BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Petition No.	**149 of 2013**
Date of Institution:	30.12.2013/ 18.02.2025
Arguments Heard on:	01.04.2025
Decided on:	**28.04.2025**

CORAM
DEVENDRA KUMAR SHARMA
CHAIRMAN

YASHWANT SINGH CHOGAL
MEMBER (Law)

SHASHI KANT JOSHI
MEMBER

M/s Om Hydro Power Limited (formerly M/s Om Power Corporation Ltd.,)
Registered Office at Kothari Bhawan, 16/121-1,
Faiz Road, Jarol Bag, New Delhi-110005 ….
Petitioner.

Versus

The HP State Electricity Board Ltd. (HPSEBL)
Vidyut Bhawan, Shimla, HP-171004. ....
Respondent.

Petition u/s 61,62,86 and 94 of the Electricity Act, 2003 read with regulation 6 of the Himachal Pradesh Electricity Regulatory Commission (Power Procurement from renewable Sources and Co-generation by Distribution Licensee) Regulations, 2007 for determination of tariff for sale of electricity generated at the 15 MW Neogal Hydro Electric Project.

Present:-

Sh. Ankur Gupta, Advocate for the Petitioner.

Sh. Kamlesh Saklani, Authorised Representative for the Respondent.

ORDER

A Petition for determination of Project Specific tariff was filed by the Petitioner bearing Petition No 149 of 2013 which was decided by the Commission vide order dated 28.04.2016.

2. Feeling aggrieved by the order dated 28.04.2016, the Petitioner filed an appeal before the Hon'ble APTEL bearing Appeal No. 301 of 2016 & IA No. 260 of 2024 which has been decided by the Hon'ble APTEL vide Order dated 16.12.2024 by setting aside the order of the Commission dated 28.04.2016 and remanding the matter to the Commission for passing consequential Order in Petition No. 149 of 2013. The operative part of the Judgment/ Order of the Hon'ble APTEL dated 16.12.2024 is reproduced as under:

> *"For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 301 of 2016 has merit and is allowed to the extent as concluded in the foregoing paragraphs, the Impugned Order dated 28.04.2016 passed by the Himachal Pradesh Electricity Regulatory Commission in Petition No. 149 of 2013 is set aside.*
> *The State Commission is directed to pass the consequential order within three months from the date of this judgment strictly in accordance with the observations and conclusions made herein."*

3. Consequently, the Commission as directed, re-registered the Petition in its original number. An application was also filed by the Petitioner for passing the consequential order.

4. The Petitioner has filed large number of documents alongwith application for passing consequential order, which have been taken on record.

5. The Commission has heard Sh. Ankur Gupta, Ld. Counsel for the Petitioner and Sh. Kamlesh Saklani, Authorized Representative of the Respondent and have perused the record carefully.

6. The HPSEBL was also directed to submit the response to the documents submitted by the Petitioner within a week. The HPSEBL has accordingly submitted its response.

7. The Petitioner has placed on record the following documentsfor establishing the expenditure incurred in the construction of the Project,under the following heads: -

"

Sr. No.	**Particulars**	**APTEL Findings**	**Supporting Doc./Ann.**
a.	**Computation of capital cost of Project.**		
	i. Land Cost	(**Para 110 @Pg.29 of APTEL Judgment**) *"**110.**In view of the details submitted*	**(Ann. P-3; Pg.77-645 of this Appl.)**

		before us which are claimed to be placed before the Commission, we decide the issue in favour of the Appellant, and the differential cost for land for transmission and Private land (Stamp duty and registration charges) is allowed, the State Commission is directed to allow such costs on the basis of the proofs submitted by the Appellant."	
	ii. Civil Works	(**Para 142 to 143 @Pg.37 of APTEL Judgment**) *"**142**. In view of the above the deduction of Rs. 11.06 cr. is found erroneous as the reasoning of the deduction is presumptive in nature and the methodology adopted by the Commission to arrive at the cost is not in accordance with the Regulations.* ***143.** The issue is decided in favour of the Appellant, the cost of Rs. 11.06 Cr. is allowed based on the documents placed before us as also placed before the State Commission."*	**Allowed by Ld. APTEL.**
	iii. Misc.Expenses	(**Para 147-148 @Pg.38 of APTEL Judgment**) *"**147.** The details are placed in Annexure 16 (Proof of payments, ledger account summary, bills of the consultants and surveyors towards 'Misc. Expenses') of the Appeal Paper Book (Pg. No. 1672 to 1692) and the Appellant claimed that these were placed before the State Commission also.* ***148.** Accordingly, we direct the State Commission to re-examine the issue and in case the Appellant provides the relevant document, the costs should be allowed."*	**(Ann. P-4; Pg.646-716 of this Appl.)**

	iv. Road works	(**Para 151@Pg.39 of APTEL Judgment**) *"**151.** The Appellant submitted that the State Commission has failed to consider these documents, accordingly, we direct that the claim of Rs. 10.19 cr. of the Appellant needs to be re-examined by the State Commission based on such documents."*	**(Ann. P-5; Pg.717-2841 of this Appl.)**
	v. Environment & Ecology for Compensatory Afforestation Tax.	(**Para 154-155@Pg.40 of APTEL Judgment**) *"**154.** Any prudent expenditure made by the Appellant cannot be rejected, if enough proof is provided by the Appellant to satisfy such a claim is made.* ***155.** The State Commission is directed to verify and re-examine the claim based on documents submitted by the Appellant before it as part of the original petition."*	**(Ann. P-6; Pg. 2842-2875 of this Appl.)**
	vi. Transmission Line.	(**Para 163-164@Pg.42 of APTEL Judgment**) *"**163.** The State Commission has indulged itself in a roving investigation for each payment and seeking proof of payment against each item ignoring the agreements between the parties and auditor certificate without stating a reason for not accepting such documents, as such it is not a prudence practice while finalizing the capital costs of the project.* ***164.** Given the documents placed before the Commission by the Appellant, the State Commission is hereby directed to re-examine the claim."*	**(Ann. P-7; Pg. 2876-2988 of this Appl.)**
b.	**Interest During Construction**	(**Para 186@Pg.50 of APTEL Judgment**)	**(Ann. P-8; Pg. 2989 –**

		*"**186.** Therefore, the State Commission is directed to re-determine the IDC subject to COD on 06.05.2013."*	**3019 of this Appl.)** **Rs.**
c.	**MNRE capital subsidy.**	(**Para 205@Pg.53 of APTEL Judgment**) *"**205.** Hence, the State Commission is directed to re-examine the matter and in case, the reasons for the non-grant of subsidy by MNRE are not attributable to the Appellant, the Commission shall make corrections accordingly."*	**(Ann. P-9; Pg. 3020 – 3046 of this Appl.)**
d.	**Tax Component**	(**Para 209@Pg.55 of APTEL Judgment**) *"**209.** We agree with the decision of the Commission and the Appellant may take up the issue of tax and submit necessary documents of actual tax payment at the time of Truing up."*	
e.	**Determination of levelized tariff.**	(**Para 214 & 220@Pg.55 & 57of APTEL Judgment**) *"**214.** The tariff is to be computed as per the State Commissions Tariff regulation and Capital cost approved by the Commission. As a consequence of the judgment in this Appeal, based on the revisions of Capital Cost approved by the Commission, the tariff would be revised. It however, cannot be approved based on the completion cost approved by the Directorate of Energy, GoHP.* ***220.** It is pertinent to mention here that the Commission had to consider the directive issued by the State Government regarding royalty power, Local Area Development Authority (LADA). These orders/policies are binding on the*	**(Ann. P-10; Pg. 3047 – 3060 of this Appl.)**

		developers, and accordingly, the same has to be allowed by the Commission in tariff orders. Accordingly, Net Saleable energy is to be worked out again by the Commission.”	
f.	**Adjustment of costs using WPI Index.**	(**Para 132@Pg.35 & 57 of APTEL Judgment**) *“**132.** The statement of the State Commission that “**due to the complications involved in performing such a detailed analysis, the Commission has adjusted such costs using WPI index”** needs to be rejected as the failure to carry out prudent analysis cannot be allowed to be a valid reason for the disallowance of the reasonable cost incurred by the Appellant, inter-alia supported by audited accounts, and therefore, the Appellant cannot be made to suffer for this failure to prudently determine Capital cost including civil cost without exploring the alternate legally tenable methodology.”*	

”

8. The Petitioner has requested the Commission to issue the order as per the directions of the Hon’ble APTEL contained in Order dated 16.12.2024.

9. The HPSEBL in its response to the documents filed by the Petitionerhas submitted as under:

“

i. That the present reply is being filed by the Respondent-HPSEBL in response to the Interlocutory Application filed by the Petitioner pursuant to the directions issued by the Hon’ble Appellate Tribunal for Electricity

(APTEL) vide its Order dated 16-12-2024 in Appeal No. 301 of 2016, wherein the Hon'ble APTEL has directed this Hon'ble Commission to pass a consequential order strictly in accordance with the observations and conclusions made in the said judgment, without prejudice to the right of the respondent/HPSEBL to file review/appeal against the order and judgement of the Hon'ble APTEL.

ii. *That the directions issued by the Hon'ble APTEL primarily pertain to the revision of certain parameters, including capital cost, Interest During Construction (IDC), MNRE capital subsidy, tax component, and levellized tariff determination. The Respondent submits that the Hon'ble Commission must strictly adhere to the directions issued by Hon'ble APTEL, ensuring that all revisions are based on substantiated and verified evidence and in conformity with applicable regulatory principles.*

iii. *That without prejudice to the right of the respondent/HPSEBL to file review/appeal, it is submitted that the capital cost revision sought by the Petitioner must be strictly limited to the extent allowed by Hon'ble APTEL. While Hon'ble APTEL has allowed additional civil costs of ₹11.06 Cr., it has not granted blanket approval for the entire claim of the Petitioner. Further, miscellaneous costs, transmission line expenses, and differential land costs have been directed to be re-examined, and the Petitioner is required to furnish proper evidence to justify any such inclusion. HPSEBL submits that any additional allowance must be subjected to detailed scrutiny and verification by this Hon'ble Commission.*

iv. *That regarding the Interest During Construction (IDC), the Hon'ble APTEL has directed re-determination based on the actual Commercial Operation Date (COD) of 06.05.2013. The Respondent submits that IDC must be recomputed strictly in line with actual funding patterns, loan drawdowns, and interest rates prevailing during the construction period, duly supported by audited financial statements.*

v. *That with respect to the MNRE Capital Subsidy, the Petitioner has contended that the amount of ₹6.20 Cr. should not be deducted from the capital cost on the ground that the subsidy was rejected by MNRE. It is submitted that Hon'ble APTEL has only directed re-examination of the issue and not outright exclusion of the subsidy from capital cost adjustments. HPSEBL submits that the Petitioner must be required to furnish documentary proof to establish that the non-receipt of the subsidy was not attributable to any default, negligence, or non-compliance on its part. Further, as per standard regulatory practice, any subsidy amount that could have been availed but was not obtained due to the generator's lapse should not be passed on to consumers through a higher tariff.*

vi. *That in relation to the determination of levellized tariff, the Petitioner has claimed a tariff of ₹3.84/kWh based on a capital cost of ₹140.00 Cr.*

However, Hon'ble APTEL has not unconditionally approved this claim and has only directed revision of specific cost components, which are subject to re-examination. HPSEBL submits that tariff determination should be conducted strictly in accordance with the applicable HPERC Tariff Regulations and the cost revisions permitted by Hon'ble APTEL.

vii. *That the Petitioner has also raised the issue of network augmentation charges amounting to ₹1.95 Cr., which have been included in the capital cost of the Project. HPSEBL submits that such charges must be treated in accordance with standard regulatory norms governing transmission and evacuation cost sharing, and any inclusion in tariff calculations must be subject to proper justification and scrutiny.*

viii. *That the claim of the Petitioner regarding loss of generation due to discrepancies in design discharge data allegedly provided by HPSEBL for preparation of the Detailed Project Report (DPR) is beyond the scope of the directions issued by Hon'ble APTEL and has no direct bearing on the consequential order to be passed by this Hon'ble Commission. Any such claims should not be entertained at this stage.*

ix. *That the Petitioner has further sought interest @18% per annum on the differential tariff from the date of COD. HPSEBL strongly opposes this demand, as the tariff payable for the project has been under judicial review and regulatory determination. Any retrospective interest claim would impose an undue financial burden on consumers and is contrary to established regulatory principles, which do not support retrospective interest payments in such cases.*

x. *In light of the foregoing andwithout prejudice to the right of the respondent/HPSEBL to file review/appeal against the order of the Hon'ble APTEL,the Respondent has prayed as under:*

a) *Consider the revision of capital cost, IDC, MNRE subsidy adjustment, tax component, and levellized tariff determination strictly in accordance with the directions of Hon'ble APTEL, subject to detailed verification and scrutiny.*

b) *Direct the Petitioner to furnish all necessary documents to substantiate its claims, particularly in relation to miscellaneous costs, transmission line expenses, land costs, and MNRE subsidy non-receipt.*

c) *Reject the Applicant's claim for retrospective interest on differential tariff, as the same is not legally or regulatorily tenable.*

d) *Pass any other relief(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case."*

Our Analysis and Findings

10 After analyzing the details provided by the Petitioner and the submissions of the HPSEBL, the following issues are addressed as per the directions of the Hon'ble APTEL as under: -

Issue No. 1: - Computation of Capital Cost of the Project

11 The Hon'ble APTEL in para 96 oforder dated 16.12.2024 has discussed the head-wise capital cost in detail as under: -

i. Land Cost

12. The Hon'ble APTEL on the issue of Land Cost has observed the following in Paras 97 to 110 as under: -

"

97 The Appellant vide its petition had claimed the cost of the land at Rs.6.17 Cr., however, in its reply to the discrepancy note of the Commission on 27.4.2015, the Appellant had claimed and cost of Rs. 5.75 Cr. against which only an amount of Rs. 5 Cr. has been allowed by the State Commission, as under:

(AllFiginCr.)

