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**Record of Proceeding of Public Hearing in Petition No. 1267/2017 on
Prudence check of Capital Cost of Alaknanda Hydro Power Company
Limited (AHPCL)**

Background

1. The Petitioner AHPCL has developed and is operating the 330 MW Srinagar hydroelectric project across the River Alaknanda at Srinagar in the district of Tehri and Pauri Garwal in the state of Uttarakhand. The Petitioner had filed a Petition no. 1267/2017 regarding approval of its Capital Cost of Rs. 5533 Crore and extension of COD. The Project has four units of 87.5 MW each and the extended SCOD of Unit no. 1 & 2 was on 31st March 2013 and for unit no. 3 & 4 was 31st May 2013. However due to unprecedented flash flood in the State of Uttarakhand and a delay in the Commissioning of the evacuation system, the project could be commissioned during June 2015.
2. UPPCL has opposed the extension of COD on various grounds and suggested that the capital cost should be allowed subject to the prudence check of capital cost. Thereafter, the Commission through bidding process appointed AF Consult Switzerland Pvt. Ltd (herein referred as Consultant) for Prudence check of the Capital cost of the Project. The AF Consult Switzerland Pvt. Submitted its interim Report in September 2019 with capital cost of Rs. 5290 Crore. The same was deliberated and comments on the reports were sent to the Consultant and later consultant have submitted the final report in February 2020 recommending capital cost of Rs. 5198 Crore.
3. The final report of the Consultant along with the MOM of the Commission dated 08.01.2020 and comments dated 19.12.2019 of Sh. Bharat Jhunjhunwala, an intervener, were uploaded on the website of the Commission for Public comments. A Public Notice in this regard was Published on 12.05.2020 in English and Hindi newspapers inviting stakeholders to furnish their comments.
4. In wake of prevailing COVID-19 pandemic outbreak in the country and travel restrictions, the Public Hearing on prudence check of capital cost of Alaknanda Hydro Power Company Limited was held through Video Conferencing on 02.06.2020 at 11.00 AM onwards. In the public hearing, the stakeholders put forth their comments/suggestions before the Commission.
5. Secretary, Sh. S K Singh, announced if there was any other representative / stakeholder than those who have sent their comments / suggestions. No one turned up. The comments/suggestions of various stakeholders have been summarized under various sub-heads below:

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Stakeholders Comments

A. Sh. Rama Shankar Awasthi, Consumer of UP through its Legal counsel Sh. Dibyanshu Bhatt submitted as follows: -

1. Complete documents have not yet been placed on record

A lot of important documents have either not been placed on record or have not been inspected thoroughly including, but not limited to, PERT Chart, Progress reports submitted by the Petitioner to the state authorities, examination of the level of works executed until May, 2013, CEA standards applicable to the construction and implementation of the Project, Form 5 E(ii) etc.

Apart from that, the tariff forms, the main petition, and the prayers made before this Hon'ble Commission, none of these documents have been placed in public domain. Unless these documents are uploaded and available for public comments, the prudence check exercise cannot be complete.

It was clarified by the Commission that this Public hearing is related to Capital Cost of the Project and not the tariff for the same.

2. Issues related to Capital cost:

The Petitioner's Project has significantly high capital cost and the maximum one in terms of per MW cost as compared to the power projects of around the same capacity. The comparison of such 11 hydro power lays exorbitant cost of the Project. Therefore, in-depth analysis is to be carried out by the DIA to ascertain the prudence of the costs, which has not done by the DIA.

There is an increase of 225.66% from the original capital cost of the Project, as approved by the CEA, vide its Techno Economic Clearance ("TEC"). A claim for the allowance of time overrun and cost overrun of such magnitude needs to be thoroughly scrutinized as any allowance granted by this Hon'ble Commission shall translate into a massive escalation in the resulting tariff.

3. Reasons for delay in Project Commissioning

The major reasons provided for the same are: (a) Delay in executing land lease agreement; (b) Directives of MOEF (524 days) (c) Unprecedented flood occurrence; (d) Non-availability of transmission line facility ; (e) Agitation by villagers obstructing reservoir filling . Further, apparently the Project was ready but was delayed due to the delay in provision of the Transmission Line, why did it take another period of around 6-7 months for the units of the Project to be commissioned.

