudence check before approving the capital cost of the Project. Regulation 14 provides as under:-

> *"**14. Capital cost of project.-**(1)**…….***
>
> *(2) The capital cost admitted by the Commission, after prudence check, shall form the basis for determination of tariff:*
>
> *Provided that prudence check of capital cost may be carried out based on the benchmark norms to be laid down by the Commission from time to time; and*
>
> *Provided further that in case where benchmark norms have not been specified, prudence check may include scrutiny of the reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be considered appropriate by the Commission for determination of tariff:*
>
> *……………..….."*

27. As is evident from the above, the Commission is required to undertake due prudence check before approving the capital cost of the Project. The prudence check also includes scrutiny of the reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be considered appropriate by the Commission for the determination of tariff in the interest of the consumers so that the consumers are not burdened with exhorbitant tariff. Similarly, the Commission has made the

observations keeping in view the provisions of the Transmission Tariff Regulations, 2011. Therefore, in exercise of the powers vested in the Commission, the Commission has made the observations regarding the funding of the Project which cannot be said to be beyond the jurisdiction.

28. Significantly, the Commission has based its decision on the pleadings and record made in Petition No. 1 of 2024 strictly in accordance with law by considering each and every aspect of the matter.

29. Thus, the Petitioner has not been able to substantiate that there are errors apparent on the face of the record regarding methodology adopted to derive funding of the Project. Point No. 1 is accordingly decided against the Petitioner.

Point No. 2:

Review of the COD approved by the Commission

30. The Commission has dealt with this aspect of the matter in detail in the Order dated 12.06.2024 in para 3.3.8, 3.4.10 and 3.6.15 as under:-

"3.3.8 In view of the definition as per the Regulation as discussed above, the Commission feels appropriate to consider the COD for both Asset-1 and Asset-2 as 10.03.2023 based on the actual utilization of the assets .The summary of the COD dates claimed, approval granted from Electrical

Inspectorate, actual charging of Assets and approved COD for Asset-1 and Asset-2 is given as below: …………….

3.4.10 It is observed that while the Asset-1 and Asset-2 were commissioned on 20.05.2022, the actual flow of power through these transmission assets had started from 10.03.2023 only. The Commission feels that the delays caused in commissioning of the assets has resulted in requirement for alternate arrangements which could have best been avoided by the Petitioner. It is felt that recovery of ARR from the date of commissioning would result in charging the cost from the consumers in the State specially when the assets were not being utilized. Therefore, the Commission has approved the recovery of the ARR for these transmission assets from the date of actual utilization of the assets i.e., from 10.03.2023 for both Asset-1 and Asset-2. The matter of recovery of ARR by the Petitioner has been discussed in detail in Chapter 4 of this Order.

3.6.15 It is observed that while the Asset-1 and Asset-2 were commissioned on 20.05.2022, the actual flow of power through these transmission assets started from 10.03.2023 only. The Commission feels that the delays caused in commissioning of the assets have resulted in requirement for alternate arrangements which could have best been avoided by the Petitioner. Therefore, the Commission feels appropriate to allow IDC and DC only upto the date of commissioning of the assets i.e., till 20.05.2022 for both Asset-1 and Asset-2"

31. It is apparent from the above that the recovery of ARR from the date of commissioning would have resulted in charging the cost from the consumers without the assets actually utilized. Therefore, the Commission has approved the recovery of the ARR for these transmission assets from the date of actual utilisation of the assets i.e., from 10.03.2023 for both Asset-1 and Asset-2.

32. As far as Regulation 2 of the HPERC Transmission Tariff Regulations, 2011, as amended from time to time, is concerned, it is

quite clear that the Regulation provide that in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, its suppliers or contractors, the Commission may approve the date of commercial operation prior to the element coming into regular service. However, in the present case, the Commission feels that the delay in put-to-use of the Assets were attributable to the HPPTCL, as the HPPTCL should, ideally, have entered into the open access agreements with the beneficiaries in advance before proceeding with the construction of Assets to ensure recovery of its costs. Creating Assets without identification of beneficiaries does not augur well for any Company. Further, the generators were not by choice but as last measure evacuating their power through the interim power evacuation arrangement and the HPPTCL was recovering the cost for the same. Thus, ultimately the HPPTCL was receiving the transmission charges from said generators through another asset by way of interim arrangement pending commissioning of the assets in question. Therefore, the Commission has approved the recovery of the ARR for these transmission assets from the date of actual utilization of the assets i.e., from 10.03.2023 for both Asset-1 and Asset-2.