S. No.	***Headof Works***	***As per petition***	***Asper contract/ agreement***	***Asper payment references***	***Allowed by Commission***
1.	*Government Land*	*0.02*	*0.02*	*0.02*	*0.02*
2.	*Transmission Land*	*3.64*	*2.95*	*2.68*	*2.95*
3.	*PrivateLand*	*0.29*	*0.27*	*0.27*	*0.27*
4.	*ForestLand*	*1.70*	*1.70*	*1.70*	*1.70*

5.	*Compensation fortreecutting*	*0.10*	*-*	*0.06*	*0.06*
	Total	*5.75*	*4.95*	*4.67*	*5.01*

98. The cost of Government Land and Forest Land is not in dispute i.e. Rs. 0.02 Crore and Rs.1.70 Crore respectively, the State Commission has allowed the same.

99. The cost of Transmission land as claimed in the petition was Rs. 3.64 Crore but payment references of Rs. 2.95 Crore were produced before the State Commission therefore, the Commission has only allowed Rs.2.95 Crore towards the cost of Transmission Land.

100. The State Commission in its order stated that the land requirement for theTransmissionlineasperDPRwas19.1Haandthelandacquiredis20.01 Ha, which is allowed by the State Commission based on the Petitioner's submissions that due to site requirement, additional land was acquired.

101. The State Commission also stated that as per DPR land cost was considered very low and actual expenditure is higher and the Petitioner failed to submit the documentary proof of the same, however, ***it isnoticed thatthe Appellant has submitted the entire details (chart) of Transmission Land payment of Rs.3.64 Crore, as also placed at Annexure A13 of this Appeal Paper book*** *and the differential amount has been erroneously missed while calculating the same.*

102. On page 325 of the Appeal Paper Book, the Appellant noted the following:

"Note: All the payment proof including all related documents already submitted to Commission and again submitted all details"

103. It is thus noted that all the documents were placed before the Commission, however, the Commission has failed to consider these documents.

104. The Appeal before this Tribunal is a continuation of the original petition before the Commission, on facts and law both, in the light of the above the issue can be remanded on the grounds of non-consideration of facts placed before the Commission or can be decided by this Tribunal also.

105. The instant appeal has been pending before this Tribunal since 2016, therefore, we find it appropriate to resolve the issue on its merit based on facts placed before us.

106. The cost of Private Land as claimed was 0.29 Crore but only Rs. 0.27 CrorehadbeenallowedbytheStateCommission,theAppellantsubmittedt hatan amount of Rs. 0.02 Crore has been missed which is the stamp *duty and registrationcharges,andthesamearepartoftheAgreementswiththeprivate land owners, details of the same enclosed in the Appeal Paperbook (Annexure A13).*

107. The Appellant submitted that all such documents, detailing the agreements andcosts paid (reference-Annexure A13),were submitted to the State Commission also.

108. It cannot be disputed that such expenditure has been made and related proof, except the proof related to stamp duty and registration charges, is placed before the Commission and also before us, the same is, thus, need to be allowed.

109. The cost of Compensation for tree cutting as claimed was Rs. 0.10 Crore but only Rs. 0.06 Crore had been allowed by the Commission. The differential amount is Rs.0.04 Crore. The Appellant clarified that his discrepancy falls due to the inadvertent missing of the proofs submitted to the Commission.

110. In view of the details submitted before us which are claimed to be placed before the Commission, we decide the issue in favour of the Appellant, and the differential cost for land for transmission and Private land (stamp duty and registration charges) is allowed, the State Commission is directed to allow such costs on the basis of the proofs submitted by the Appellant."

13. The Hon'ble APTEL has directed the Commission to allow such costs, on the basis of proof submitted by the Petitioner. The Petitioner has now furnished the documents and based on the same, the Commission has allowed the differential cost of 0.74 Cr. for landfor transmission and Private land (stamp duty and registration charges) as per the directions of the Hon'ble APTEL.

ii. Civil Works

14. The Hon'ble APTEL on the issue of the disallowance of the

cost of the civil works has observedthe following in paras 111 to 143 as under:

"

111. The Appellant had claimed Rs.69.02Cr. against civil works, as per DPR amount allocated for civil works was Rs.29.61Cr., the State Commission vide letters dated 3.12.2014, etc. had asked the Appellant to submit the details of the civil works award, contract agreement, and payment disbursed to the agency, the Appellant in its replies submitted the desired documents to the Commission.

*112. **The State Commission ignored the documentary evidence placed before it for the reasonable cost incurred by the Appellant and decided the issue based on unjustified and irrational methodology.***

113. The Appellant in reply to various discrepancy notes submitted the final cost of civil works as Rs. 55.84 Cr. as per the bills raised by the Contractors against the claimed cost of Rs 69.02 Cr.

114. The Appellant submitted that an amount of Rs. 11.06 Cr. has been disallowed by the Commission as against the total claim of Rs.55.85 Crore as per the petition, the Commission had allowed the civil works of a cost of Rs.44.78Cr.against the payment proofs reconciled from the bank statements.

115. In the total claim of Rs 55.85 Cr., the major civil works were awarded amounting to Rs. 29.19 Cr. out of which Rs 25.57 Cr. of bills were raised by the various contractors, the Commission had allowed only Rs 19.63 Cr.

116. The State Commission in its order mentionedthat a <u>competitive biddingprocedure was not adopted in finalizing the main EPC contractor which wasawarded on 20.6.2007 a</u>nd the Penalty was levied when the agency left the work in May 2009 stated Operational difficulty, further, the Commission in its order at para 4.12 states the following for not allowing the claimed cost:

"4.12.1 Based on its understanding of the various time delays in the project as discussed under section 4.3 of this order, the Commission believes that the developer could have avoided certain costs or could have completed certain works at a lower cost or could have procured certain equipment/materials at a lower

cost, by executing those works or procuring that equipment / material earlier than their actual execution or procurement. Due to the absence of detailed data to identify such activities; which could have been executed by the developer at an earlier date, and due to the complications involved in performing such a detailed analysis, the Commission has adjusted such costs using WPI index."

117. *Regulation 12 of the HPERC Generation Tariff Regulation,2007*

Provides as under:

"12.Capitalcostoftheproject:

(1) Subject to prudence check by the Commission, the actual expenditure incurred on completion of the project shall form the basis for determination of tariff. The tariff shall be determined basedontheadmittedcapitalexpenditureactuallyincurredupto the date of commercial operation of the generating station and shall include capitalized initial spares subject to a ceiling norm of

1.5% of the original project cost as on the cut-off date:

Provided that where the power purchase agreement entered into between the generating company and the beneficiaries provides a ceiling of actual expenditure, the capital expenditure shall not exceed such ceiling for determination of tariff."

118. *It is observed that the State Commission after comparing the civil cost as per the original DPR (based on market prices for March,1998) with the project cost based on the price level of 2013 as the project was completed in May 2013 (as per Commission May 2012),has failed in appreciating that there is always a huge gap in the approval and commissioning of hydro projects due to the approval of various clearances from Central / State Government, land acquisition, financing, these factors needs to be considered while approving the cost of the project, resulting into significant increase in the project cost.*

119. *It is pertinent to mention that Himachal Pradesh is a Hydro Generation richstateandtheStateCommissionmaybeawareofthedifficultiesinworking conditions, the occurrence of geological surprises during construction, the availability of few agencies, and other operational difficulties.*

120. *Accordingly, the State Commission must take a balanced view of how to complete the project within the schedule or to minimize delays, the Appellant to avoid such delays and start litigation with the Contractor, work continued with the already working agencies and wherever required renegotiate the cost.*

121. *The State Commission has allowed a time overrun of 39.5 months due to force majeure.*

122. ***The Appellant submitted that whatever documents were available were submitted to the Commission, due to this the claim had been revised from Rs. 69.02 Cr. to 55.85 Cr.***

123. *The Commission must apply Prudence Check while allowing the capital cost / completed cost of the project, in case the State Commission is not agreeable to audited/actual expenditure on any item, it needs to validate that expenditure by comparing it with other similarly placed project or getting it vetted by experts.*

124. *We find it totally unacceptable and unjustified that by **questioning the time of award, the audited/actual expenditure can be rejected, the rejection should be made on rational and justified grounds.***

125. *In the present case Commission had gone one step beyond not only deciding what activity to take up when by the Appellant even the cost of such activities was also decided using the WPI index.*

126. *Aspersection86(1)(a)and86(2)(ii)oftheElectricityAct,2003following is defined*

"(1) The State Commission shall discharge the following functions, namely:-

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(2) The State Commission shall advise the State Government on all or any of the following matters, namely:-

(i) *promotionofcompetition,efficiencyandeconomyinactivitiesofthe electricity industry;*

(ii) *promotionofinvestmentinelectricityindustry;"*

127. *The Regulatory Commission must maintain a balance between the Developer/Generator and Beneficiaries and ensure that they are not deprived of their entitlement, whereas, the State Commission penalized the Appellant by disallowing capital cost of Rs. 11.06 Cr. on the presumption basis and recovery of actual and reasonable capital cost is restricted, even when documentary evidence was placed before the Commission.*

128. *The State Commission before determining the capital cost of the project should have considered the civil construction cost of any other project commissioned during the same period to get a fair idea.*

129. ***The Appellant also submitted the Auditor's certificate of the completed cost as of 6.5.2013, which the Commission also did not consider.***

130. *The State Commission Order's para no. 4.12.1 shows that the decision is based more on presumption rather than a defensible prudence check, as seen from below-quoted extract:*
"---- developer could have avoided certain costs or could have completed certain works at a lower cost or could have procured certain equipment/materials at a lower cost, by executing those works or procuring that equipment/material earlier than their actual execution or procurement."