It is submitted that a lot of these issues have existed simultaneously. However, the DIA has neither assessed the number of days for which delay has been caused due to each of the issues, nor has the DIA scrutinised for

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how many days each of the issues caused the delay that was overlapping with the delay caused because of another issue that existed simultaneously.

4. Failure to give notice of Force Majeure:

The Report has contended that the time overrun of such magnitude in completion of the Project is attributable to unforeseeable and uncontrollable factors including floods in 2013, stop work order by MoEF, issues related to land acquisition for the Project, and stoppage of work by villagers at different times. Though the Project has been delayed by more than 4 and a half years, provision of a notice of Force Majeure is a mandatory precondition for claiming Force Majeure relief in accordance with Clause 14.0 of the PPA. As no notice of any of the Force Majeure events has been served on the party to the PPA, i.e. UPPCL, the Petitioner is not entitled to claim any Force Majeure relief.

5. Eligibility for Extension in COD

There appear to be incorrect interpretations of the orders that stopped work; the critical path of the Project has not been charted out; when the Project's COD was revised till May, 2013, which was before the floods happened, the Project should have been ready. However, no determination of works completed till May 2013 has been made by the DIA.

The DIA has assumed that all the extensions to COD that were given by this Hon'ble Commission vide their respective orders between 2012 and 2015 were actually the final determination and that there would be no further scrutiny at the time of approval of revised capital cost into these reasons that have allegedly "uncontrollably" delayed the implementation of the Project.

6. Liquidated damages to be recovered from the Petitioner

While it is yet to be decided by this Hon'ble Commission as to whether the Petitioner is eligible for receiving any capital cost between 2013 and 2015 on account of not having secured any prior approval for extension of COD and whether the PPA survives in the absence of such extension, it is also to be noted that the Petitioner is liable to pay liquidated damages to UPPCL.

7. Whether PPA survives

In fact, another important question that needs to be examined is that when the Petitioner abruptly chose to not seek any approval for extension of COD beyond May, 2013, does the PPA between the parties even survive or is it liable to be terminated. If it could be terminated, then did UPPCL exercise the option of terminating it, is also not known.



8. Prudence check not carried out in accordance with this Hon'ble Commission's Regulations

It is not understood if any benchmarking norms have been followed properly. The DIA has mentioned that justified rates taken from the Schedule of rates published by Department of Water Resources, Karnataka for year 2012-13, have been used to work out the major costs of different components. Multiplication factors have been worked out for different components from the DPR costs to account for other miscellaneous items. The total costs thus derived have been taken as the justified cost of Civil works.

In this regard, several questions arise. Firstly, why the rates from Karnataka, Department of Water Resources? Why not the rates from Uttarakhand itself? Or any nearby state with a similar geographical and topological conditions?

9. Geographical and other Technical Constraints

The investigations that have been carried out before the grant of TEC to the Project and the variations/ constraints pointed out by the Petitioner during the construction phase of the Project exhibit stark contradictions. It is submitted that either the investigation was not done correctly at TEC stage or at the construction stage. In the absence of proper scrutiny, there appears to be massive escalations in cost which cannot be burdened upon the consumer

10. Rehabilitation and Resettlement

Nowhere has there been any scrutiny in the Report regarding the basis of arriving at these figures of compensation payable. There is also no finding with respect to who decided the legitimacy of these amounts. Further, no comparison with any nearby Project who gave similar compensation has been done by the DIA.

The Petitioner, as per the Report, has given around Rs. 16 lakhs as scholarships, a separate 3 lakhs for education, Rs. 10 lakhs for supplying sewing machines, economic allowance of Rs. 20 lakhs, financial assistance to 60 handicapped people etc. Therefore, why should the general consumers be responsible for compensating the petitioner for the charities that were undertaken by the Petitioner? However, this aspect has not been scrutinised in the DIA.

