

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY  
COMMISSION SHIMLA**

In the matter of :-

M/s Winsome Textiles Industries Limited,  
1, Industrial Area, Sai Road Baddi,  
Distt. Solan (H.P.)

....Petitioner

Versus

The HP State Electricity Board Ltd. thro' its,  
Executive Director (Personnel)  
Vidyut Bhawan, Shimla-171004

....Respondent

Petition No. 21 of 2016

(Decided on 3<sup>rd</sup> August, 2016)

**CORAM**

**S.K.B.S. Negi**  
**CHAIRMAN**

Counsels: -

for petitioner:

Sh. Nimish Gupta, Advocate  
a/w Sh. Sanjeev Mittal, GM

for respondent:

Sh. Ramesh Chauhan,  
Authorised Representative  
a/w Er. Suneel Grover, CE(SO)

**ORDER**

(Last heard on 30.07.2016 and Orders reserved)

M/s Winsome Textile Industries Ltd., which is a Company incorporated under the Companies Act, 1956, having its office at 1, Industrial Area, Sai Road, Baddi, Distt. Solan (HP) and Head Office at SCO 191-192, Sector 34-A, Chandigarh (hereinafter referred as "the Petitioner") has moved this petition under section 86 (1)(f) of the Electricity Act, 2003, read with Clause (h) of sub-regulation (3) of regulation 16 of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from Renewable Energy Sources and Terms and Conditions of Tariff Determination) Regulations, 2012, seeking directions to the Respondent Board to execute the Supplementary Wheeling Agreement for enhanced capacity of 3.5 MW, with the same terms and conditions as specified in the original Wheeling Agreement dated 30.03.2000

for 2.5 MW and also to finalize/notify the Commercial Operation Date of the Project for enhanced capacity of 3.5 MW, as the same is ready for generation.

2. The facts, in brief, leading to filing of this petition are that-
- (a) the petitioner had set up a Small Hydro Power Project having capacity of 2.5 MW in the name of Manuni Hydro Electric Project, located in Distt. Kangra (hereinafter referred as “the project”) to generate the power for captive use for its plant located in Baddi, (H.P.) and entered into an Implementation Agreement (IA) with the GoHP on 30.03.2000. The said firm has also signed the Agreement for Wheeling, Banking and Captive use of power, in short Wheeling Agreement, on 30.03.2000 with the Respondent Board;
  - (b) now the petitioner Company has revised the capacity of their project from 2.5 MW to 3.5 MW and accordingly Supplementary IA has been signed with GoHP on 22.08.2014;
  - (c) the petitioner Company has submitted that they have communicated/ informed the Respondent Board on 07.08.2014 and also apprised them through various letters that project has been commissioned in all respects and is ready for generation, but the Respondent Board during the meetings held on 22.09.2014 and 04.12.2014 has informed the petitioner Company that the Respondent Board is in process of drafting new Wheeling Agreement as per the latest Regulations and, therefore, it is not possible to sign Supplementary Wheeling Agreement. The petitioner Company also informed that they have time and again requested the Respondent Board to finalise/issue the COD as the project has been commissioned long time back and the petitioner Company is suffering loss every day;
  - (d) the petitioner Company filed petition No. 70 of 2015 before the Commission, and the same has been disposed of vide Order dated 10.07.2015, stating that the petitioner had intended to withdraw the petition to sort out the matter amicably through intra parties negotiation and in case the failure of intra parties negotiation the petitioner was granted the liberty to approach the Commission again;

- (e) subsequently, a meeting was held between representatives of both the petitioner Company and WTD of the Respondent Board for intra parties negotiations in compliance of the Commission Order dated 10.07.2015. During the negotiations, the Respondent Board observed that it cannot be expected that the agreement entered into in the year 2000 for 2.5 MW be acted upon in the year 2015 for a capacity of 3.5 MW, particularly when the entire legal regime has changed and the Commission has come into being to regulate all aspects of transmission, wheeling, supply of electricity etc. and in this case, the Regulations of the Commission do not support the Wheeling, Banking and Captive use of power as provided for in the Wheeling Agreement of the year 2000;
- (f) the petitioner Company, being aggrieved by the failure of the intra parties negotiations, has now again moved the present petition seeking the directions to the Respondent Board to execute the Supplementary Wheeling Agreement for enhanced capacity of 3.5 MW, with the same terms and conditions as specified in the original Wheeling Agreement dated 30.03.2000 for 2.5 MW and also to finalize/notify the Commercial Operation Date of the Project for enhanced capacity of 3.5 MW, as the same is ready for generation.