131. *The State Commission has erred in guessing and presuming the timing ofeventsand/orjustificationofthecostwithouthavingdataorbenchmark cost of any civil work/equipment, it is observed that the State Commission has not compared the costs with any other similarly placed project.*

132. *ThestatementoftheStateCommissionthat"**duetothecomplications involved in performing such a detailed analysis, the Commission has adjusted such costs using WPI index"** needs to be rejected as the failure to carry out prudent analysis cannot be allowed to be a valid reason for the disallowance of the reasonable cost incurred by the Appellant, inter-alia supported by audited accounts, and therefore, the Appellant cannot be made to suffer for this failure to prudently determine Capital cost including civil cost without exploring the alternate legally tenable methodology.*

133. *It is also important to mention that considering the Project size of 15MW which is covered under the Small Hydro project and for the project executed in the same time frame, benchmark costs or tariffs are available which are computed by various State Commissions based on large data set available.*

134. *At the first instance for regulatory accounting, the auditor statement is to be relied upon and only in case of discrepancy or valid reasons, a detailed analysis can be carried out, however, the role of prudence check is not to make* ***presumptive*** *conclusions.*

135. *There is an apparent inconsistency in the approach of the Commission, in place of the normal prevailing practice of regulatory prudence check basedontheAuditorcertificate,theStateCommissionsoughtproofofeachpayment, and for minor works, the Commission accepted the payment proofs for approving the expenditure, however, for major works, the Commission has questioned the timing, methodology, and justification for each sub-item and rejected some of the actual costs even supported by payment receipts.*

136. *Also, the methodology adopted by the commission i.e. escalation of DPR cost as per WPI is not as per the relevant Regulations.*

137. *It is a settled principle that if the law provides a methodology to do a thing, it cannot be done in any other manner.*

138. *The State Commission is bound by its Tariff Regulations, none of the State Commission's Regulations provides for any other alternative to the prudent analysis, inter-alia, there is no alternative methodology mandates that the Commission can Suo moto compute the capital cost by escalating the DPR cost based on WPI.*

139. *Therefore, once no such methodology is mentioned in the Tariff Regulations, the State Commission has to carry out the prudence check per the Regulations and should not invent any new methodology to predict or arrive at cost based on its presumption including the sequence and timing of work orders.*

140. *It cannot be disputed that in general, the application of WPI in Regulated Tariff Mechanisms is limited to O&M charges only, its application to the estimation of capital cost or Civil work cost is erroneous as WPI consists of a basket of items while relevant escalation in case of projects concerning civil work is based on items like Steel, Cement and manpower costs, also considering geographical surprises in case of Hydro Station, a simplistic formula of WPI escalation cannot be applied.*

141. ***Hence the methodology adopted by the Commission is arbitrary and not in accordance with its own Regulation, given this the State Commission should have looked into the Civil cost accordingly, and if required, should have sought the***

advice of experts/institutes like IIT Roorkee or consultant having experience in Civil engineering costs analysis, considering the scope of work, manpower and material cost.

142. ***In view of the above the deduction of Rs11.06 Cr is found erroneous as the reasoning of the deduction is presumptive in nature and the methodology adopted by the Commission to arrive at the cost is not in accordance with the Regulations.***

143. ***The issue is decided in favour of the Appellant, the cost of Rs.11.06 Cr is allowed based on the documents placed before us as also placed before the State Commission."***

15. Since, the Hon'ble APTEL has allowed and approved the cost of Rs. 11.06 Cr. on account of the civil works, the Commission has allowed said cost of Rs. 11.06 Crore on account of civil works. However, it is relevant to mention that the Commission has sought the review of order of Hon'ble APTEL and thus, the approval of this cost shall be subject to the outcome of the Review Petition.

iii. MiscellaneousExpenses

16. This aspect was discussed by the Hon'ble APTEL in Paras 144 to 148 of the Order dated 16.12.2024 by observing the following as under:-

"

144. The Appellant has claimed miscellaneous expenses of Rs. 0.22 Crore paid to various companies for consultancy services and charges, the proof of payments, ledger account summary, and bills of the consultants and surveyors towards miscellaneous expenses have been submitted with the Appeal paper- book, the State Commission has held that any amount based on ledger cannot be passed if supporting documents are not provided in respect of the same.

145. It cannot be argued that the State Commission can seek and verify *the actual expenditure, however, it must take into consideration the Appellant was implementing a 15 MW project and may lack experience like other regulated entities and utilities, so there is a need to give an opportunity to submit documents.*

146. *However, the State Commission rejected the claim stating that the expenditure could not be allowed based on the ledger, however, the Commission could have directed the Appellant to specific documents as required in support of the ledger.*

147. ***The details are placed in Annexure 16 (Proof of payments, ledger accountsummary,billsoftheconsultantsandsurveyorstowards` Misc. Expenses') of the Appeal Paper Book (page nos. 1672 to 1692), and the Appellant claimed that these were placed before the State Commission also.***

148. ***Accordingly, we direct the State Commission to re-examine the issue,andincasetheAppellantprovidestherelevantdocument,thecost should be allowed."***

17. The Commission has carefully examined the documents submitted by the Petitioner alongwith the application for passing the consequential Order. The Commission in the impugned order dated 16.04.2016 had approved the capital cost based on the documents made available by the Appellant. Further, there has been no separate component of the Miscellaneous expenses as such in the capital cost originally approved by the Commission. However,the Petitioner might have taken the services of the Consultants during the construction of the Project. Since the amount involved is not significant and also that the Petitioner has submitted all the related documents in this regard

before the Hon’ble APTEL and this Commission as well,we have approved the cost of Rs. 0.22 Cr. on account of the Miscellaneous expenses as per the direction of the Hon’ble APTEL.

iv Communication/ Road Works

18. The Hon’ble APTEL on the issue of the disallowance of the cost of the Communication/RoadWorkshas observed the following in paras 149 to 151 as under:

“

149. The Appellant claimed an amount of Rs. 10.19 Cr. for the Road Work/ Communication expenses incurred by it, additionally,it is the submission of the Appellant that the break-up and details of the said expenses incurred by the Appellant were submitted to the State Commission, the ledger of road work and work order of traffic tunnel and bills of the contractors carrying out road construction were also submitted but the Commission in its Impugned Order had mentioned that the same were not part of the record and therefore the amount of Rs.10.19 Crore was rejected.

150. The Appellant, on page 1693 of Annexure 17 of the Appeal Paper Book, recorded that:

“(1)The Commission has not considered this expenditure and hence the same is claimable. (2) The detail of sheet expenditure incurred under road communication placed in annexure 7 of our reply dated 20.01.2015 page no. 235 and again commission asked a query on 02.04.2015 and we are submitted detail sheet of expenditure-under road and communication in our reply dated 27.04.2015 in which we are placed ledger of road work and work order of traffic tunnel and bills of road contractor Page no 670 to 766”

151. The Appellant submitted that the State Commission has failed to consider these documents, accordingly, we direct that the claim of Rs.10.19 of the Appellant needs to be re-examined by the State Commission based on such documents.”

19. The Commission had approved the cost based on the documents made available by the Appellant during the pendency of the proceedings, the Auditor Certificate and also considering the prudence of the cost incurred. The total cost considered for civil cost as per the Auditor Certificate has been Rs. 69.02 Crore.The Commission had approved the civil cost of Rs. 44.78 Crore against the total claim of Rs. 69.02 Crore as evident from the order. Now, on re-examination of the documents in view of the observations of the Hon'ble APTEL, the civil cost of Rs. 11.06 Crore has additionally been approved as discussed above under the head Civil Works. Therefore, the total civil cost approved add up to Rs. 55.84 Crore. However, the documents furnished do not justify the allowing of the cost of Rs. 10.19 Crore as the approval and allowing the cost of Rs. 10.19 Crore for road work/ communication expenses would amount to the increasing total civil cost to Rs. 66.03 Crore, which will be quite exorbitant for a hydro project capacity of 15 MW.Further, it is pertinent to mention here that the Commission in the tariff order dated 28.04.2016 has already observed that one of the contractors namely 'Pioneer Builders' had expressed

inability to execute contract due to operational constraints and, therefore, the developer had to assume the responsibility to make direct payments to sub-contractors for the civil works of the project. No penalty was levied on ‘Pioneer Builders’ for the termination of the project for the reasons best known to the developer. The relevant portion of the Tariff Order dated 16.04.2024 is reproduced here as under:

> *“4.6.8 The Commission analyzed the supporting documents to verify the payments made and claimed by the developer. Following information was deduced by the Commission from the supporting documents submitted by the developer –*
> *a. The developer awarded the contract for civil works to ‘Pioneer Builders' on 20th June 2007 for Rs. 38.26 crore.*
> *b. ‘Pioneer Builders’ further awarded sub-contracts to ‘Raj Kumar Engineers’, ‘Jai Santoshi Mata’, ‘Ram Krishna Thakur’, ‘Sanjeev Kumar Anand’ and ‘MCC Power Projects’ for various civil works like Tunnel Excavation, D Chamber, Power House, Surgeshaft, Penstock etc. between 2007 and 2009.*
> *c. However in May 2009, ‘Pioneer Builders’ expressed inability to execute contract due to operational constraints and therefore the developer had to assume the responsibility to make direct payments to sub-contractors for the civil works of the project. No penalty was levied on ‘Pioneer Builders’ for the termination of the project. The developer has submitted in its reply to discrepancy notes that M/s Pioneer Builders were demanding to be compensated for the financial losses suffered by them during the year 2007 and 2008 due to delay in execution of the works because of road blockage by the villagers. Therefore the developer decided that M/s Pioneer Builders will not be compensated for the losses suffered by them and that they will also be not liable for any penalty for breach of contract. While the Commission believes that the contractor should have been penalized by the developer for breach of contract, the Commission has*

taken a reasonable view on this issue and ignored this lapse by the developer owing to the difficult conditions during construction of the project."

20. Further, the Commission has also noted that usual process of competitive bidding was not followed for awarding the contracts for civil works. Also prima facie, it appears that 'Pioneer Builders' and 'Om Hydro Power' belong to the same group of Companies, creating conflict of material interest between the parties. The Commission believes that major contracts should be awarded based on competitive bidding to generate greater efficiency in costs. In this regard, it is relevant to reproduce the relevant portion of the Tariff Order dated 16.04.2016 as under:

> *"4.6.9 Further the Commission asked the developer to submit the details of selection procedure of the contractor for civil works. Based on the supporting documents submitted by the developer, the Commission has deduced that usual process of competitive method was not followed for awarding the contracts for civil works. Also prima face it appears that 'Pioneer Builders' and Om Hydro Power belong to the same group company, creating conflict of material interest between the parties. While the Commission believes that major contracts should be awarded based on competitive bidding to generate greater efficiency in costs, the Commission has taken a reasonable view on this issue and allowed the contracts awarded in the case of Neogal SHP owing to the difficult conditions during construction of the project."*

21. Further, as per the DPR and also as per the CEA guidelines, the road and communication work and related works falls under the civil

works.Also, the Commission has noted that the Auditor Certificate supplied by the Petitioner wherein the segregation of the total capital cost under different heads has been given. There is no separate head for the road and communication work in this Auditor Certificate. Therefore, we have considered the road and communication works cost under Civil Works head as per the DPR and also as per the CEA guidelines as discussed above. It is also noted that the Petitioner itself has agreed and revised its claim of the total civil cost incurred in the Project to Rs. 55.85 Crore against the earlier claim of Rs. 69.02 Cr. This is also quite evident from the order dated 16.12.2024 of the Hon'ble APTEL wherein the following has been recorded at para 122 under Civil Works:

> ***"122. The Appellant submitted that whatever documents were available were submitted to the Commission, due to this the claim had been revised from Rs. 69.02 Cr. to 55.85 Cr."***

Since the Commission has already allowed the cost of Rs. 55.84 Cr. against the claim of Rs. 55.85 Cr. in civil works and there is no separate head as such'road and communication works' in the 'Auditor Certificate' submitted by the Petitioner, therefore, the Commission has not accepted the claim of the Petitioner for the additional cost of Rs. 10.19 Crore on account of the road and communication works.

v Environment & Ecology for Compensatory Afforestation Tax

21. The Hon'ble APTEL on the issue of the disallowance of the cost of the Environment & Ecology for Compensatory Afforestation Tax has observed the following in paras 152 to 155 as under:

"

152. The cost of Rs.0.96 Crore has been disallowed by the Commission while calculating the Capital Cost of the Project. The Appellant submitted that all the details were submitted before the State Commission.

153. The Appellant on page 2855 of Annexure 18 of the Appeal Paper Book, recorded that:

"The Commission has not considered this expenditure and hence the same is claimable (The same amount shown by us in our Reply dated 20.01.2015 Annexure 7 page no 237.)"

154. Any prudent expenditure made by the Appellant cannot be rejected, if enough proof is provided by the Appellant to satisfy such a claim is made.

155. ***The State Commission is directed to verify and re-examine the claim based on documents submitted by the Appellant before it as part of the original petition."***

23. The Commission in the impugned Order had approved the cost based on the documents made available by the Appellant.There was no separate head as Environment & Ecology for Compensatory Afforestation Tax in the Auditor's Certificate furnished by the Petitioner.