11. Mitigation of excessive costs through BG Encashment and recovering of Liquidated Damages

While there are clear findings in the Report that contracts were terminated and re-awarded for inefficient work or non-compliance of timelines, there is no evaluation and assessment of whether the loss caused due to the

inefficient work of these sub-contractors resulted in any liquidated damages having been recovered from them or if any of their Bank Guarantees were encashed.

There is no reason to allow the Petitioner the escalation in cost that is a result of the inefficiency of its contractors and suppliers. It is not possible to even ascertain whether there was any scope of levying liquidated damages in the contracts that were awarded, especially to the related companies of the Petitioner that have executed a major chunk of the Project's civil works.

12. Insurance claims for damages due to Flooding

While the DIA has arrived at a finding that the Petitioner received an insurance claim of around Rs. 147 Crores for the damage to the desilting basin and submergence of the powerhouse caused due to the floods, it has rendered no finding on the issue regarding why the insurance claim did not cover the complete damage.

13. Limited Tendering and Arm's Length Pricing of the Awarded Contracts

The escalation in cost about various packages is although provided in the Report, but the reasons behind the same have not been scrutinised. The DIA appears to have overlooked the extent of tendering and has not scrutinised whether adequate care was taken in arriving at the most optimum cost by competitive bidding on part of the Petitioner.

B. Sh. Bharat Jhunjunwala, as an intervener submitted as follows: -

1. There is an APTEL Order dated 13.02.2014 that all cost to be examined and discussed in Public Hearing. It is observed that the DIA Report contains several blatant falsehoods and stands which needs to be rejected outright.
2. DIA has acted as an Agent of the Petitioner, AHPCL.
3. The weight of cement and steel is not verified by the DIA as it was required to assess the use of cement and steel during the alleged period of stoppage of work due to the Stop Work Order. DIA has feigned as if checking of bills generally is sufficient to assess use of these materials during a period.
4. The Muck Disposal Plan requires retaining walls to be made up to HFL. There is no mention of 3000 CUMEC therein. The project was designed for more than this according to DIA itself which is maximum of 17516 MCUM.
5. I have submitted the pictures and it can be observed that the damage was to the floor of the sedimentation tank having subsided and the water

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gushing out. The entire wall is fallen off and then there is a hole in the tank which proves that the construction was not up to the mark.

6. Can UPERC accept any capital cost beyond TEC cost. The hydro plants are dealt in accordance with the Section 8 of the Electricity Act, 2003 and DIA is failed to make the distinction between Hydro and Thermal plant.
7. DIA has provided that Forest land of 338 Ha was leased on 29.8.2009, however, it was only the non-essential land which was handed over in 2009. The possession of Forest Land was handed over in 2006 and construction had already been started. Hence, even if lease was signed later, it is of no consequence regarding delays. Therefore, it is falsehood that they could not get the land.
8. The DIA has submitted that the private land could be acquired after GOUK Approval. However, it is observed that AHPCL purchased land directly from the sellers and there was no acquisition of land. Hence, no permission of GOUK was required for this.
9. The DIA further has submitted that Dhari Devi Temple lead to force majeure condition. However, the Orders of Uttarakhand HC and SC were also applicable to work on Dhari Devi and the work continued despite MOEF order.
10. The contention of the DIA that the Coffor Dam breaks happen in monsoons is not true at all, the first break took place in winter of year 2008-09, which was not due to the monsoon. If I am given an opportunity, I can challenge the DIA on these facts.
11. The Project has accepted the revised TEC in 2006 with project cost. Therefore, the cost was frozen that time and the Petitioner had agreed for no increase in the cost. The extension COD does not entitle them to increase the cost. Further, the delay due to Coffor Dam Break was due to bad works by IPP. Accordingly, the cost must be disallowed.
12. It is stated by the DIA that the work Stopped due to Muck Disposal. The main problem was IPP violated the Muck Disposal Plan and the work had continued anyways. I have given the photographs showing the work had continued that time. There was no stoppage of work and in November 2011, High Court has mentioned that there is no order to stop the work and in January 2012 Supreme Court said that the work should continue without hindrance.
13. The submission is that the delay is caused due the deliberate actions of the IPP while violating the laws, therefore, the consumer cannot be made responsible for such delay.

