

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 98/GT/2020

Subject : Petition for revision of tariff of Tehri Hydroelectric Power Project, Stage-I (1000 MW) for the period 1.4.2014 to 31.3.2019 based on truing up exercise in terms of Regulations 8 of the Tariff Regulations, 2014.

Petitioner : THDC India Ltd.

Respondent : Punjab State Power Corporation Ltd & ors

Date of hearing : **27.7.2020**

Coram : Shri I.S. Jha, Member
Shri Arun Goyal, Member

Parties present : Ms. Ranjitha Ramachandran, Advocate, THDC
Shri R.B Sharma, Advocate, BRPL
Shri Mohit Mudgal, Advocate, BYPL

Record of Proceedings

The matter was taken up for hearing through Video Conferencing.

2. During the hearing, the learned counsel for the Petitioner submitted that the present petition has been filed for revision of tariff of Tehri Hydroelectric Power Project, Stage-I (in short 'the generating station') based on truing-up exercise in terms of Regulation 8 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014. She also submitted that the tariff filing forms have been submitted by the Petitioner in accordance with the provisions of the 2014 Tariff Regulations and copies have been served on the Respondents. The learned counsel while pointing out that the Petitioner has filed its rejoinder to the replies filed by the Respondents UPPCL and MPPMCL, prayed for grant of time to file its rejoinder to the reply filed by the Respondent BRPL.

3. The learned counsel for the Respondent, BRPL, referred to the reply and mainly submitted the following:

(i) The truing up exercise is required to undertaken by the Petitioner as well as the Commission in terms of Regulations 8(1), 8(2), 8(3), 8(6), 8(7) and 8(8) of the 2014 Tariff Regulations and accordingly the amount under-recovered or over-recovered along with simple interest is recovered or refunded by the generating company under Regulation 8(13) of the 2014 Tariff Regulations. The details of the truing up exercise undertaken by the Petitioner is also required to be filed as the Petitioner has been delegated the statutory power of truing up on certain issues. The Petitioner has not filed any such information which is necessary for the truing up of tariff;



(ii) The truing up exercise under Regulation 8(2) of the 2014 Tariff Regulations is to be carried out by the Petitioner in respect of Auxiliary Energy consumption and the re-financing of loan on monthly basis, with annual reconciliation. However, no such details on monthly basis, with annual reconciliation, have been furnished in the petition;

(iii) The actual tax rate applicable to the generating company was to be trued up in accordance with Regulation 6 of the 2009 Tariff Regulations. The generating companies have been allowed huge tax benefits under the Income Tax Act, 1961 in the form of Tax Holiday for enterprises engaged in infrastructure development as per Section 80 IA as well as the other benefits like the higher depreciation in initial years. However, the benefits arising out of the tax benefits were determined by the Commission without considering Regulation 15 of the 2009 Tariff Regulations in the Commission's order dated 20.3.2017 in Petition No. 172/GT/2015. Such decision can be re-visited by the Commission and the same cannot be allowed in perpetuity (Judgment of APTEL dated 12.5.2015 in Appeal No.129 & batch was referred to);

(iv) The truing-up of the grossed up rate of Return on Equity (ROE) at the end of every financial year, based on the actual tax paid including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities is to be carried out by the Petitioner. No such details have been filed by the Petitioner;

(v) The Profit & Loss Account for the period from 2014-15 to 2018-19 show that the Petitioner has not paid any Income tax during the entire period. Accordingly, the Petitioner is not entitled for any grossing up of ROE in terms of Regulation 25(1) of the 2014 Tariff Regulations. The entire tax collected by the Petitioner is therefore required to be reimbursed with interest to the beneficiaries for the period 2014-19;

(vi) Regulation 49 of the 2014 Tariff Regulations restricts the claim of tax amount only to deferred tax liabilities up to 31.3.2009, whenever it materializes. As the generating station is in commercial operation since 18.5.2004, the provisions of deferred tax liability are applicable. Also, during the period 2004-09, there was no grossing up of equity and the beneficiaries had paid the income tax on actuals as per the 2004 Tariff Regulations. Since the Respondents were paying the Income tax on the generation business without getting the benefits under the Income Tax Act, 1961, the Petitioner may be directed to pay back the extra amount of Income tax after accounting for the benefits allowed under the Income Tax Act, 1961;