Accordingly, the same was also notin the approved capital cost by the Commission. The Commission on re-examination of the documents in view of the observation of the Hon'ble APTEL has allowed the claimed cost of Rs. 0.96 Crore on account of 'Environment & Ecology for Compensatory Afforestation Tax' by way of this Order.

vi Transmission Line

24. The Commission had allowed an amount of Rs. 4.46 Crores only against the claim of Rs. 7.54 Crore against transmission line expense. The Hon'ble APTEL on the issue of the disallowance of the cost of the Transmission Line in paras 156 to 164 has observed as under:

"

156. The Appellant had claimed Rs. 8.04 Cr for transmission line expense, however, in reply dated 18.9.2015 to the discrepancy note issued by the Commission, the Appellant the claim to a cost of Rs. 7.54 Cr for the transmission line and an establishment cost of Rs. 0.27 Cr, however, the Commission has allowed a claim of Rs 4.46 Cr only as against Rs. 7.54 Cr.

157. The Commission has allowed payment to HPSEB of Rs. 0.86 Cr for the cost of land at Dehan Sub Station and other charges while rejecting the claim of Rs1.95 Cr to HPSEB for the cost of sharing for augmentation of 132/33 kV Dehan Sub-station because this payment could not be verified from the Appellant account.

158. The Commission agreed that for power evacuation land is required at the Dehan Sub-station of HPSEB, however, the State Commission rejected the claim for the system to be augmented for evacuation of ***power as payment proof is not available.***

159. It is pertinent to mention that for the evacuation of power of the

Appellant's project, there is a need for the augmentation of the electrical system of the Dehan substation of HPSEB as per the CEA technical standards and such details of augmentation could have been verified from the HPSEB also, however, the State Commission without carrying out any prudent analysis and had rejected the claim of the Appellant.

160. *The State Commission had rejected the claim of Rs. 0.37 Cr. for the electrical equipment which had been procured by the Appellant from various agencies for substation work, land lease amount of Rs. 0.26 Cr. allowed against Rs.0.62Cr.and had allowed cost of Transmission line work for Rs.0.71 Cr. only as against the claim of 1.71 Cr which was awarded to M/s Devarya Engineering stating lack of payment proof from bank statement.*

161. The Appellant has alleged that it has submitted all the documents related to the payments to the respective parties and these are also submitted with the Appeal paper-book.

162. *The State Commission has allowed an amount of Rs. 4.46 Crores after perusal of the documents submitted by the Appellant of which break-up is as follows:*

(AllFiginCr)

S. No.	Head of Works	As per Petition	As per contract/agreement	As per payment references	Allowed by Commission
1.	Material	2.55	2.98	2.55	2.55
2a.	Payment of HPSEB	0.86	0.86	0.86	0.86
2b	Payment of Railways	0.02	0.02	0.02	0.02
2c	Payment to Devarya	1.36	1.36	0.71	0.71
2.	Sub Total – Transmission Line	2.24	2.24	1.59	1.59
3.	Network Augmentation	1.95	1.95	-	-
4.	Land lease rent	0.41	0.42	0.26	0.26
5.	Electrical Equipment	0.37	0.37	0.05	0.05
	Total	7.54	8.18	4.46	4.46

163. The State Commission has indulged itself in a roving investigation for each payment and seeking proof of payment against each item ignoring the agreements between parties and auditor certificate without stating a reason for not accepting such documents, as such it is not a prudence practice while finalizing the capital cost of the project.

164. Given the documents placed before the Commission by the Appellant, the State Commission is hereby directed to re-examine the claim."

25. The Commission had approved the cost based on the documents made available by the Appellant during the pendency of the proceedings. Since the Appellant has submitted all the related documents before the Hon'ble APTEL and the Hon'ble APTEL has indicated in its observation as discussed above that the Commission has not offered any plausible reason for ignoring the agreements between parties and auditor certificate. The Commission on detailed analysis of the documents hasconsidered the claim of cost incurred under this head except the claim for payments of Rs. 1.95 crore to HPSEBL for the Cost sharing for augmentation of 132/33 kV Dehan Sub- station as neither the payment for this cost could be verified against the bank statements of the developer/Petitioner nor the Petitioner has produced the receipt.Therefore, the Commission has decided to approve the revised cost of Rs. 5.59 Crore from Rs. 4.46

Crore approved earlier for transmission line against the claimed cost of Rs. 7.54 crore.

vii) Interest During Construction (IDC)

26. The Hon'ble APTEL on the issue of the disallowance of the IDC by the Commission hasobserved in paras 165 to 186 as under:

"

165. The Appellant had signed an MOU with the State Government for the development of the project and various Implementation Agreements(intotal6 nos.) were also signed, as per clause 1c(iii) of 4th IA dated 27.01.2006, the construction of the project to be completed within 42 months from the signing of PPA (signed on 27.10.2006.

166. The project was commissioned on 6.5.2013, and as per the 4th Supplementary Implementation Agreement dated 27.01.2006, the Project was to be commissioned by 26.4.2011 i.e. within 42 months from the date of signing of the PPA i.e. 27.10.2006.

167. The Appellant in Petition no 48/2013 sought condonation of delay of 51 months out of 84 months of the construction period due to force majeure, Commission after a detailed analysis of the construction activities and reasons submitted by the Appellant allowed the delay of 39.5 months.

168. The State Commission classified the delay into the following categories:

i.Category A Factors attributable to generating Company cost escalation due to time delay of such factors are not passed on to tariff by the Commission.

13. Category B Factors beyond the control of the generating company, and cost escalation due to time delays of such factors are entirely passed on to tariff by the Commission.

14. Situation not covered by (i) and (ii) (hereafter referred to as Factor C), this Tribunal has further opined in Petition no 54 of 2012 that the escalation is due to time delays of such factors are not partly passed onto the tariff by the Commission, in such cases, the State Commission has allowed 50% of the time delay for such factors.

169. The relevant extract of the Impugned Order is quoted as under:

"4.3.7 The Commission finds it appropriate to be guided by the principles laid down byHon'ble APTEL in its judgment in Appeal No. 72 of 2010 for prudence check to decide the responsibility for delay in execution of a generating project. In para 7.4 of the said judgement, Hon'ble APTEL has held that the delay in execution of a generating project could occur due to

(a) Factors entirely attributable to the generating company (thereafter referred to as "factor A"). Escalations due to time delays of such factors are not passed on to the tariff by the Commission.

(b) Factors beyond the control of generating company (thereafter referred to as "factor B"). Cost escalations due to time delays of such factors are entirely passed on to the tariff by the Commission.

(c) Situation not covered by (i) and (ii) above (thereafter referred to as "factor C"). Hon'ble APTEL has further opined Order in Petition No. 54 of 2012. Escalations due to time delays of such factors are not partly passed on to the tariff by the Commission. In this case the Commission has allowed 50%of the time delay for such factors.

4.3.8 The Commission has taken note of the submissions made by the developer for time delays and considered events like road damage, rain and now as factor C events and others as factor B events. The Commission has however, while taking a reasonable view, avoided classification of any event as factor A.

170. Details of the delay claimed by the Petitioner therein and accepted by the State Commission, are mentioned in the table below:

	Force Majeure	*TimeLoss claimedby petitioner*	*Factor*	*Allowed time loss by Commission (months)*	*Remarks*
2007	*Roaddamaged ue tounprecedented rains*	*6*	*C*	*3*	*The developer has submitted an order by Magistrate to stop construction work in July 2007 due to heavy rains. Further, in its letter dated 30.12.2007 to HPSEB, the*

					developer has claimed only 3 months of time delay.
2007	*Disruptio ndueto blockage by villagers*	*2*	*C*	*1*	*Severalnewspaper clippingsindicate construction work was affected however developer has not submitted any proof or date of termination of Force majeure event.*
2008	*Road*	*6*	*C*	*3*	*Initsletterdated 21.12.2008to*
	dama gedu eto unpre cede nted rain/s now				*HPSEB, the developer has claimed only 3 months of repair time from Oct 2008 to Dec 2008. Based on experienceof year2007,the developer should have anyways planned to close construction work during rainy season from July 2008 to Sep 2008.*
2009	*Roadda maged ue tounpre cedent ed rain*	*4*	*C*	*2*	*In its letter dated 30.10.2009 to HPSEB, the developer has claimed only 1 month of repair time in Oct 2009.*

					Based on experience of year 2007 and 2008, the developer should have anyways planned to close construction work during Rainy season from July 2009 to Sep 2009.
2010	*Damage to components due to cloud burst/ flash flood*	*13*	*B*	*13*	*The developer has submitted work schedule for repair works and in its letter dated 30.12.2011 had asked HPSEB for time extension of upto 1 year from May 2011 to May 2012*
2011 -12	*Road damagedueto unprecedented rain/snow*	*3*	*B*	*3*	*The developer in its letter dated 08.05.2012 had asked HPSEB for time extension of upto 3 months from May 2012 to Aug 2012. Documents for start and termination of event have been submitted.*

2011 -12	*Disruption oftransmissionline workbyvillagers*	*2*	*C*	*1*	*The developer in its letter dated 14.04.2012 has asked for loss of 39 Labor days. Further proof for termination of force majeure event Has not been submitted.*
2012 -13	*Intense Rain/Flashflood 2012*	*3*	*C*	*1.5*	*The developer has claimed delay from Sep 2012 to Dec 2012 on account of intense rain/ flashflood. However, the construction work should have finished till Aug 2012as per the earlier submission of developer itself (after taking into account all earlier force majeure events)*
2012 -13	*Stoppageofjointline with dept. line work at Dehan substation.*	*8*	*B*	*8*	*The developer has submitted Details of court case on the issue of RoW for transmission line and delay in commissioning due to the same.*
2012 -13	*Legal notice and litigationbyPvtland owners in TXN*	*4*	*B*	*4*	
	Total	***51***		***39.5***	

171. *The Appellant vide letter dated 30.12.11 requested HPSEB for an extension of 13 months (May 2011 to May 2012) due to "Damage to components due to cloudburst/ flashflood", the State Commission had allowed this delay under Category B which means the entire time delay allowed under this category shall be passed on to the tariff.*

172. *The Appellant vide letter dated 8.5.12 asked HPSEB for a time extension of 3 months from May 2012 to August 2012 under the head "road damage due to unprecedented rain/snow", which is*

allowed by the Commission under category B means the entire time delay allowed under this category shall be passed on to the tariff by the Commission.

173. *The Appellant claimed a two-month time extension vide letter dated 14.4.2012 due to the disruption of transmission line work by villagers, the State Commission had allowed delay under category C for one month, which runs parallel to the time extension granted earlier.*
174. *The Appellant claimed a three-month extension from September 2012 to December 2012, under "intensive rain/Flashflood 2012, the State Commission had allowed 1.5 months under Category C, this is in continuation to the time extension granted from May 2012 to August 2012, however, restricted to 1.5 months only under category C.*
175. *As such it cannot be denied that the Appellant has got the extension till mid-October 2012.*
176. *Further, the Appellant had claimed a time extension of 8 months and 4 months due to the stoppage of joint line with line work at the Dehan substation and legal notice and litigation by private land owners respectively, the Commission had allowed the claimed time extension under Category B means the entire time delay allowed under this category shall be passed on to the tariff.*
177. *However, the dates of such extensions are not provided in the Impugned Order.*
178. *However, the extensions are given during 2012-13, and total months granted are 12, as such the delay has to be condoned for the year 2012-13 i.e. upto 1st April 2013.*
179. *Accordingly, the final COD dates workout as follows:*

   a. *As per implementation Agreement 27.1.2006 and PPA dated 27.10.2006, the completion schedule of 42 months shall be 26.4.2011.*
   b. *Further time extension allowed by the Commission under Category B is13 months (May 2011 to May2012), 3 months (May 2012 to August 2012).*
   c. *A 1.5-month extension under CategoryC was also allowed for the period starting from September 2012.i.e.uptomid-October, 2012.*
   d. *Further, 8 months for FY 2012-13 and 4 months (specific dates were not mentioned in the Commission order) of time extensions were granted under Category B. As such, counting 8 months from mid-October 2012, the extension is granted*

beyond the actual COD.

e. *As per the time extension allowed by the Commission in its order Commissioning date of the projects worked out beyond 6.5.2012 which is, wrongly, considered by the Commission to work out the IDC.*

180. *Respondent No. 2 submitted that as per Schedule-1 attached to the PPA, the SCOD of the Project was agreed upon by both parties to be July 2009.The Schedules of the PPA form an integral part of the PPA. Therefore, the contention that the PPA did not recognize the scheduled date of commissioning is factually incorrect.*

181. *The Commission in the Impugned Order has notes as under:*
"3.3.3 Commission's view

As per the clause 2.24 of the 4th Supplementary Implementation Agreement the project was to be commissioned within 42 months from the date of signing of the PPA i.e. by 27th April, 2010. ***The PPA does not specifically mention any scheduled COD, however it states under Article 3 that the construction period should be a maximum of 32 months from the date of financial closure.****"*

182. *Further, Respondent No. 2 argued that the notice of force majeure is mandatory has also been reiterated in the case of Himachal Sorang Power Ltd v. CERC & Ors, Appeal No. 54 of 2014 dated 30.04.2015, para 22, 26 and 33. The Hon'ble Tribunal has already reiterated that where the PPA provides for a particular consequence of force majeure, the same is binding on the parties.*

183. *Also, submitted that although the time overrun of 39.5 months itself is incorrect, however, any further time overrun ought to certainly not be allowed, since the claim of the Appellant fails to meet the contractual requirement of notice of force majeure to the other party, however, accepted the decision of the Commission as it has not been challenged.*

184. *Accordingly, the argument of the Respondent is rejected.*

185. *The Commission in its order dated 28.4.2016 had allowed the delay by datesasrequestedbytheAppellanttoHPSEB,thisrepresentsthatasper*

the time extension allowed by the Commission under Category B (the entire time delay allowed under this category shall be passed on to the tariff), the final commissioning date works out to be not before 06.05.2013, however, the Commission had considered the Commissioning date as 6.5.2012 for allowing IDC and other allowances, hence there is an error apparent in the decision of the Commission, the State Commission is bound to consider the IDC as per the COD achieved, as mentioned above.