3. In response to the petition, the Respondent Board states that the petitioner is yet to complete the project. A long period has elapsed after the execution of the Wheeling Agreement on 30.3.2000. As such it is not possible to execute the SPA for enhanced capacity on the same terms and conditions. Besides this the Respondent Board is to consider the availability of its existing system for providing the Open Access to the petitioner, with regard to the issue relating to the finalization of the COD of the project, the Respondent Board submits that Section 42 of the Electricity Act, 2003 and the Open Access Regulations mandates the distribution licensee to provide non-discriminatory open access to the consumers intending to use power from their captive plants, irrespective of plant capacity, subject to Regulations and payment of charges. Accordingly the petitioner has already been advised to apply for grant of connectivity with electrical system of the Respondent Board in accordance with the provisions of the Regulations in force.

4. During the hearing of this petition, the Commission observed that the petitioner has executed the Supplementary Implementation Agreement (SIA) on 22.08.2014, with the State Govt. for revised capacity of 3.5 MW Manuni Hydro Electric Project, modifying the original Implementation Agreement dated 30.03.2000. As such both the parties were also advised to make their submissions with reference to the SIA dated 22.08.2014.

5. Sh. Namish Gupta the learned Advocate, representing the petitioner company, submits that the SIA dated 22.08.2014, is already under adjudication before the Hon'ble High Court of Himachal Pradesh in a writ petition filed by the petitioner and the same cannot be relied upon at this stage. On query being raised, Sh. Gupta confirmed that there is no stay Order in this regard. The petitioner also submits that any delay in commissioning the project may lead to the generation loss.

6. Er. Sunil Grover, the Chief Engineer (SO) of the Respondent Board contends that-

- (i) the petitioner has been repeatedly requested to apply, alongwith supporting documents/papers, for availing the open access in accordance with the regulations in force, but no such application has been made so far. He emphasizes that there will be absolutely no delay on the part of the Respondent Board;
- (ii) the petitioner is not entitled to claim benefit under the Wheeling Agreement for 2.50 MW project, executed in the year 2000, particularly when the project of 2.50 MW capacity was never executed. The project being actually executed is comprised of two units of 1.75 MW each. Moreover the petitioner has himself agreed, under the SIA, to be governed by the policy of HPSEBL, HPERC and HPPTCL at the time of actual operationisation of transmission and wheeling of power from the 3.50 MW project. In relation to the pendency of the matter before the Hon'ble High Court, it was urged that the same will have no bearing on the issue, particularly keeping in view the fact that, as admitted by the petitioner himself, there is no stay order from the Hon'ble High Court;
- (iii) on the issue regarding permitting the connectivity of the project in order to avoid any loss of generation, the Respondent Board has been repeatedly requesting the petitioner Company to make application alongwith relevant

papers for availing open access under the regulations or disposal of the power in any permissible mode, but no response up till now has been received from the petitioner Company. Further the Respondent Board would also not like to become hurdle in any generation of power, which is otherwise a national resource;

- (iv) the petitioner has the option either to avail Open Access (short-term or long-term) as per the HPERC Regulations or to sell power to the Respondent Board either under REC Mechanism or under Long-Term PPA by initiating the process for submission of appropriate proposal suiting to his convenience to the Respondent Board.

7. After hearing the arguments advanced by the Respondent Board, Sh. Namish Gupta submits that the petitioner company intends to avail Short Term Open Access in accordance with the Regulations. However, he seeks clarification about the scheduling aspects for his project, keeping in view the fact that as per the Grid Code projects upto 5.00 MW capacities are exempt from provisions regulating scheduling. In this regard the Respondent Board points out that in case of open access the scheduling and accounting has to be done as per the detailed procedure approved by the Commission under the Regulations.

8. In the aforesaid facts and circumstances and the submissions made and arguments advanced on behalf of the respective parties in this petition and the discussion made herein before, the Commission directs the Respondent Board to expeditiously provide open access to the petitioner as per the Regulations on receipt of application and fulfilling the statutory requirements laid in relation thereto. As regards the scheduling aspect raised by the parties, the Commission shall, if necessary, consider to issue suitable guidelines/clarification etc. in relation to the Plants upto 5 MW.

This petition is disposed of accordingly

--Sd/-  
**S.K.B.S. Negi**  
**Chairman**