(vii) The Petitioner has claimed huge additional capitalization as against those permitted in Commission's order dated 29.3.2017 in Petition No.178/GT/2015, though the tariff period 2014-19 is over. Such huge claims for the additional capitalization under Regulation 14(3)(viii) of the 2014 Tariff Regulations is justifiable only if such claim is on account of damage caused by natural calamities and due to geological reasons and the expenditure is necessary for successful and efficient plant operation. Similarly, the claims for minor assets for capitalization are also not admissible;

(viii) The provision relating to providing the variable charge is neither in the interest of the consumer nor does this provision facilitate the recovery of



reasonable cost to the hydro generators. The provision related to the variable charge is wholly unreasonable and hence the Commission may consider amendments in the 2019 Tariff Regulations;

(ix) The Design Energy (DE) as set out in the Techno-Economic Clearance (TEC) of CEA may be considered for tariff determination. The Petitioner has adopted a modified DE of 2797 MU for the tariff period 2014-19 which may not be allowed. Also, in the event of modification of DE, the Commission had not allowed the benefits of secondary energy upto the DE in TEC by CEA. This decision of the Commission in its order dated 16.4.2013 in Petition No. 250 of 2010 had been upheld by APTEL vide its judgment dated 29.5.2015 in Appeal No.103/2014 filed by the Petitioner and has therefore attained finality;

(x) The adoption of Indian Accounting Standards (IND AS) by the petitioner is against the regulatory procedure for computation of tariff as per the 2014 Tariff Regulations and may therefore be rejected.

4. The learned counsel for the Respondent, BYPL adopted the above submissions of learned counsel of Respondent BRPL and submitted that the same may be considered at the time of determination of tariff.

5. The Commission after hearing the parties directed the Petitioner to submit the following additional information, with advance copy to the Respondents, on or before **30.8.2020**:

- (a) *Reasons for the difference of ₹9342.39 lakh between the additional capital expenditure allowed on projected basis and the additional capital expenditure claimed in this petition on net basis;*
- (b) *Supporting documents for the additional capital expenditure claimed during the period 2014-19 along with reasons including the recommendations of the various agencies/Departments, namely CISF, IB, Standing Advisory Committee, Government circulars etc.;*
- (c) *Proper justification for the additional capital expenditure claimed along with the clarification as to whether the said expenditure claimed is towards the items allowed in earlier petitions or for new items;*
- (d) *Any other relevant document/information in support of the additional capital expenditure claimed;*
- (e) *Form 9E along with annexure, in MS Excel format;*
- (f) *Detailed break-up of exclusions, indicating the asset, type of exclusions (positive or negative), the amount and reasons for exclusion (as per Form D);*
- (g) *In respect of the assets/works claimed under the various heads as listed in the table below, the information required as mentioned in the last column of the table:*

2014-15		
Items	Amount claimed (₹ in lakh)	Information required
SUBMERSIBLE PUMP SET 75 HP	10.44	Proper justification for the claim