186. Therefore, the State Commission is directed to re-determine the IDC subject to COD on 06.05.2013."

27. The Petitioner had claimed IDC of Rs. 30.06 Cr. against total capital cost claim of Rs. 147.71 Cr. during its original tariff filing before this Commission. Therefore, net capital cost claim excluding IDC amount of the Petitioner was Rs. 117.65 Cr. However, the Commission in the tariff order dated 16.04.2016 had allowed IDC of Rs. 19.01 Cr. only in the total approved capital cost of Rs. 102.53 Cr. Thus, the net approved capital cost excluding the IDC by the Commission was Rs. 83.52 Cr. Now, the Commission, in this order as discussed above, has allowed additional capital cost totaling to Rs. 24.30 Cr. Accordingly, the capital cost approved in this Order excluding the IDC comes to Rs. 97.63 Cr. which is 17.02% lesser than the claimed capital cost of Rs. 117.65 Cr. without IDC.Therefore, on the careful examination of documents, the Commission find it prudent to allow Rs. 24.94 Cr.as IDC, a reduction

of Rs. 5.12 Cr. to the claimed amount, in the same proportion as approved capital cost to the claimed capital cost.

It is relevant to mention here that the Commission has sought review of the Order of Hon'ble APTEL and this Order shall be subject to the outcome of the Review Petition.

viii) Advance against Depreciation while determining the levellized tariff

28. The Hon'ble APTEL has held that the HPERC Tariff Regulations do not contain a provision of Advance against depreciation, therefore, no relief was granted on this account.Accordingly, no changes are required to be incorporated in the impugned tariff order.

<u>Issue No. 2: MNRE Capital Subsidy</u>

29. The Hon'ble APTEL on the issue of considering the MNRE capital subsidy in paras 193 to 205 has observed as under:

"

193. The Appellant had submitted that a subsidy amount of Rs. 6.20Cr. is to be considered as per the MNRE policy for the State of Himachal Pradesh, further, stated that this amount of Rs. 6.20 Cr. has been received, therefore, the Commission has adjusted 90% of this subsidy amount as additional loan repayment during the first year of operation, for determination of tariff, balance 10% of the subsidy amount has been allowed by the Commission towards administrative spent while availing the loan or other incidental *expenses.*

194. *It cannot be argued that availing of subsidy is the responsibility of the Appellant, however, based on the auditor certificate, it is evident that no subsidy is availed by the Appellant.*

195. *The Commission had considered that subsidy credited to the Appellant account, based on the submission of the Appellant, and the same had been adjusted in 90% of the subsidy amount in loan repayment, which had adversely impacted the cash flow of the Appellant, the relevant extract of the Impugned Order is as under:*

> *"5.3.1 The Commission directed the Petitioner to furnish details of any kind of subsidy availed by the Petitioner.*
>
> *5.3.2ThePetitionersubmittedthatasubsidyamountofRs.6.20 crore is to be considered as per the MNRE policy for the State of Himachal Pradesh. Accordingly, this subsidy amount will have to be accounted on project specific basis.*
>
> *5.3.3* ***As the petitioner has stated that this amount of Rs.6.20 Crore has been received, therefore, the Commission has adjusted 90% of the subsidy amount as additional loan repayment during the first year of operation****, for the determination of tariff.10%ofthesubsidyamounthasbeen allowed by the commission towards administrative expenses spent while availing the loan or other incidental expenses."*

196. *However, the Appellant submitted that it had nowhere mentioned in the Petition before the State Commission that the amount of Rs. 6.02 Cr. as Capital Subsidy has been received from MNRE.*

197. *Respondent No. 2 argued that the above contention of the Appellant stands negated in terms of its pleading before the State Commission. The Appellant in its petition before the State Commission had considered the subsidy amount of Rs.6.20 crores in the tariff computation. This is provided in para 4.1 of the Petition read with Annexure Q to the petition.*

198. *Further argued that the Appellant was entitled to the subsidy amount fromMNREandhaditselfconsideredthesameinthetariffcomputation.There isnothingonrecordtoshowwhethertheAppellanthadclaimedthes*

amefrom MNRE, whether the same has been rejected by MNRE, whether the rejection (if any) is for reasons attributable to the Appellant etc. There is no basis for the claim now sought to be made that the subsidy amount is not to be considered.

199. From the above ,it is clear that there is no evidence regarding:

a. *Whether the Appellant had claimed the same from MNRE,*

b. *Whether the same has been rejected by MNRE ,and*

c. *Whether the rejection (if any) is for reasons attributable to the Appellant*

200. The Commission has stated that the subsidy amount cannot be recovered from the state's consumers if the Appellant has not received it yet due to its own inefficiency.

201. However, from the Impugned Order or the submissions of the Respondents, we could not find any finding ascertaining the fact that the Appellant has not acted diligently.

202. The MNRE grants the subsidy afterexaminingthefacts of thecase and can be disallowed for reasons that cannot be attributed to the Appellant.

203. The reliance on this Tribunal's judgment dated May 9,2019, in ***HimUrja Pvt Ltd v .Uttarakhand Electricity Regulatory Commission, Appeal No. 17 of 2017****,wherein it has been held that the Appellant cannot be allowed to take benefit of its own fault of not receiving the MNRE subsidy and therefore the cost cannot be passed onto the consumers,*

204. However, without justifying the fault on the part of the Appellant the same cannot be denied, in the instant case the StateCommission has not recorded anyfinding basedon whichtheAppellant isheldresponsible as such reliance on the aforesaid judgment is misplaced.

205. Hence, the State Commission is directed to re-examine the matter, and in case, the reasons for the non-grant of subsidy by MNRE are not attributable to the Appellant, the Commission shall make corrections accordingly."

30. The Petitioner in the application for passing the consequential order on the issue of non-availing of MNRE Capital Subsidy has submitted the following:

"

a. *On 05.05.2010, a detailed Application for availing MNRE Capital Subsidy was submitted by Petitioner through its consultant before Ministry of Non-Conventional Energy Sources ("**MNRE**"). All relevant information/data/details and documents etc were submitted along with the Application for availing MNRE Capital Subsidy. However, no response/objection was received by Petitioner from the concerned agency/authority for 9 years.*
b. *On 13.05.2019, MNRE, rejected the Application/proposal dated 05.05.2019 without informing the Petitioner about the nature of non-compliance in a summary manner. The Petitioner/Applicant was never informed about any objection or alleged non-compliance of MNRE scheme dated 27.09.2003, despite Applicant's consultant numerous visits to the office of MNRE. However, alleged non-compliance of scheme dated 29.07.2003 and 11.12.2009 was never communicated by MNRE.*
c. *MNRE, infact, rejected the proposal for grant of subsidy in respect of 53 nos. of Projects in a summary manner, without providing any information qua the reasons for such rejection.*
d. *The Applicant was neither negligent nor defaulted in compliance of any guidelines issued by MNRE. The reasons for non-approval of Applicant's proposal for grant of MNRE Capital Subsidy was not attributable to the Applicant and therefore, amount of Rs.5.58 cr. (90% of MNRE Subsidy of 6.20 cr.) may not be adjusted from the capital cost of the Project.*
e. *The Applicant further submits that the Ld. Commission had erroneously recorded in Para 5.3.3 of Order dated 28.04.2016 that the Petitioner has stated that amount of Rs. 6.20 Cr has been received. It is pertinent to mention that Applicant had nowhere in its earlier submission before this Hon'ble Commission had ever stated that it has received MNRE Capital Subsidy of Rs. 6.20 Cr. and for obviating any confusion, it is submitted that the Applicant had never received MNRE Capital Subsidy of Rs. 6.20 cr. and prays this Hon'ble Commission not to adjust the said amount from the Capital Cost of the Project.*
f. *The Applicant further relies upon the Order dated 18.12.2007 passed by this Hon'ble Commission, wherein this Hon'ble Commission in 4.41 & 4.42 held as under: -*
    a. *"**4.41** The Commission is of the view that if the developer gets any subsidy / incentive from MNES / State Govt. or any other agency on the capital cost, then such subsidy / incentive shall not be adjusted against the capital cost of the project for the purpose of tariff determination. In order to fulfil the mandate of promoting renewable energy generation provided by Section 86 (1) (e) and Section 61(h) of the Electricity Act 2003, the Commission has decided that the entire*

benefit of subsidy be given to developer as incentive for the purpose of promotion of small hydro power in the state.

b. ***4.42*** *The above notation has validity for two more reasons. Firstly, there is doubt whether the Central Ministry will for purpose of subsidy switch over from continuing to give some subsidy to the projects which have been approved on the MOU route or would only seek to provision for only those IPPs who have migrated to the system via the competitive bidding route. Secondly, if we evaluate the over all likely explosion of renewable energy across the North-West and North-Eastern Himalayan region in the country over the next decade, the number of projects and the budgetary requirement for subsidy will become difficult to provision for by GOI. Similar constraints have been noted in many subsidy based programs, wherein recipients spend lot of time and effort on subsidy retrieval from the bureaucracy at the Central level. This will lead to policy makers at the Central Level to slow down or negate the subsidy transfers. It is thus imperative that like the CDM issue, MNES subsidy should not be accounted for within any tariff formulation but should be left as an incentive for the promoters, in line with the views enshrined in the National Tariff Policy."*

g. *It is stated that the Applicant is also in the process of initiating appropriate proceedings before appropriate court of law or forum, against the MNRE rejection order dated 13.05.2019. The Applicant undertakes to update the status of the said proceedings before this Commission."*

31. The Commission has carefully analysed the matter and considered the additional submissions. Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewable Sources and Co-generation by Distribution Licensee) Regulations, 2007, are silent about the treatment of any subsidy from the Government Agencies/ Authorities. Regulation 6 of these Regulations provides for Determination of Tariff for electricity from Renewable sources as under:

***“6. Determination of Tariff for electricity from Renewable sources**:*

(1) The Commission shall, by a general or special order, determine the tariff for the purchase of energy from renewable sources and co-generation by the distribution licensee;

Provided that the Commission may determine tariff –

(i) by a general order, for small hydro projects not exceeding 5 MW capacity; and

(ii) by a special order, for small hydro projects of more than 5 MW and not exceeding 25 MW capacity, on individual project basis:

Provided further that, (i) where the power purchase agreement, approved prior to the commencement of these regulations, is not subject to the provisions of the Commission’s regulations on power procurement from renewable sources; or (ii) where, after the approval of the power purchase agreements, there is change in the statutory laws, or rules, or the State Govt. Policy; the Commission, in order to promote co-generation or generation of electricity from renewable sources of energy, may, after recording reasons, by an order, review or modify such a power purchase agreement or a class of such power purchase agreements.”:

Provided further that the Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.