14. Lastly it is proposed that either a short Committee may be constituted and include independent persons with Chartered Accountant to scrutinise the cost or the Commission can also appoint fair & independent DIA along with our participation and then the Commission can take a view on the report so produced.

C. Sh Avdhesh Verma of Rajya Upbhokta Parishad submitted as follows

1. The Commission has asked DIA to investigate certain specific issues, however, it is observed that the DIA has neither looked into such issues nor have incorporated them. This issues that DIA has not complied with the directions of the Commission and this issue need to be looked in seriously by the Commission.
2. The Petitioner may be asked to file the revised Petition with correct and complete information as the cost is to be borne by the Consumers of the State in long run.
3. It is observed that the project was commissioned in 2015, however, the Petitioner did not file the Petition till notice was issued by UPPCL. The cost has been increased by 225%, which is required to be scrutinized by the independent consultants in fair and transparent manner.
4. The DIA has not checked the balance sheet and P&L and only have looked into certain technical aspects. The DIA has not carefully looked into insurance claim, interest during construction etc. without which true and fair capital cost cannot be determined.
5. The capital cost proposed by the Petitioner is of Rs.15.5 MW/ crore, however it is observed that the DIA has not provided the benchmark cost of different similarly situated plants. However, it is found that the average capital cost of most of the plants is around Rs 8.73 Crs/ MW and there is only one project at Krishnganga whose capital cost is around Rs. 16 crore per MW due to the certain international dispute related to water with Pakistan. In that case, the matter was referred to the International Court of Justice for arbitration, which took some time and there was considerable delay. Thus, it is not appropriate to compare the same with the present case.
6. Further, it is observed that the Petitioner without going into tendering process has awarded the work to its sister concern. The work so allocated to the sister concern is on higher side and it is found that there is no process followed which would ensure competition as envisaged under the Electricity

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Act 2003. Therefore, it is proposed that enquiry may be setup against the Petitioner to unearth the scam.

7. There are many conflicting statements in the Report shows that no financial scrutiny has been conducted.
8. If the capital cost is allowed to the Petitioner, that means the consumers of the State of Uttar Pradesh will have to pay Rs.9 per unit for 300 MW plant for 35 years.
9. Finally, it is proposed that the independent consultant may be appointed to conduct the prudence check of the capital cost and the present DIA should be booked under Section 142 of the Electricity Act 2003 as it has not complied with the directions of the Commission. The Commission should not allow the high tariff and the government may be recommended to be setup the enquiry.

D. Sh Bhanesh Aswal, on behalf of local consumers of Shrinagar, Uttarakhand submitted as follows

Upon specific query of the Commission about his interest in the case, Sh. Aswal stated that he is a resident of Shrinagar and the matter related to the Power Plant situated at Alaknanda river in Uttarakhand. The Commission allowed to present his general comments. The following comments were presented:

The petitioner has submitted that the water entered in the power plant is due to the flood occurred. However, it is submitted that the same is not due to the floods but because of deliberate actions and carelessness of the Petitioner. The other point is related to Dhari Devi Temple which is already discussed by the Sh. Bharat Jhunjunwala in detail.

E. Sh Ankur Sood, legal counsel on behalf of local consumers of Shrinagar, Uttarakhand submitted as follows

Sh Sood informed the Commission that though he represented interest of consumers of Uttarakhand, yet several legal issues are to be brought before the Commission. The Commission allowed Sh Sood to present his comments. The following comments were presented:

1. Section 8 of the Electricity Act starts with the non obstante clause, hence overriding the Section 7 of the Electricity Act 2003. The Section 8 provides that the capital cost incurred by the Hydro Power Plant, except it is lower than threshold as prescribed, shall be submitted to the CEA for the approval. It is pertinent to mention that as per Sub Section 2 of Section 8 of the Electricity Act, 2003, it is not possible to override the approval provided by the CEA.

