

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.12/RP/2020**

**in**

**Petition No.249/GT/2016**

**Coram:**

**Shri P.K. Pujari, Chairperson**

**Shri I.S. Jha, Member**

**Date of order: 11<sup>th</sup> October, 2021**

**In the matter of**

Review of Commission's order dated 9.1.2020 in Petition No. 249/GT/2016 pertaining to the determination of tariff of Teesta-III Hydroelectric Project (1200 MW) for the period from actual COD (28.2.2017) till 31.3.2019

**And**

**In the matter of**

Teesta Urja Limited,  
2nd Floor, Vijaya Building,  
17, Barakhamba Road,  
New Delhi-110001

**...Review Petitioner**

**Vs**

1. PTC India Limited,  
15, Bhikaji Cama Place,  
New Delhi- 110066

2. Energy and Power Department,  
Government of Sikkim,  
Kazi Road, Gangtok- 737101

3. Punjab State Power Corporation Limited,  
The Mall, Patiala- 147001

4. Uttar Haryana Bijli Vitran Nigam Limited,  
Vidyut Sadan, Plot No. C16, Sector-6,  
Panchkula- 134109

5. Dakshin Haryana Bijli Vitran Nigam Limited,  
Vidyut Sadan, Vidyut Nagar,  
Hisar- 125005



6. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector-6,  
Panchkula-134109

7. Ajmer Vidyut Vitran Nigam Limited,  
Vidyut Bhawan, Panchsheel Nagar,  
Makarwali Road,  
Ajmer- 305004

8. Jaipur Vidyut Vitran Nigam Limited,  
Vidyut Bhawan, Janpath,  
Jaipur- 302005

9. Jodhpur Vidyut Vitran Nigam Limited,  
New Power House, Industrial Area,  
Jodhpur-342003

10. Jaipur Vidyut Vitaran Nigam Limited,  
Vidut Bhavan, Janpath, Jyoti Nagar,  
Jaipur-302005

11. Rajasthan Urja Vikas Nigam Limited,  
Vidyut Bhawan, Janpath, Jyoti Nagar,  
Jaipur- 302005

12. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow-226001

.....Respondents

**Parties Present:**

Shri Tarun Johri, Advocate, TUL  
Ms. Swati Jindal, TUL  
Shri Anand K. Ganesan, Advocate, HPPC  
Ms. Swapna Seshadri, Advocate, HPPC  
Ms. Ritu Apurva, Advocate, HPPC  
Shri Brijesh Kumar Saxena, UPPCL

**ORDER**

Petition No. 249/GT/2016 was filed by the Review Petitioner, Teesta Urja Limited, for determination of tariff of Teesta-III Hydroelectric Project (1200 MW) (hereinafter referred to as 'the Project') for the period from actual COD (28.2.2017) till 31.3.2019, in terms of the Central Electricity Regulatory Commission (Terms and



Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “the 2014 Tariff Regulations”) and the Commission vide order dated 9.1.2020 disposed of the same. Aggrieved thereby, the Review Petitioner has filed the Review Petition challenging the impugned order dated 9.1.2020 on the following grounds:

*“(a) Error in the claimed additional capital expenditure amount indicated in paragraph 86 of the order;*

*(b) Error in the cut-off date considered;*

*(c) Error in the closing capital cost amount;*

*(d) Error in the treatment of depreciation.”*

3. The Review Petition was heard through video conferencing on 25.6.2020 and the Commission vide interim order dated 10.7.2020, rectified the arithmetical/ clerical errors, on the issues raised in paragraph 2(a) to (c) above, and admitted the Review Petition only on the issue raised in paragraph 2(d) above i.e. “Error in the treatment of depreciation”.

4. The Respondent No.4, UPPCL and Respondent No.6, HPPC have filed their replies vide affidavits dated 21.7.2020 and 23.7.2020 respectively. The Review Petitioner has filed its rejoinder to the said replies vide separate affidavits dated 29.7.2020.

5. Subsequently, the Review Petition was heard through video conferencing on 18.6.2021 and the Commission after hearing the parties, reserved its order in the matter. Based on the submissions of the parties and the documents available on record, we examine the issue regarding the ‘Error in the treatment of depreciation’ in the subsequent paragraphs.