(2) The Commission shall determine the tariff separately for each category of renewable source mentioned in clause (m) of regulation 2.

(3) While deciding the terms and conditions of tariff for energy from renewable sources and co-generation, the Commission shall, as far as possible, be guided by the principles and methodologies specified by the Central Commission, the National Electricity Policy, the Tariff Policy and the tariff regulations notified by the Central Commission.

Provided that the Commission, may for sufficient reasons and after exercising due diligence and applying prudency check, deviate from the terms and conditions of the generation tariff notified by the Central Commission:

(4) While determining the tariff, the Commission may, to the extent possible consider to permit an allowance based on technology, fuel, market risk, environmental benefits and social contribution etc., of each type of renewable source.

(5) While determining the tariff, the Commission shall consider appropriate operational and financial parameters.

(6) The tariff for small hydro projects not exceeding 5 MW capacity determined by the Commission shall be applicable for a period of 40 years from the date as notified by the Commission;

(7) The tariff for small hydro projects not exceeding 5 MW capacity, determined by the Commission is subject to review after every 5 years and

such revised tariff shall be applicable to power purchase agreements entered into after that date.”

32. It is apparent from the above Regulation that the Commission shall, as far as possible, be guided by the principles and methodologies specified by the Central Commission, the National Electricity Policy, the Tariff Policy and the Tariff Regulations notified by the Central Commission. Regulation 22 of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009, with respect to Subsidy or incentive by the Central / State Government provides as under:

“22. Subsidy or incentive by the Central / State Government
The Commission shall take into consideration any incentive or subsidy offered by the Central or State Government, including accelerated depreciation benefit if availed by the generating company, for the renewable energy power plants while determining the tariff under these Regulations.
Provided that the following principles shall be considered for ascertaining income tax benefit on account of accelerated depreciation, if availed, for the purpose of tariff determination:
i. Assessment of benefit shall be based on normative capital cost, accelerated depreciation rate as per relevant provisions under Income Tax Act and corporate income tax rate.
ii. Capitalisation of RE projects during second half of the fiscal year.
Per unit benefit shall be derived on levellized basis at discount factor equivalent to weighted average cost of capital.”

33. Furthermore, the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy

Sources) Regulations, 2012, with respect to Subsidy or incentive by the Central / State Government also provides as under:

> *"22. Subsidy or incentive by the Central / State Government*
> *The Commission shall take into consideration any incentive or subsidy offered by the Central or State Government, including accelerated depreciation benefit if availed by the generating company, for the renewable energy power plants while determining the tariff under these Regulations.*
> *Provided that the following principles shall be considered for ascertaining income tax benefit on account of accelerated depreciation, if availed, for the purpose of tariff determination:*
> *i) Assessment of benefit shall be based on normative capital cost, accelerated depreciation rate as per relevant provisions under Income Tax Act and corporate income tax rate.*
> *ii) Capitalization of RE projects during second half of the fiscal year.*
> *Per unit benefit shall be derived on levellized basis at discount factor equivalent to weighted average cost of capital."*

34. Also, the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012, provides for treatment of subsidy or grant etc. as under:

> *"21. Subsidy or incentive or grant/budgetary support by the Central / State Government.- (1) While determining the generic levellized or project specific levellized tariff, as the case may be, for the renewable energy project(s) under these Regulations, the Commission shall take into consideration any incentive and/or subsidy and/or grant available under the schemes of the Central or State Government or its agencies, including accelerated depreciation benefit under the Income Tax Act:*
> *Provided that for tariff determination, 90% of the capital subsidy available to the project as per applicable scheme of the MNRE/ State Government shall be considered:*
> *Provided further that the Commission may evolve suitable mechanisms for incorporating impact of the subsidy component for determination or adjustment of generic levellized tariffs for various categories of projects:*

Provided further that the capital subsidy under the schemes of the Central or State Government or its agencies, shall, unless the circumstances otherwise warrant, be ordinarily adjusted against the principal component of the loan amount as additional reduction apart from the normal payment:
Provided further that where the Central Government or the State Government notifies or has notified any generation based incentive (GBI) scheme for a particular kind of renewable technology, such technology based generating station shall be assumed to have availed the benefit of such a scheme and their tariffs shall automatically be treated as reduced by the amount of generation based incentive (GBI) per unit for the period during which such incentive remains applicable
(2) Where any additional grant or budgetary support is available to any project, apart from the incentive and/or subsidy and/or grant available under sub-regulation (1) of this regulation, the Commission shall account for 100% of such budgetary support, while determining project specific levellized tariff.
(3) The amount of subsidy shall be considered for each renewable source as per the applicable policy of the MNRE/State Government and if the amount and/or mechanism of subsidy is changed by the MNRE/State Government, consequent corrections in tariffs may be carried out by the Commission in accordance with regulation 19.
(4) The Commission shall determine two generic levellized tariffs or project specific levellized tariffs, as the case may be, one by considering accelerated depreciation and the other without it, and the tariff to any renewable energy generator shall be applicable as provided in succeeding sub-regulation(5): Provided that for ascertaining income tax benefits on account of accelerated depreciation for the purpose of tariff determination-
(a) assessment of benefit shall be based on normative capital cost or the cost admitted, as the case may be, accelerated depreciation rate, as per relevant provisions under the Income Tax Act and the Corporate Tax rate;
(b) in case of generic levellized tariff, capitalisation of renewable energy projects shall be considered during second half of the financial year and in case of project specific levellized tariff, the expected date of commencement of operation of the project shall be considered; (c) per unit benefit shall be derived on levellised basis at the discount factor equivalent to the post tax weighted average cost of capital.
(5) It shall be assumed that the renewable energy generator shall avail the benefit of accelerated depreciation and accordingly the tariff, which accounts for the accelerated depreciation, shall be applicable unless the renewable energy generator establishes, to the satisfaction of the distribution licensee, that he has not availed or is not entitled to such a benefit."

35. A careful analysis of the above mentioned CERC/ HPERC Regulations shows that the above Regulations do not envisage any such possibility of non-availing of MNRE subsidy/ grant by a Hydro Power Project Developer. The Petitioner has not given any satisfactory justification/ evidence for not availing the subsidy amountwhen the Petitioner was eligible for getting MNRE subsidy.Being a RE Generator, it was obligatory on the part of the Petitioner to claim the same. The explanation offered by the additional submissions are not satisfactory. The Petitioner has stated that the Petitioner had applied for the subsidy in the year 2010 but his case was rejected by the MNRE in the year 2019 without citing any specific reasons. No documents have been produced that the Petitioner submitted any follow up application to the MNRE as to why the case is not being considered during these nine years from 2010 to 2019.It appears that the Petitioner has remained totally silent. Though, the Petitioner has stated that his consultant used to visit the MNRE, but there is no specific proof/ evidence provided by the Petitioner in this regard. Further, the Office Memorandum dated 13.05.2019 issued by MNRE has clearly stated that in view of non-

compliance of the provisions contained in the Administrative Approval of SHP schemes circulated vide letter No. 14(5)/2003-SHP dated 29.07.2003 and vide letter No. 14/(1)2008-SHP dated 11.12.2009, has closed the files pertaining to 53 Small Hydro Power Projects in Power sector. It has been further conveyed by way of the above memorandum that the project developers had not submitted any progress report of their project execution after submission of application for providing Central Financial Assistance meaning thereby that the Petitioner/ developer was negligent. The project of the Petitioner was among these 53 projects which had been denied financial assistance by the MNRE. Accordingly, it is clearly established that the MNRE subsidy could not be availed by the Petitioner due to negligence on its part. However, the Petitioner has submitted that it will approach the court of law on this issue. The Commission is of the view that the Petitioner should have been pro-active and taken such steps well in advance to approach the MNRE for sanctioning the subsidy. Significantly, the industrial subsidy has twin effect as on the one hand it was to facilitate the Petitioner/ Project Developer to complete the construction without arranging the loan which was non-refundable, and on the other hand, the cost of the Project would have been reduced and thereby the impact of tariff on the consumers would have been less. Therefore, the Commission is of the firm opinion that the consumers of the State cannot be burdened with this additional cost, which could have been avoided had the Petitioner been vigilant. Accordingly, the Commission has not considered the request of the Petitioner for not adjusting the amount of MNRE subsidy in the tariff.

Issue No. 3: Tax Component

36. The Hon'ble APTEL on the issue of consideration of the Tax Component in the tariff order has observed the following in paras 206 to 209 as under:

> "
>
> *206. The Appellant has stated that the Commission while calculating the levelized tariff, erroneously omitted to count the tax component which it has approved in para 5.9.2 and 5.9.3 of the impugned order:*
>
> > *"5.9.2 The Commission while determining the project specific tariff has considered the actual MAT and Corporate Tax Rates for the years 2013-14 and 2014-15 while assuming the current Tax rates and MAT rates for the future balance period of the project, as follows*
> > *XXXXXXXXX*
> >
> > *5.9.3 The generic levelised tariff determined in the order dated 18.12.2007 is subject to adjustment on account of*

variation in the tax rates. Accordingly, in case of any changes in these tax rates, the tariff under this order shall also be suitably adjusted as per the formulae given in the subsequent paragraphs."

207. The Commission in its reply has stated that in case any discrepancy is found and pointed out by the Appellant to the Commission, it will be considered while truing up exercise by the Commission.

208. The Appellant at the time of Truing up may take up the issue with the Commission.

209. We agree with the decision of the Commission and the Appellant may take up the issue of tax and submit necessary documents of actual tax payment at the time of Truing up."

37. The Petitioner on this issue of Tax component has submitted the following by way of additional submission in application for passing the consequential order:

"As per HPERC Regulations Tax component is applied on Return on Equity. The same was although allowed by this Hon'ble Commission in its Order dated 28.04.2016.
*Tax component is worked out after considering the then 80-IA Benefits i.e. 1^{st} 10 Years @MAT Rate and 11^{th} Year to 40^{th} Year @ Corporate Tax Rate. The said component would be trued up based on the changes in actual Tax Rates. (**Ref. Para 5.10.9, 5.10.10, 5.10.11, 5.10.12 @Pg.68& 69 of HPERC Order dated 02.05.2016**).*
Even though this Hon'ble Commission considered Tax Component calculations, however, the same wasn't included in the Tariff of Rs.2.31 per kWh. The Applicant, therefore, prays that the same may be included in the tariff calculations and actual taxation component may be worked out so that 14% post tax RoE can be availed by Applicant."

38. The Commission has revised the capital cost of the 15 MW Neogal HEP in this Order. Therefore based on this revised capital cost

and the submission of the Petitioner, thetax component calculation has been taken care of while finalizing this Order.

Issue No. 4: Determination of levellized tariff

39. The Hon'ble APTEL on the issue of determination of the levelized tariff hasobserved the following in paras 210 to 220 as under:

"

210. The purpose of determination of capital cost etc. is to determine the levelized tariff of the generating project, it is therefore important that the levelized tariff impacted by the parameters decided above should be examined.

211. The Commission had worked out the levelized tariff for 40 years based on the approved capital cost, IDC, and financial parameters, which has been revised by this judgment as concluded in the foregoing paragraphs.

212. The Commission in its order considered ROE 14% post-Tax ROE, 11.71% interest on term loan, and an average tax rate of 29.35% for the 40 years period of the plant operation.

213. It is pertinent to mention that the State Commission has to follow the policy as perthe 4th SIA ROE as 14% post-tax. The Appellant has prayed for an increase in the levelized tariff as the Directorate of Energy, GoHP vide its letterno.DOE/CE/TEC-Neogal/2013-5433-34 dated 19.10.2013 has approved the project completion cost at Rs. 152.70 Crores which is very close to the actual expenditure of Rs. 147.71 crores.

214. The tariff is to be computed as per the State Commission's Tariff regulation and Capital cost approved by the Commission. As a consequence of the judgment in this Appeal, based on the revision of Capital cost approved by the Commission, the tariff would be revised. It, however, cannot be approved based on the completion cost approved by the Directorate of Energy, GoHP.