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2. TEC guidelines of 2007 provide the CEA approval is mandatory for the purpose of the Capital Cost for any change in the design. There are significant changes in capital cost and design for which CEA approval is not sought.
3. The Article 3.3 of the PPA deals with capital cost and provides that the capital cost shall be approved by the CEA and based on certain factors capital cost can be revised. Therefore, again it is the CEA who can approve the revised cost.
4. The force majeure condition as per the PPA is the situation beyond the control; direct or indirect. There was a precondition regarding claim of force majeure. Sub clause 8 of Article 14 of the PPA, non-performance or delay on part of contractor will not attract the force majeure clause. Further, there are many judgements pertaining to that the notice is mandatory in case of force majeure event, which as per the information available is not given.
5. In view of above, capital cost claimed by the Petitioner should not be allowed.

F. Sh. Deepak Raizada, Chief Engineer, REPPA, UPPCL and Sh. Mohit Goyal, Consultant submitted as follows

1. The capital cost of the Petitioner is too high as compared to other similarly situated projects. Most of the civil work has been awarded by the Petitioner to its own sister concern, which is of grave concern. Therefore, the work award process along with details of liquidated damages received from them should be investigated more diligently. There are certain issues in R&R, which has been mentioned in our written submission.
2. The time overrun events cannot be expected to be sequential and there is every possibility that there are overlaps in the time overrun elements. The Critical Path Analysis and Project Evaluation and Review Technique (PERT) chart is not provided to substantiate the delay in commissioning of the project.
3. There is a significant divergence in the values stated in the report submitted by the DIA in September 2019 and now in December 2019. For example, the "TEC provision for Civil Works including infrastructure works and hydro mechanical works - (Base date March 1999) was stated to be Rs. 886.73 crore in the September 2019 report which has been restated to Rs. 983.95 crore in the December 2019 report. Similarly, the "cost to be added to TEC provision to take care of scope and statutory changes" has been revised from Rs. 580.16 crore in September 2019 to Rs. 655.28 crore in December 2019. There is no justification provided by the DIA in the report regarding all this.

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4. Further, as per the Report, the DIA has sought to justify the cost escalation in civil works. It has used three different indices for ascertaining the reasonableness of civil works costs namely "cost indices published by the RBI, cost inflation index published by Income Tax Dept., indices published by Construction Industry Development Council". However, in our view the said approach is erroneous on account of the following:
 - a. The DIA has used RBI cost index for "all commodities" wherein it has a weightage of only around 30% for articles such as concrete, cement, plaster, etc. Hence, an index where other commodities dominate the index should not be used for demonstrating the reasonableness of civil works.
 - b. The Cost Inflation Index published by IT Dept. is used to compute inflation adjusted long term capital gains on asset classes such as houses, shares, MFs, securities, etc. Hence, consideration of the same for civil works does not seem to be a correct approach.
 - c. The indices published by CIDC cannot be considered for justifying the increase in of electromechanical works, building, township, site development expenses, etc.
5. On query of the Commission, as to which Indices are suitable for cost escalation, the UPPCL Representative submitted that generally CPI and WPI indices are to be considered for the inflation index.
6. The Report, details regarding Source of Funding, however, only details are provided, and no analysis is provided. It is mentioned that, again, to part finance the Project cost, AHPCL has also availed foreign currency loans to the extent of 40 million US Dollars (about Rs. 161 crores).
7. No details are provided regarding the purpose of this foreign currency loan when in fact AHPCL has also availed Rupee loan from Axis bank Limited. Further, no details are provided regarding currency of foreign loan, rate of interest, whether the loan is hedged etc.
 - a. For the financial verification of the completed capital Schedule of rates published by the Department of Water Resources, Karnataka for the year 2012-13, have been used to work out the major costs of different components. It may be clarified the reason for considering Karnataka rate schedules for 2012-13.
 - b. It is not clarified in the report that, whether component by component the capital expenditure incurred was reasonable or not?