### **Submissions of the Review Petitioner**

6. The Petitioner has submitted that in paragraphs 114 and 118 of the impugned order dated 9.1.2020, the Commission has inadvertently mentioned the allowable depreciation value as 90% of the capital cost. It has submitted that the agreements entered into between the host State Government and the Project Developer for implementation of hydroelectric projects, provide for transfer of the entire project back to the State Government, upon expiry of the period agreed to in the agreement. The Review Petitioner has also submitted that the Implementation Agreement dated 18.7.2005, entered into between the Government of Sikkim and the Petitioner, for implementation of the Project, provides for implementation period of 35 years from COD of the Project, where after, the Project, including all its assets and works, shall be transferred to the Government of Sikkim free of cost, and in good operating condition. Referring to Regulation 27(3) of the 2014 Tariff Regulations and the submissions made in the main petition, with regard to the Implementation Agreement dated 18.7.2005, the Review Petitioner has submitted that an error apparent has occurred, whereby, the Commission, after taking cognizance of the specific submissions made by the Petitioner with regard to the provisions of the Implementation Agreement dated 18.7.2005 signed with the Government of Sikkim, in paragraph 112 of the impugned order, had inadvertently overlooked the same, while allowing depreciation at only 90% of the capital cost. Accordingly, the Review Petitioner has prayed that paragraphs 114 and 115 of the impugned order be amended, so as to allow 100% depreciation, as otherwise, 10% salvage value of the Project cost will remain unrecoverable over the 35 years implementation period allowed to the Project Developer by the Government of Sikkim from COD of the Project.



### **Replies of the Respondents**

7. The Respondent UPPCL has submitted that the Review Petitioner has failed to furnish the copy of the Implementation Agreement dated 18.7.2005 and, therefore, it is not possible to verify the claim of the Review Petitioner as regards depreciation and salvage value of the Project. It has also submitted that the phrase 'free of cost' used in the Implementation Agreement should not mean that the Review Petitioner be allowed 100% depreciation considering salvage value of the Project as 'zero' for the purpose of tariff. This phrase shall mean that the transfer of the Project (including all its assets and works) to the State Government should not have a 'cost' to the Government i.e., it must be transferred on 'no cost' to the State Government. The Respondent has pointed out to paragraph 11(ii)(a) of Schedule-E of the PPA dated 28.7.2006, regarding depreciation agreed between the Review Petitioner and PTC, that the residual life of the asset shall be considered as 10% and depreciation allowed to the maximum of 90% of the historical capital cost of the asset. In view of this provision, the Respondent has submitted that there is no error in the impugned order dated 9.1.2020 and the Review Petitioner is not entitled to 100% depreciation as claimed in the instant Review Petition.

8. The Respondent HPPC has submitted that the decision of the Commission to allow the depreciable value as 90% to avoid double factoring of the contracted capacity is a reasoned decision and there is no error in the impugned order dated 9.1.2020.

### **Rejoinder of the Review Petitioner**

9. In response to the above, the Review Petitioner has submitted that during the proceedings in the main petition, each and every additional document sought by the



Commission and the Respondents were placed on record by the Review Petitioner. It has also submitted that the provisions of the Implementation Agreement with the Government of Sikkim having bearing on the computation of depreciation and depreciable value were submitted by the Review Petitioner vide affidavits dated 18.10.2018 and 19.3.2019 respectively. The Review Petitioner has further submitted that the Commission, in paragraph 112 of the impugned order, has dealt with two separate aspects pertaining to depreciation viz., (i) depreciation value in terms of the second proviso to Regulation 27(3) of the 2014 Tariff Regulations considering provisions of the Implementation Agreement and (ii) depreciable value in terms of Regulation 6(5) of the 2014 Tariff Regulations which provide for calculation of annual fixed charges of generating stations wherein, part capacity is contracted through long term PPA, to be done on the basis of entire capital cost, prorated to the contracted capacity. Accordingly, the Review Petitioner has submitted that while the submissions of the Review Petitioner with regard to (i) above were taken cognizance of by the Commission, but in the process of dealing with (ii) above, the submissions in (i) above, were inadvertently missed, on account of which, the depreciable value of only 90% was allowed in the impugned order. The Review Petitioner has also stated that since the Project is to be transferred 'free of cost' to the Government of Sikkim, the salvage value in accordance with the implementation Agreement will be 'zero'. Referring to the judgment dated 15.3.2010 of the Hon'ble Supreme Court in Civil Appeal No.3902 of 2006 (PTC India Ltd v CERC & ors), the Review Petitioner has submitted that the 2014 Tariff Regulations framed by the Commission, in exercise of the power under Regulation 178 of the Electricity Act, 2003, shall override the existing contracts including PPAs, which are to be aligned with the Tariff Regulations.