33. Further, on the issue of the burden of the Interest During Construction (IDC) as pointed out by the Petitioner, the same has already been dealt by the Commission in detail in para 3.6.15 of the tariff order as under:-

> *"3.6.15 It is observed that while the Asset-1 and Asset-2 were commissioned on 20.05.2022, the actual flow of power through these transmission assets started from 10.03.2023 only. The Commission feels that the delays caused in commissioning of the assets have resulted in requirement for alternate arrangements which could have best been avoided by the Petitioner. Therefore, the Commission feels appropriate to allow IDC and DC only upto the date of commissioning of the assets i.e., till 20.05.2022 for both Asset-1 and Asset-2."*

34. In the circumstances, the Commission has allowed the IDC upto actual commissioning of the assets i.e. 20.05.2022 and not upto actual utilization of the assets i.e. 10.03.2023. This cannot be allowed as the delay has been due to inaction on the part of the Petitioner as it should have settled the issue of the bay charges etc. well in advance. Moreover, as observed above the Petitioner has created the assets without entering into open access agreements in advance. Therefore, the Commission cannot pass through the cost of inefficiency on the part of the Petitioner to the beneficiaries of the system. Thus, the Petitioner has not been able to substantiate that

there are errors apparent on the face of the record regarding methodology adopted to approve the COD of the Project. Hence, Point No. 2 is accordingly decided against the Petitioner and in favour of the Respondent.

Point No. 3

Review of the Methodology adopted for adjustment of Consumer Contribution

35. With regard to the adjustment of Consumer Contribution, the Commission in Tariff Order dated 12.06.2024, has dealt the issue in detail in para 3.7.11 as under:-

> *"3.7.11 In addition to the debt and equity, the Petitioner has received payments towards bay charges amounting to INR 1.67 Cr. from M/s DLI Power, INR 85.71 lakh from Brua HEP and INR 35.00 lakh from Shaung HEP as per the directions of the Hon'ble APTEL judgement as mentioned in the preceding section. Therefore, the Commission has reduced the total amount of bay charges from the capital Cost amounting to INR 2.88 Cr. (INR 1.67 Cr. + INR 0.35 Cr. + INR 0.8571 Cr.) recovered towards Asset-1."*

36. The Petitioner has submitted that the Capital Cost as on COD has been funded only through Equity & Debt as consumer contribution of Rs. 2.88 Crore was received by the Petitioner only in FY 2022-23 after claimed COD of assets i.e. 20.05.2022. However, the Commission has considered the consumer contribution received

from M/s DLI Power, Brua HEP and Shaung HEP as on COD which is prior to the receipt of such amount.

37. It is worth mentioning that the delay in receipt of the contributions was due to time taken for disposal of various Petitions filed before the HPERC and Appeal before the Hon'ble APTEL which could have been avoided had the Petitioner acted in time to secure utilization of the Assets being created by it. Moreover, it is a well-known principle that the funds need to be deposited in advance for creating any assets by way of the Consumer contribution. Not only this, the situation has arisen due to the reason that the Petitioner has not entered into transmission service agreements well in advance with the beneficiaries. Therefore, the Commission has rightly adjusted the amount of consumer contribution in the impugned tariff order. Hence, the Petitioner has not been able to substantiate that there are errors apparent on the face of the record regarding the methodology adopted for adjustment of Consumer Contribution. Point No. 3 is accordingly decided against the Petitioner and in favour of the Respondent.

38. In the entire Petition, the Petitioner has not been able to show that the order under review suffers from any error apparent on the

face of record or that the review is necessitated on the discovery of new and important matter of evidence which after exercise of due diligence was not within the knowledge of the Petitioner or could not be produced when the order was made. Thus, the Petitioner has failed to establish that there are sufficient reasons for reviewing the Order dated 12.06.2024 in Petition No. 01 of 2024.

Final Order

39. In view of the above discussions and findings, the Petition fails and is accordingly dismissed.

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

The file after needful be consigned to records.

Announced
26.02.2026

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