215. For the determination of a levellized tariff, it is important to note the design energy of the project.

216. The Appellant had claimed 71.86 MU of gross generation at 75%

dependable year after considering water release at the rate of 15% of the dependable flows for respective periods which has been stated to have been done as per GoHP policy. As per notification no PC-F(2)-I/2005 issued by the Government of Himachal Pradesh on 9.9.2005, the quantum flow of water to be released and maintained should be a threshold value of not less than15% of the minimum inflow observed in the lean season and not of the dependable flows during the respective period.

217. *As per clause 6 of the 4th Supplementary Implementation agreement dated 27.1.2006, it was directed by the Government of Himachal Pradesh that for the first 12 years, royalty power should be 16% (15% freepower+1% LADA as pe r6th amendment of Implementation agreement dated 10.4.2014)andfor the balance 28 years 21% (including 1% LADA)*

218. *The Commission had considered only 12% royalty power while working out the net saleable energy.*

219. *As per Section 86(4)of the Electricity Act, 2003,*

(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3.

220. *It is pertinent to mention here that the Commission had to consider the directive issued by the State Government regarding royalty power, Local Area Development Authority (LADA). These orders/policies are binding on the developers, and accordingly, the same has to be allowed by the Commission in tariff orders .**Accordingly, Net Salable energy is to be worked out again by the Commission.”***

40. The Commission in the tariff order dated 16.04.2016 regarding free power had observed as under:

“

5.1.1 The developer in its petition has claimed 16% of free power for the first 12 years and 21% for the balance period as per Clause 6 of the 4th Supplementary Agreement. The Commission observes that the rates of royalty claimed by the developer in the petition includetheenhanced rates applicablein caseof failureofthedeveloper to commission the project within the stipulated period as per the provisions of clause 6.3 of the 4th Supplementary Agreement. The relevant provisions of National

Hydro Policy and Tariff Policy specify that the maximum royalty to be considered for determination of tariff shall be limited to 13% in any year including 1% for LADF. The Commission declines to accept any claim beyond the aforesaid limits particularly when the enhancement is on account of failure on the part of the developer to commission the project within stipulated timelines. The Commission has accordingly calculated the tariffassuming12%royaltyexcluding1%additionalfreepowerforLADF.Further the Commission has also calculated the tariff using 13% royalty including 1% additional free power for LADF, however this tariff would be applicable only for the time periods where the additional free power for LADF is actually provided by the developer."

41. Though, the provisions of Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewable Sources and Co-generation by Distribution Licensee) Regulations, 2007, do not specifically specify with regard to consideration of free power of the GoHP. However, Regulation 35 of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012, provide the following in respect of Free Power:

"

35. Free Power. -*(1)The Commission shall consider appropriate structure(s) of free power for determination of generic levellized tariffs for various categories of SHPs, as mentioned in Regulation 32, duly keeping in view of the provisions of the State Hydro Policy for allotment of sites for SHPs, National Hydro Policy, Tariff Policy and the limits specified under sub-regulation (3):*

Provided that in cases requiring determination ofthe project specifictariff,theCommissionshallconsiderthestructureoffreepower actually applicable to that project subject to the above and the limits specified in sub-regulation(3).

(2) In case of any change in the structure of free power for a SHP from that considered for the determination of generic levellized tariff for project specific levellised tariff in accordance with sub-regulation (1) or in cases where the adjustment in tariff on account of variation in free power has to be allowed as per the specific provisions contained in these Regulations, including those covered in regulation 16 and sub-regulation (2) of regulation 19, the distribution licensee shall adjust the tariff as per the following formula:-

$$\text{Rate payable For the month For the net saleable Energy (Rs/kWh)} = a \times \frac{(100-b)}{(100-c)}$$

Where,-

"a" is the levellised tariff (in Rs/kWh) which is required to be adjusted under this regulation

"b" is the free power (in percentage) taken into account or deemed as taken into account for the month, in "a" in the corresponding month of the tariff period byreckoning the date of commencement of operation of the project as the starting date of the tariff period.

"c" is the free power (in percentage) to be allowed in the tariff for the month subjectto maximum limit of 13% free power(energy) and the provisions of sub-regulation (3)

Where free power is applicable at different rates for different parts of a month, the permissible free power (i.e. "c") shall be determined under this sub-regulation separately for each such part and weighted average rate for the month as a whole shall be worked out by considering the total quantum of energy for each day of the month.

(2) *Thefree power (inpercentage)to be taken into consideration for the purpose of determination of tariff under sub-regulation (1) and/or any adjustment under sub-regulation(2)shall be subject to the following:-*

(i) *The free energyto be taken into account for anypart of the tariff period for the purposes of sub-regulation (1), or to be allowed for anypart of the tariff period for the purposes of sub-regulation(2),shall not exceed13%freepower(energy) which includes 12% free power to home State and 1%*

additionalfreepowerforLocalAreaDevelopmentFund,as stipulated in the National Hydro Policy/ Tariff Policy.

(ii) *Any quantum of free energy, if committed by the renewable energy generator over and above the 13% free power(energy) for any period shall not be factored into the tariff.*

(iii) *Additional free energy, if any, to be provided by the renewable energy generator to the State Government, on account of curtailment of waiver period due to delay in commissioning of project as per provisions of Implementation Agreement and/or for enhancement of capacity and/or for any reason attributed to the renewable energy generator shall not be taken into account even if the total free power for any period,including such additional free power, does not exceed 13% free power(energy).*

(iv) *The quantification and adjustment of free energy as well the energyaccountingshallbemadewithreferencetotheenergy projected/received at the interconnection point.*

(v) *The free energy to be allowed for anyperiod for the purpose of sub-regulation (2) shall in no case be more than that actually deducted for that period in the energy accounts, out of the total energy received at the interconnection point."*

42. From the perusal of Regulations 35 of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012, it is evident that free power more than 13% cannot be passed through in the tariff. However, the Hon'ble APTEL in its Judgment has observed that the Commission has to consider the directive issued by the State Government regarding royalty power, Local Area Development Authority (LADA) which are binding on the developers, and accordingly, the same has to be allowed by the Commission in tariff orders.Thus, as directed, the Commission has allowed the free power Royalty @ 16%(15% free power + 1% LADA as

per 6th amendment of Implementation agreement dated 10.4.2014)andfor the balance 28 years @ 21% (including 1% LADA).

43. However, it is relevant to mention here that the Commission has sought review of order of Hon'ble APTEL on this issue and approval of free power shall be subject to the outcome of the Review Petition.

44. The Hon'ble APTEL has, also directed to compute the tariff as per the State Commission's Tariff Regulation and Capital cost approved by the Commission. The capital cost of Rs. 122.57 crore has been approved by the Commission in this order after including the impact of additional costs allowed as per the directions of the Hon'ble APTEL,as discussed above.The per MW capital cost on this amount of Rs. 122.57 is coming out to be more than Rs. 8 crore, which is quite exorbitant. The Commission in its order dated 18th December, 2007 for small HEPs upto 5 MW had considered benchmark cost of Rs. 6.5 Crore per MW for determination of tariff. The Project cost was not required for be exorbitant, the Neogal HEP being a higher capacity power plant having economy of scale and Commission is of the view that the capital cost for 15 MW Neogal HEP of the Petitioner should not ideally be more than

Rs. 6.5 Crore per MW which is both in the interest of the Project developers and Consumers of the State.

45. Further, the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012, dated 17th December, 2012, specify the following normative capital costs for the tariff determination as under:

S.No.	Category of small hydro project	Rupees in Lac per MW
(i)	Above 100 kW to 2 MW capacity	780
(ii)	Above 2 MW to 5 MW capacity	750
(iii)	Above 5 MW to 25 MW capacity	700

46. Similarly, Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009, dated 16th September, 2009, had calculated the normative capital cost for small hydro projects during first year of Control Period (FY 2009-10) as Rs. 6.30 Crore per MW for the Projects having capacity between 5 to 25 MW. Further, the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources)

Regulations, 2012 had worked out the normative capital cost for small hydro projects during first year of Control Period (FY 2012-13) as Rs. 7 Crore per MW.

47. The Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012, provides for the determination of the Project specific levelized tariff as under:

> "*1. Project specific levellised tariff.-(1) Where the parties have mutually agreed, in the Power Purchase Agreement executed by them, for a project specific levellised tariff, the Commission shall determine such tariff taking into consideration- (i) prudent capital cost as may be admitted by the Commission duly keeping in view normative capital cost under these Regulations, the cost approved in the Detailed Project Report, the actual expenditure incurred as per auditor's certificate, the information furnished under regulation 18:*
> *Provided that in case of delay in execution of the project, the Commission shall consider the time over run cost as follows - (a) where the delay is due to factors entirely attributable to the renewable energy generator, the entire cost shall be borne by the renewable energy generator; (b) where the delay is due to force majeure, the Commission may allow the net additional cost incurred on this account to the renewable energy generator: and*
>
> *(2) Where the project specific levellised tariff, as determined under subregulations (1), –*
> *(i) exceeds the corresponding generic levellised tariff, duly adjusted for permissible rate of free power if any, determined by the Commission in relation to the control period in which the Power Purchase Agreement was approved by the Commission, the distribution licensee shall have the option to exit from the power purchase agreement, provided that this option shall*

not be available to the distribution licensee if the renewable energy generator agrees to a tariff corresponding to the generic levellised tariff; (ii) is less than 95% of the corresponding generic levellised tariff, duly adjusted for permissible rate of free power if any, determined by the Commission in relation to the control period in which the Power Purchase Agreement was approved by the Commission, the renewable energy generator shall have the option to exit from the power purchase agreement, provided that this option shall not be available to the renewable energy generator if the distribution licensee agrees to keep the tariff within the aforesaid limit."

Since, the Petitioner's project i.e. Neogal HEP having capacity 15 MW has been commissioned in June, 2013, therefore, the Commission is of the firm view that the capital cost of the Neogal HEP must be benchmarked at Rs. 7 Crore per MW. And, the tariff should be accordingly calculated on this capital cost only.

48. The Electricity Act, 2003 under Section 61 has enshrined upon the Electricity Regulatory Commissions to specify the terms and conditions for the determination of tariff, inter-alia, safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner. The Commission in the Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewable Sources and Co-generation by Distribution Licensee) Regulations, 2007, has not specified the terms and conditions for the determination of tariff in detail. However, the Commission while

determining the tariff under these Regulations videorder dated 18th December, 2007 for small HEPs upto 5 MW had specified the normative capital cost as well as the other financial and operational terms and conditions in this Order. Further, the Commission in these Regulations has not specified that the Project specific tariff cannot be fixed on normative basis or the project specific actual capital cost has to be necessarily considered by the Commission. The Commission also believes that the cost incurred by the Petitioner in executing the Project has been exorbitant and also there are serious concerns of transparency and efficiency while carrying out the expenditure during construction of the Project. The Commission has observed that the Petitioner had not followed the competitive bidding process for awarding even the major components of the Project like civil works. Further, the sound engineering and accounting principles are also found to be lacking in execution of the Project. Also, the quality of the information/data provided by the Petitioner has not been satisfactory. The Commission has to protect the interest of the consumers as well. Accordingly, the Commission is of the view that the capital cost for a

HEP having capacity more than 5 MW can not be allowed to exceed Rupees 6.5 Crore per MW, except in extraordinary circumstances, fixed by the Commission on normative basis for HEPs less than 5 MW in order dated 18.12.2007. However, the Commission has taken a lenient view as Neogal HEP was commissioned in June, 2013 and has, therefore, approved capital cost of Rupees 7 crore per MW, similar to the normative capital cost fixed by this Commission and the Hon'ble CERC in their respective RE Regulations, 2012. The other parameters considered by the Commission to determine the levellised tariff for power generated from the Petitioner's hydro power project have been kept the same as approved in Order dated 16.04.2016 except for the revision in quantum of GoHP free power, as per the GoHP policy, as discussed above in this Order.