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- c. Whether DIA verified all major EPC, Non-EPC & Services contracts or not? If yes, what were the observations? Were there any deviations observed?
 - d. Whether DIA verified the documentary evidence of a contract or not? If yes, why the details of the contract (such as date of signing, specific clauses regarding liquidated damages, performance guarantees, insurance, payment of fees and other important terms of the contracts) verified were not included in the contract?
 - e. Whether DIA conducted an analysis of invoices and actual payments on a sample basis or not? What were its observations? Were there any deviations observed?
8. The details regarding the insurance policy is not highlighted in the report considering to what extent the project was covered under the same.
 9. The audited accounts have not been analysed by the DIA in respect of year on year increase in capital cost attributable to the events.
 10. The Petitioner has considered the debt: equity ratio of 80:20, in which the Interest During Construction (IDC) contributes approximately 32% of the total cost verified by DIA. However, no detailed analysis regarding whether the debt was drawn in optimal manner or not, rates of interest for debts and whether the amount drawn but lying idle with the Generating company was used for other purposes or not etc. need to be analysed. However, no such analysis is done by the DIA. The DIA has simply attributed all delays to Force Majeure conditions beyond control of the generating company.
 11. There is no details of interest rate and penal charges of the project in the report by the DIA. UPPCL requests that excel model may be provided for further analysis. The DIA has conducted the technical analysis, however the financial analysis is not looked upon by the DIA. Therefore, it is requested that the financial audit may be done by the Commission.

G. Sh. Prasanna Reddy, Representative of AHPCL through its Counsel Sh. Vishrov Mukerjee submitted as follows:

1. In connection with the approval of the completed capital cost claimed by Alaknanda Hydro Power Company Limited, the Hon'ble Uttar Pradesh Electricity Regulatory Commission (Hon'ble Commission/UPERC) is pleased to hold a public hearing on 02.06.2020. In this regard, we were given link to join in the public hearing through a video conference. The said link was provided by the Hon'ble Commission through its confirmatory email dated 02.06.2020 along with certain documents supposedly filed by certain people who desires to participate in the hearing to be held today.

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2. The various stakeholders who are present in the hearing and who have offered their comments have vested interest and some of them are not even consumers of the State. The detailed comments have been filed before the Commission regarding the report submitted by the DIA. Therefore, an opportunity may be provided to file the counter in respect of the issues raised by the various stakeholders as it is necessary to address the same.
3. AHPCL objected about the people named hereunder in participating the public hearing:
 - (i) Bhoopal Chaudhary Add: Gola Bazar Srinagar
 - (ii) Rajiv Kumar Add: Gola Bazar Srinagar
 - (iii) Banesh Ashwal Add: Garhwal Marg Srinagar
 - (iv) B B Chamoli Add: Srikot Srinagar
 - (v) Sameer Raturi Add: Srinagar
 - (vi) Anjana Ghildiyal Add: Ghashyamadari Srinagar
 - (vii) Uma Ghildiyal. Add: Uma Sadan Srinagar
 - (viii) Suman Nautiyal Add: Srikot Ganganali Srikot
 - (ix) Vishweshri Devi Add Srikot Srinagar

It is also observed from the correspondence shared by the Hon'ble Commission that one Mr. Ankur Sood and Mr Bhanesh Aswal were authorised to represent some / all the above-named persons. AHPCL submitted that the above-named people are not consumers of the State of Uttar Pradesh and are in no way related to the Shrinagar Hydro Electric Project being operated by AHPCL.

AHPCL requested the Commission to be pleased to permit only the public/consumers who are within the jurisdiction of the Hon'ble Commission and any objections from the non-consumers of the State of Uttar Pradesh may not deserve any consideration and that the same may not be taken on record in the present matter.

4. Sh. Reddy, the developer requested Commission to grant three-four weeks' time to file response on the issues raised during the Public Hearing by the various stakeholders.

Commission viewed that this was not a case hearing and whatever comments of Petitioner must be presented on the day of Public hearing itself. However, looking into detailed comments presented during the hearing by various stakeholders, Commission allowed two-week time to Petitioner.

These comments of the Petitioner shall be uploaded on Commission's website [www. Uperc.org](http://www.Uperc.org) and those stakeholders who have participated in Public hearing today may file their comments,

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if any, within next two weeks. The Commission will decide the matter accordingly and there will not be any public hearing in this regard.

The Public Hearing ended with a vote of thanks by the Secretary of the Commission for participation of everyone through video conferencing.

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