

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

In the matter of:-

The Himalaya Power Producers Association
Sector-1, New Shimla-171009
(through Sh. S.N. Kapur its Authorized Signatory)

..... **Petitioner**

Versus

The HP State Electricity Board Ltd.
(through its Director (Personnel),
Kumar House, Shimla-171004

.....**Respondent**

Petition No. 51 of 2017

(Decided on **23rd February, 2018**)

CORAM:

**S.K.B.S NEGI
CHAIRMAN**

**BHANU PRATAP SINGH
MEMBER**

Counsel:-

for petitioner:

Sh. Ajay Vaidya, Advocate

for respondent :

Sh. Kamlesh Saklani

(Authorized Representative)

ORDER

(Last heard on 03.02.2018 and Orders reserved)

The petition has been filed by the Himalaya Power Producers Association, Sector-I, New Shimla (hereinafter referred as ‘the petitioner’) under Sections 86 and 94 of the Electricity Act, 2003 complaining non-adherence to the orders/ guidelines issued by the Commission for calculating the O & M Charges, by the Himachal Pradesh State Electricity Board Ltd. (hereinafter referred as “the Respondent Board”).

2. The facts of the case in brief are as under:-

- (a) that the Petitioner Association has submitted that it has approached the Respondent Board many times for charging the O & M charges of the interconnection facilities on the basis of the Interconnection Agreement which has been entered into between the parties and according to the guidelines of the

Commission, but the Respondent Board has issued the revised bills on the old lines without adhering to the orders passed by the Commission.

3. The Commission has laid down the guidelines to work out the cost of O & M for interconnection facilities for SHPs (upto 25 MW) in para 18 of the order dated 23.11.2010 passed in the **petition No. 81 of 2010 – M/s Astha Projects (India) Ltd. Vs. HPSEBL & another** which are reproduced as under:-

“ 18. The Commission, therefore, lays down the guidelines to work out the cost of O & M charges for interconnection facilities for the SHPs (upto 25 MW) as under:-

- (i) the total amount of normal O & M cost for the interconnecting manned substation shall be apportioned in the ratio of number of feeders for which interconnection facilities are provided to SHPs to the total number of incoming and outgoing feeders irrespective of the voltage level of such feeders. The normal O & M cost of substation shall also include the maintenance costs of the infrastructure works, such as approach roads, staff quarters, sanitation, repair of buildings etc., as per provisions of the agreement;*
- (ii) the prorata amount worked out on the above lines in respect of the interconnection facilities shall be suitably increased to account for the applicable departmental charges as stipulated in the agreement;*
- (iii) the other provisions including those relating to detailed mechanism for payment of the charges in this regard as contained in the agreement executed by the petitioner with the Respondent Board shall remain unchanged. However, the amount billed/ recovered by the Board on account of normal O & M charges in excess of that determined as per the above formulation shall be withdrawn/refunded alongwith with penalty, if any, charged on such excess amount.”*

4. The Petitioner in the present petition has alleged that the Respondent Board is not calculating the O & M charges as per the guidelines stated hereinbefore and is charging those expenses which are not directly or indirectly related to the members of the Association. The Petitioner Association has requested for the following reliefs: -

- i) that the Respondent Board may be directed to work out the cost of O & M for the interconnection facility based on the calculation of numbers of

bays/feeders/VCBs in the Station/Sub-station and as per regulations issued by the Commission with regard to O & M charges;

- ii) that the Respondent Board may be restrained from making recovery of O & M charges from the energy bills of the members of the Association till the decision of this petition;
- iii) that the Respondent Board may be directed not to include those expenses which are not related to the interconnection facility in the bills as issued to the IPP(s);

The Petitioner Association has however neither cited any specific instances of alleged violations/contraventions. There are no facts on the record, supported by any documentary or any other evidence to establish its claim.

5. When the matter came up for hearing on 16.09.2017, the authorized representative of the Respondent Board, strenuously opposed the admission of this petition and expressed his intention to file written submissions and he prayed for adjournment of the admission hearing.

6. In response to the petition, the Respondent Board submits that the present petition deserves to be dismissed and is required not to be admitted on the following grounds -

- (a) that the petition from being in a representative capacity, for the alleged cause of action in respect of individual member of the association, is not maintainable, as the cause of action differs from person to person and case to case;
- (b) that some discrepancies related to bus coupler and station transformers etc. in the guidelines laid down in the Astha case, stand further clarified by this Commission in **petition No. 96/2016–M/s Harison Hydel Construction Pvt. Ltd. Vs HPSEBL decided on 15th March, 2016** to the extent that -

“The O&M costs of any devices, other than those directly connected to the incoming or outgoing feeders, installed at the Sub-Station for conveyance or for facilitating conveyance of electricity from incoming feeders to outgoing feeders, cannot be allocated to any particular feeder and the O&M costs of such devices have essentially to be shared by the incoming and outgoing feeders. Accordingly, even if, purely for argument sake, the bus coupler and the station transformer were to be considered as two additional feeders for the purpose of working out the petitioner’s share in O&M costs, the O&M costs related to these two

additional feeders would again have to be loaded on the 6 Nos incoming and outgoing feeders only.”