Accordingly, the Review Petitioner has prayed to allow the recovery of 100% depreciation for the generating station.

### **Analysis and Decision**

10. We have examined the matter. Regulation 27(3) of the 2014 Regulations provides as under:

*“27. Depreciation:*

*(1) xxxxx*

*(2) xxxx*

*(3) The salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset:*

*Provided that in case of hydro generating station, the salvage value shall be as provided in the agreement signed by the developers with the State Government for development of the Plant:*

*xxxxx”*

11. With regard to the depreciable value, the Commission, in the impugned order dated 9.1.2020 decided as under:

*“112. The Petitioner has claimed depreciable value as 100% for the purpose of calculating depreciation. Accordingly, the Petitioner has submitted the following:*

*xxxx*

*113. It is pertinent to mention that Regulation 6(5) of the 2014 Tariff Regulations provides that the calculation of annual fixed charges in case of the generating stations wherein, part of the capacity is contracted through long term PPA, shall be done on the basis of the entire capital cost and shall be pro-rated for the contracted capacity. The said regulation is as under:*

*“6. Tariff determination*

*(5) Where only a part of the generation capacity of a generating station is tied up for supplying power to the beneficiaries through long term power purchase agreement and the balance part of the generation capacity have not been tied up for supplying power to the beneficiaries, the tariff of the generating station shall be determined with reference to the capital cost of the entire project, but the tariff so determined shall be applicable corresponding to the capacity contracted for supply to the beneficiaries.”*

*114. A concurrent reading of both the above regulations implies double pro-rating of the depreciation; firstly, while calculating the depreciable value and secondly, while applying the annual fixed charges to the contracted capacity. In order to avoid double factoring of the contracted capacity, the depreciable value has been allowed as 90%.”*



12. It is evident from the above-quoted provisions, that the Commission, based on the concurrent reading of Regulation 27(3) with Regulation 6(5) of the 2014 Tariff Regulations, had allowed the depreciable value of 90% of the capital cost, to avoid double factoring of the contracted capacity. While Regulation 27(3) of the 2014 Tariff Regulations provides for the consideration of a depreciable value up to maximum of 90% of the capital cost of the asset, with a salvage value of 10%, the proviso to this Regulation provides that the salvage value shall be as provided in the agreement signed by the developers with the State Government for development of the Project. As noticed in paragraph 112 of the impugned order dated 9.1.2020, the Review Petitioner had submitted that the Implementation Agreement dated 18.7.2005 provides that upon completion of the 35 year period (unless extended further), the Project is to be transferred 'free of cost' to the Government of Sikkim. It has been further mentioned that the depreciable value (in Form-12) has been considered as per the proviso to Regulation 27(3) of the 2014 Tariff Regulations. Though the submissions of the Review Petitioner in Form-12 of the Petition No. 249/GT/2016, were taken note of in the impugned order, while calculating depreciation, the proviso to Regulation 27(3) of the 2014 Tariff Regulations was apparently overlooked, which has resulted in the depreciable value of 90% of the capital cost being allowed with a salvage value of 10%. This, according to us, is an error apparent on the face of the impugned order dated 9.1.2020 and review on this count is maintainable. Accordingly, in terms of the proviso to Regulation 27(3) of the 2014 Tariff Regulations, we hold that the depreciable value of 100% (instead of 90% considered in the impugned order), based on the Implementation Agreement dated 18.7.2005 with the Government of Sikkim, shall be considered for the purpose of tariff. The





Review Petition is allowed on this count and the impugned order dated 9.1.2020 stands modified accordingly.

13. It is noticed that the revision in the depreciable value of 100% allowed as above, shall not result in any revision of the tariff allowed vide impugned order dated 9.1.2020 in Petition No.249/GT/2016. However, the error in the depreciable value will be corrected as 100% (instead of 90% as allowed in the impugned order), at the time of truing up of tariff of the generating station, for which Petition No.641/GT/2020 filed by the Petitioner is pending before this Commission.

14. Review Petition No. 12/RP/2020 is disposed of in terms of the above.

*Sd/-*  
**(I.S. Jha)**  
**Member**

*Sd/-*  
**(P.K. Pujari)**  
**Chairperson**