

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 60/GT/2024

- Subject : Petition seeking Revision of Tariff of Koteshwar Hydro Electric Project (KHEP) (4x100MW) for the period 1.4.2019 to 31.3.2024 on account of interim truing up limited to meet the liabilities as per the arbitration award dated 17.12.2010 read with the orders of Hon'ble Delhi High Court dated 13.12.2019, 12.7.2023, 28.7.2023 paid by THDCIL on 27.1.2020 and 31.8.2023, in terms of Regulations 13(3) and 76 & 77 of the Tariff Regulations, 2019.
- Date of Hearing : **11.7.2024**
- Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
- Petitioner : THDC India Limited
- Respondents : PSPCL and 13 Others
- Parties Present : Shri M.G. Ramachandran, Senior Advocate, THDC
Ms. Anushree Bardhan, Advocate, THDC
Ms. Surbhi Kapoor, Advocate, THDC
Ms. Shrishti Khindaria, Advocate, THDC
Shri Aneesh Bajaj, Advocate, THDC
Ms. Shirsa Saraswati, Advocate, THDC
Shri Venkatesh, Advocate, TPDDL
Shri Nihal Bhardwaj, Advocate, TPDDL
Ms. Manu Tiwari, Advocate, TPDDL
Shri Sachin Dubey, Advocate, BSES Discoms
Shri Mohit Jain, Advocate, BSES Discoms
Ms. Jaya, BSES Discoms

Record of Proceedings

During the hearing, the learned Senior counsel for the Petitioner submitted that the present petition has been filed for interim truing-up of tariff of Koteshwar HEP for the period 2019-24 period limited to meet the liabilities, as per the arbitration award dated 17.12.2010 read with the orders of Hon'ble Delhi High Court dated 13.12.2019, 12.7.2023 and 28.7.2023 and paid by the Petitioner on 27.1.2020 and 31.8.2023. On the Commission's specific query with regard to the amount paid in terms of the award/orders of the Hon'ble Court, the learned Senior counsel submitted that the total amount involved is Rs 1460.25 crores (Principal amount of Rs 475 crore plus interest of Rs 985.25 crore). He further clarified that pursuant to the order of the Hon'ble High Court dated 13.12.2019, the Petitioner had deposited Rs 450 crores (under the arbitral award) with the Registrar General of the Delhi High Court on 27.1.2020 and the outstanding decretal amount of Rs 1010.25 crore was later deposited on 31.8.2023, in terms of the Hon'ble High Court's order dated 28.7.2023. The learned Senior counsel added that the Division Bench of the Hon'ble High Court of Delhi on 24.4.2024 had



dismissed the appeal filed by the Petitioner, and against this judgment, the Petitioner has filed SLP before the Hon'ble Supreme Court. The learned Senior counsel submitted that since the substantial amounts deposited as above have adversely affected the cash flows of the Petitioner, the Commission, considering the exceptional circumstances of the case, may, in the interim, direct the payment of the Principal amount of Rs 475 crore by the Respondents.

2. The learned counsel for the Respondent TPDDL made detailed oral submissions, mainly as under:

- (a) The Petitioner has sought to invoke the Commission's powers to remove difficulties/power to relax for interim truing-up, which has the effect of amending the 2019 Tariff Regulations and is hence not permissible. Moreover, the Petitioner has not mentioned the provision of the regulation, which is to be relaxed for the grant of relief.
- (b) In terms of Regulation 13(3) of the 2019 Tariff Regulations, an application for interim truing-up can be filed in the year 2021-22 if the annual fixed cost increases by more than 20% over the annual fixed cost determined by the Commission for the respective years of the tariff period. However, in the present case, there is an increase of 20% in the annual fixed cost, only for the year 2023-24, and therefore, the present application for interim truing-up is not as per the provisions of the 2019 Tariff Regulations.
- (c) Since the tariff period 2019-24 has come to an end and the Petitioner is required to file the truing-up Petition for the Project by 30.11.2024, in terms of Regulation 13(2) of the 2019 Tariff Regulations, the present Petition may not be considered at this stage, to prevent unnecessary duplication of proceedings and to ensure regulatory efficiency.
- (d) Since the judgment of the Hon'ble High against the arbitration award is sub-judice before the Hon'ble Supreme Court, the liability of the Petitioner has still not been crystallised.
- (e) The Respondent may be permitted to file a short-written submission in the matter.

3. The learned counsel for the Respondents BRPL & BYPL submitted that the reply filed in the matter may be considered.

4. In response, the learned Senior counsel for the Petitioner clarified as under:

- (a) The submission of the Respondent TPPDDL that the petition has not been filed in terms of the 2019 Tariff Regulations is erroneous. The Petitioner had not filed the interim truing up of the tariff petition in 2021-22, in terms of Regulation 13(3) of the 2019 Tariff Regulations, as the annual fixed cost had not increased by more than 20% over the annual fixed cost as determined by the Commission for the respective years of the tariff period till 31.3.2021.
- (b) Due to the pendency of the appeal before the Hon'ble High Court, which was being pursued by the Petitioner and since the payments (as aforesaid) were made by the Petitioner in terms of the orders of the Hon'ble High Court on 27.1.2010 and



31.8.2023, the present petition has been filed with a prayer for interim truing-up, in exercise of the Commission's powers to relax.

(c) The Commission has the power to relax/power to remove difficulties, and the intent of such a clause is to prevent any hardship and injustice to a party. The prayer for interim relief may, therefore, be considered in terms of the submission of the parties.

5. On a specific query by the Commission as to the status of the appeal filed by the petitioner pending before the Hon'ble Supreme Court, the learned Senior counsel for the Petitioner submitted that the matter may be listed during August 2024. On another query by the Commission as to why the relief sought by the Petitioner cannot be considered in the truing-up petition to be filed in terms of Regulation 13(2) of the 2019 Tariff Regulations keeping in view that the tariff period 2019-24 has come to an end, the learned Senior counsel submitted that since the final order in the truing-up petition [to be filed by November, 2024 in terms of Regulation 13(2)] would take some more time and due to the cash flow problems faced by the Petitioner, the Commission, may consider the grant of interim relief in this petition. The learned Senior counsel also sought time to file its written submission in the matter.

6. The Commission, after directing the parties to file their written submissions (not exceeding two pages) by **30.7.2024**, adjourned the hearing of the matter. The Commission also directed the parties to bring on record the status of the case pending before the Hon'ble Supreme Court.

7. Petition will be listed for hearing during on **13.8.2024**.

By order of the Commission

**Sd/-
(B. Sreekumar)
Joint Chief (Law)**