49. Accordingly, based on the approved Capital Cost of the project as discussed above and various operational and financial parameters as per order dated 16.04.2016, the Commission has calculated the tariff for each year of the useful life of the plant i.e. 40 years as hereinafter:

Approved Tariff for Neogal SHP

Units Generation	Unit	1	2	3	4	5	6	7	8	9	10
Installed Capacity	MW	15	15	15	15	15	15	15	15	15	15
Net Generation @75% dependable year	MU	77.28	77.28	77.28	77.28	77.28	77.28	77.28	77.28	77.28	77.28
Auxiliary Consumption	MU	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77
Transmission Losses	MU	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54
Royalty	MU	12.16	12.16	12.16	12.16	12.16	12.16	12.16	12.16	12.16	12.16
Net Saleable Energy	MU	63.82	63.82	63.82	63.82	63.82	63.82	63.82	63.82	63.82	63.82
Tariff Components (Fixed Charge)	**Unit**	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
O&M Expenses	Rs. Crores	2.40	2.49	2.59	2.70	2.81	2.92	3.03	3.16	3.28	3.41
Depreciation	Rs. Crores	5.88	5.88	5.88	5.88	5.88	5.88	5.88	5.88	5.88	5.88
Interest on term loan	Rs. Crores	8.05	6.99	6.26	5.54	4.81	4.08	3.35	2.62	1.90	1.17
Interest on working Capital	Rs. Crores	0.58	0.59	0.60	0.61	0.62	0.64	0.65	0.66	0.68	0.69
Return on Equity	Rs. Crores	4.48	4.48	4.48	4.48	4.48	4.48	4.48	4.48	4.48	4.48
Tax	Rs. Crores	0.90	0.90	0.90	0.90	0.90	0.90	0.90	0.90	0.90	0.90
Total Fixed Cost	**Rs. Crores**	**22.28**	**21.33**	**20.71**	**20.10**	**19.49**	**18.89**	**18.29**	**17.70**	**17.11**	**16.53**
Per Unit Cost of Generation	**Unit**	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
O&M expenses	Rs/kWh	0.38	0.39	0.41	0.42	0.44	0.46	0.48	0.49	0.51	0.53
Depreciation	Rs/kWh	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92
Int. on term loan	Rs/kWh	1.26	1.10	0.98	0.87	0.75	0.64	0.53	0.41	0.30	0.18
Int. on working capital	Rs/kWh	0.09	0.09	0.09	0.10	0.10	0.10	0.10	0.10	0.11	0.11
RoE	Rs/kWh	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70
Tax	Rs/kWh	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14
Total COG per unit	**Rs/kWh**	**3.49**	**3.34**	**3.25**	**3.15**	**3.05**	**2.96**	**2.87**	**2.77**	**2.68**	**2.59**

Discount Factor		1.000	0.909	0.827	0.751	0.683	0.621	0.565	0.513	0.467	0.424
Net Value of Generation Cost	Rs/kWh	3.49	3.04	2.68	2.37	2.09	1.84	1.62	1.42	1.25	1.10

Levellised Tariff	**Rs. 2.78 / kWh**

Units Generation	Unit	11	12	13	14	15	16	17	18	19	20
Installed Capacity	MW	15	15	15	15	15	15	15	15	15	15
Net Generation @75% dependable year	MU	77.28	77.28	77.28	77.28	77.28	77.28	77.28	77.28	77.28	77.28
Auxiliary Consumption	MU	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77
Transmission Losses	MU	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54
Royalty	MU	12.16	12.16	15.95	15.95	15.95	15.95	15.95	15.95	15.95	15.95
Net Saleable Energy	MU	63.82	63.82	60.02	60.02	60.02	60.02	60.02	60.02	60.02	60.02
Tariff Components (Fixed Charge)	**Unit**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**
O&M Expenses	Rs. Crores	3.55	3.69	3.84	3.99	4.15	4.32	4.49	4.67	4.86	5.05
Depreciation	Rs. Crores	5.88	5.88	0.72	0.72	0.72	0.72	0.72	0.72	0.72	0.72
Interest on term loan	Rs. Crores	0.44	0.04								
Interest on working Capital	Rs. Crores	0.71	0.73	0.72	0.74	0.76	0.78	0.81	0.83	0.86	0.88
Return on Equity	Rs. Crores	4.48	4.48	4.48	4.48	4.48	4.48	4.48	4.48	4.48	4.48
Tax	Rs. Crores	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45
Total Fixed Cost	**Rs. Crores**	**16.51**	**16.27**	**11.21**	**11.39**	**11.57**	**11.75**	**11.95**	**12.15**	**12.37**	**12.59**
Per Unit Cost of Generation	**Unit**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**
O&M expenses	Rs/kWh	0.56	0.58	0.64	0.67	0.69	0.72	0.75	0.78	0.81	0.84
Depreciation	Rs/kWh	0.92	0.92	0.12	0.12	0.12	0.12	0.12	0.12	0.12	0.12
Int. on term loan	Rs/kWh	0.07	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Int. on working capital	Rs/kWh	0.11	0.11	0.12	0.12	0.13	0.13	0.13	0.14	0.14	0.15
RoE	Rs/kWh	0.70	0.70	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
Tax	Rs/kWh	0.23	0.23	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24
Total COG per unit	**Rs/kWh**	**2.59**	**2.55**	**1.87**	**1.90**	**1.93**	**1.96**	**1.99**	**2.03**	**2.06**	**2.10**

Discount Factor		0.386	0.351	0.319	0.290	0.264	0.240	0.218	0.198	0.180	0.164
Net Value of Generation Cost	Rs/kWh	1.00	0.89	0.60	0.55	0.51	0.47	0.43	0.40	0.37	0.34

Units Generation	Unit	21	22	23	24	25	26	27	28	29	30
Installed Capacity	MW	15	15	15	15	15	15	15	15	15	15
Net Generation @75% dependable year	MU	77.28	77.28	77.28	77.28	77.28	77.28	77.28	77.28	77.28	77.28
Auxiliary Consumption	MU	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77
Transmission Losses	MU	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54
Royalty	MU	15.95	15.95	15.95	15.95	15.95	15.95	15.95	15.95	15.95	15.95
Net Saleable Energy	MU	60.02	60.02	60.02	60.02	60.02	60.02	60.02	60.02	60.02	60.02
Tariff Components (Fixed Charge)	**Unit**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
O&M Expenses	Rs. Crores	5.26	5.47	5.68	5.91	6.15	6.39	6.65	6.92	7.19	7.48
Depreciation	Rs. Crores	0.72	0.72	0.72	0.72	0.72	0.72	0.72	0.72	0.72	0.72
Interest on term loan	Rs. Crores										
Interest on working Capital	Rs. Crores	0.91	0.94	0.98	1.01	1.05	1.08	1.13	1.17	1.21	1.26
Return on Equity	Rs. Crores	4.48	4.48	4.48	4.48	4.48	4.48	4.48	4.48	4.48	4.48
Tax	Rs. Crores	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45
Total Fixed Cost	**Rs. Crores**	**12.82**	**13.06**	**13.31**	**13.57**	**13.85**	**14.13**	**14.43**	**14.74**	**15.06**	**15.39**
Per Unit Cost of Generation	**Unit**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
O&M expenses	Rs/kWh	0.88	0.91	0.95	0.99	1.02	1.07	1.11	1.15	1.20	1.25
Depreciation	Rs/kWh	0.12	0.12	0.12	0.12	0.12	0.12	0.12	0.12	0.12	0.12
Int. on term loan	Rs/kWh	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Int. on working capital	Rs/kWh	0.15	0.16	0.16	0.17	0.17	0.18	0.19	0.19	0.20	0.21
RoE	Rs/kWh	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
Tax	Rs/kWh	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24
Total COG per unit	**Rs/kWh**	**2.14**	**2.18**	**2.22**	**2.26**	**2.31**	**2.35**	**2.40**	**2.46**	**2.51**	**2.56**

Discount Factor		0.149	0.135	0.123	0.112	0.102	0.092	0.084	0.076	0.069	0.063
Net Value of Generation Cost	Rs/kWh	0.32	0.29	0.27	0.25	0.23	0.22	0.20	0.19	0.17	0.16

Units Generation	Unit	31	32	33	34	35	36	37	38	39	40
Installed Capacity	MW	15	15	15	15	15	15	15	15	15	15
Net Generation @75% dependable year	MU	77.28	77.28	77.28	77.28	77.28	77.28	77.28	77.28	77.28	77.28
Auxiliary Consumption	MU	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77
Transmission Losses	MU	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54
Royalty	MU	15.95	15.95	15.95	15.95	15.95	15.95	15.95	15.95	15.95	15.95
Net Saleable Energy	MU	60.02	60.02	60.02	60.02	60.02	60.02	60.02	60.02	60.02	60.02
Tariff Components (Fixed Charge)	**Unit**	**31**	**32**	**33**	**34**	**35**	**36**	**37**	**38**	**39**	**40**
O&M Expenses	Rs. Crores	7.78	8.09	8.41	8.75	9.10	9.46	9.84	10.24	10.65	11.07
Depreciation	Rs. Crores	0.72	0.72	0.72	0.72	0.72	0.72	0.72	0.72	0.72	0.72
Interest on term loan	Rs. Crores										
Interest on working Capital	Rs. Crores	1.31	1.37	1.42	1.48	1.55	1.62	1.69	1.77	1.85	1.93
Return on Equity	Rs. Crores	4.48	4.48	4.48	4.48	4.48	4.48	4.48	4.48	4.48	4.48
Tax	Rs. Crores	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45	1.45
Total Fixed Cost	**Rs. Crores**	**15.74**	**16.11**	**16.49**	**16.89**	**17.30**	**17.73**	**18.18**	**18.65**	**19.14**	**19.66**
Per Unit Cost of Generation	**Unit**	**31**	**32**	**33**	**34**	**35**	**36**	**37**	**38**	**39**	**40**
O&M expenses	Rs/kWh	1.30	1.35	1.40	1.46	1.52	1.58	1.64	1.71	1.77	1.84
Depreciation	Rs/kWh	0.12	0.12	0.12	0.12	0.12	0.12	0.12	0.12	0.12	0.12
Int. on term loan	Rs/kWh	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Int. on working capital	Rs/kWh	0.22	0.23	0.24	0.25	0.26	0.27	0.28	0.29	0.31	0.32
RoE	Rs/kWh	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
Tax	Rs/kWh	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24
Total COG per unit	**Rs/kWh**	**2.62**	**2.68**	**2.75**	**2.81**	**2.88**	**2.95**	**3.03**	**3.11**	**3.19**	**3.27**

Discount Factor		0.057	0.052	0.047	0.043	0.039	0.036	0.032	0.029	0.027	0.024
Net Value of Generation Cost	Rs/kWh	0.15	0.14	0.13	0.12	0.11	0.11	0.10	0.09	0.09	0.08

50. Therefore, the levellised tariff for a period of 40 years for power generated from the Petitioner's Small Hydro plant is determined as Rs 2.78 / kWh of the net saleable energy delivered at the interconnection point. This levellised tariff of Rs 2.78/ kWh would be applicable from the date of actual commencement of operation of the project. Further, the dues of the developer on account of difference in tariff shall be cleared by the HPSEBL within next 3 months' time from the date of issuance of this tariff order or within 2 months from the date of presentation of the bill by the developer whichever is later.

51. It is relevant to mention here that the Commission has sought review of the Order dated 16.12.2024 of the Hon'ble APTEL on many issues and in case the Hon'ble APTEL accept our Commission's viewpoints then the tariff shall also get revised. Therefore, the tariff allowed in this Order is subject to the outcome of the Review Petition before Hon'ble APTEL.

Issue No. 5: Payment of arrear amount by the Respondent with interest @18% on monthly compounding basis on differential tariff

52. The Petitioner in its prayer to the Commission has requested to direct the Respondent to pay interest @18% on monthly compounding basis on differential tariff i.e. the tariff determined by the Commission as applicable from the date of COD, less the amount already received by the Petitioner since COD from the Respondent towards the supply of energy from the Project in question.

53. The Respondent HPSEBL on this issue has submitted that the tariff payable for the project has been under judicial review and regulatory determination. Any retrospective interest claim would impose an undue financial burden on consumers and is contrary to established regulatory principles, which do not support retrospective interest payments in such cases.

54. While determining the tariff vide order dated 16.04.2016, the Commission had allowed interest @ 8% per annum. Thus, the Commission on careful consideration of the matter is of the considered view that simple interest @ 8% per annum is allowed to the Petitioner on the differential amount

55. The Commission has accordingly determined the tariff by passing the consequential order in view of the directions issued by the Hon'ble APTEL vide Order dated 16.12.2024 in Appeal No. 301 of 2016 and IA No. 260 of 2024.

The file after needful be consigned to records.

Announced
28.04.2025

-Sd-	-Sd-	-Sd-
(Shashi Kant Joshi)	**(Yashwant Singh Chogal)**	**(Devendra Kumar Sharma)**
Member	**Member (Law)**	**Chairman**