KIRLOSKER MAKE CENTRIFUGAL MULTISTAGE PUMP SET MODEL MLL 11 STAGE 125 HP 1 NO.	9.28	giving details of existing arrangement and clarify whether, the old assets are de-capitalized or are in use.
CENTRIFUGAL MULTI STAGE PUMP SET KIRLOSKER MAKE 150HP 1 NO.	5.75	
KIRLOSKER MAKE CENTRIFUGAL MULTISTAGE PUMP SET MODEL MLL 11 STAGE 125 HP 1 NO.	9.28	
VERTICAL SUBMERSIBLE PUMP	1.47	Proper justification of the claim giving details of existing arrangement and clarify whether, the assets claimed are spare or have been put to use.
END SUCTION PUMP	1.41	
SPLIT CASING PUMP HORIZONTAL TYPE	2.93	
GROUTING WORK IN P.H. COMPLEX	1346.53	The COD of the Generating Station is 9.7.2007. Reason for claiming the expenditure in 2014-15.
GROUTING WORK IN PH. COMPLEX	753.79	
2015-16		
WINCH 2 TON CAPACITY	0.68	Proper justification of the claim giving details of existing arrangement and clarify whether, the assets claimed are spare or put in use.
SAFETY EQUIP - SMOKE DETECTOR - POWER HOUSE (SAFETY)	7.53	To be claimed under the relevant Regulation and submit supporting documents.
Extension of road in Project area (Part 1)	121.15	Proper justification for the claim.
Protection Work of road between Ch 570 to 650 M in B. Puram Colony	33.79	
Protection Work of road between Ch 290 to 370 M in B.Puram Colony	7.64	
Extension of road in Project area (Part 2)	0.80	
W/S EQUIPMENTS PUMP CONTROL PANEL WITH 75HP STARTER (MECH.)	18.94	Proper justification for the claim giving details of existing arrangement and clarify whether, the old assets are de-capitalized or in use.
MAIN GENERATING EQUIP- 420KV, 2000A BUSDUCT - POWER HOUSE (O&M)	81.4	Specify the relevant regulation for the claim
RUNNER INSPECTION DEVICE FOR TEHRI HPP (4x250MW) POWER HOUSE (O&M)	16.23	Proper justification for the claim giving details of existing arrangement. Specify, nature of the item claimed.
POWER TO CONST. WORKS - LT LINE near DIBNU	9.43	Specify location of the office building for which expenditure is claimed and the justification for not including it under original scope.
EOT CRANE 10 T CAPACITY FOR DRAFT TUBE GATE	26.3	Proper justification for the claim giving details of existing arrangement. Specify nature of the item claimed.
2016-17		
VIDEO CONFERENCING SYS. FOR ED OFC	3.19	De-capitalized value of old asset



OFFICE BUILDING OFFICE BUILDING IN CENTRAL STORE AT KOTI	14.77	
MAIN GENERATION SPARES	100.15	Proper justification of the claim
ELECTRIC PANEL	13.47	Clarify, whether the asset is part of Generating Station.
2017-18		
EARLY WARNING SYSTEM-DAM	201.72	Proper justification for the claim giving details of existing arrangement
NEW ROAD GIRLS HOSTEL 1 TO GIRLS HOSTEL 2 & AROUND PLAY GROUND	121.71	Whether these hostels are attached to the Institute of Hydro Power Engineering and Technology or to the school?
ELECTROMAGNETIC FLOW METER MAGFLOW SIZE DN 250,200,65 DC- DC& FLOW INDICATOR(892-1)	7.15	De-capitalized value of old asset
Installation of new Cubical Distribution Panel in Mechanical Department	1.42	Proper justification for the claim giving details of existing arrangement.
CUBICAL LT PANEL IN ACB-ELECT.	3.19	De-capitalized value of old asset, if any.
2018-19		
Additional Sewage Treatment Plant (STP), MBBR (Moving Bed Biofilm Reactor) Type having Capacity 12 KLD (Kilo Ltr per Day), installed near interface building (IFB) of Tehri HEP	9.94	Proper justification for the claim giving details of existing arrangement. De-capitalized value of old asset, if any.

- h) In Annexure to Form 16, a total amount of Rs 1009.78 lakh under adjustment of liabilities has been claimed as part of discharge of liabilities. It may be clarified as to how the adjustment of liabilities has been considered as discharge of liabilities.
- i) Clarification as to whether any component of IDC has been included in the additional capitalization claimed;
- j) A statement showing the year-wise reconciliation of liabilities as per Form 16 and the balance sheet of the project for the period 2014-19, duly certified by Auditor;
- k) An affidavit to the effect that there is no asset appearing in the books and claimed in tariff, but not in use, because of misplaced/ stolen or transferred to other project as per Annual Physical Verification Report of the plant for the period 2014-19;
- l) Documentary evidence with regard to payment of Income tax as per MAT rate i.e. Tax audit report, Form-29B etc.

6. The Commission also directed the Respondents to file their replies by **10.9.2020**, with advance copy to the Petitioner, who may file its rejoinder, if any, by **17.9.2020**. The Commission further directed that the due date of filing the additional information and reply/rejoinder should be strictly complied with and no extension of time shall be granted.



7. Matter shall be listed for hearing in due course, for which separate notice will issued to the parties.

By order of the Commission

Sd/-
(B. Sreekumar)
Deputy Chief (Law)