- (c) that the Respondent Board is strictly following the aforesaid guidelines in letter and spirit, therefore, there is no occasion to file and maintain this petition. However, if there is any grievance, that can be sorted out by resorting to the arbitration clause of the agreement.

7. The Petitioner in a rejoinder to the short reply filed by the Respondent Board, has denied that the petition is not maintainable in the present form in the representative capacity stating that-

- (a) the Astha Guidelines were issued by this Commission on 23/11/2010 on the petition filed by the Association and since the cause of action is same for all the IPPs, the Association is competent to file and maintain this Petition before this Commission. The Commission has directed the Respondent Board to charge the O&M Charges in accordance with the Astha Guidelines but due to non-adherence to the direction of the Commission in complying with the Astha Guidelines the Association has been forced to file this petition since the cause of action is the same for all its members and to avoid multiplicity of the lis this petition is filed and is maintainable before this Commission;
- (b) the members of the Association have been issued various bills on account of O&M Charges which also include the various infrastructural works such as approach roads, staff quarters, sanitation, repair of building etc. The bill of O&M charges as raised by the Respondent Board was not in accordance with the actual total number of bays/feeders of the respective Sub-station. The Respondent Board by pick and choose policy in some cases is considering all bays and feeders for the purpose of the O&M Charges and in some cases the bays and feeders are not considered on actual basis. Thus is discriminating the members;
- (c) further as per clause 6.5 of the Interconnection Agreement, the members of the Association are supposed to be provided with the actual expenses incurred on the operation and maintenance of the Interconnection facility by the Board, to be adjusted with the estimated expenditure, but no such details of expenditures have been rendered by the Respondent Board to the various members while issuance of O&M Charges.

8. We have heard the learned Counsel for the parties and, after due consideration, observe that the Commission before entertaining the petition for taking action at the outset has to satisfy itself by applying its mind as to whether there are prima facie allegations, in petition or complaint or information, which would constitute contravention or violation of any of the provisions of the Act or rules and regulations made or directions issued thereunder by the Commission which necessitate the issuance of Show Cause to conduct inquiry in the matter. To initiate action for violations of any directions given to the licensee, as alleged in this case, specific notice is a mandatory requirement to be issued by the Commission to the licensee specifying the alleged particulars of violations. Admittedly, in the present petition the Petitioner Association has made a general allegation to the extent that the licensee is not calculating the O & M Cost as per the guidelines laid down in **Petition No. 81 of 2010-M/s Astha Projects (India) Ltd & another** and is raising the bills to the individual members of the Association. Despite the fact that the Commission has already further clarified the Astha Guidelines, the Petitioner has neither in the petition itself nor in the rejoinder has brought out any specific instances of non-adherence of the said Astha Guidelines by the Respondent Board. Moreover, in the absence of any specific allegation and supporting the documents substantiating such allegation, it is not possible for the Commission to initiate any action to conduct inquiry or to make any direction to the licensee, as prayed for.

However, wherever there is any non-adherence of any of the said guidelines, the grievances of the individual members of the Association can either be sorted out by resorting to the arbitration clause of the agreements executed or being the billing disputes can be resolved through the dispute resolution mechanism provided under section 42 of the Act itself.

9. In this case the petitioner is praying for to work out the cost of O & M for interconnecting facility based on the calculations of numbers of bays/feeders/VCBs in Station/Substation as per the directions issued by the Commission. This issue has been duly clarified by the Commission in its Order dated 15th March, 2016, as referred to by the Respondent Board and this does not require any further intervention or directions. The other two points also, as prayed for by the Petitioner, the Commission does not find any justification for intervention particularly when no specific instances/ data have been placed on record. We also feel that the developers can seek remedy in their individual capacities on their grievance, if any, under their respective agreements, as suggested by the Respondent Board also. The Commission also observes that even in the earlier petition No. 81/2010 and

96/2016 as referred to by the parties were filed by the individual IPPs only and not by the Petitioner Association.

In the light of the above findings and discussion, the Commission does not consider it fit to entertain this petition for consideration. We would however expect the Respondent Board to reiterate its instructions on the subject through a self contained circular to the field units which should not only serve as a ready reckoner for the field units but should also ensure that uniform approach is followed by all the field units in the matter concerning inclusion of the suitable provisions in the interconnection agreements and working out the O&M charges recoverable for the developers under different situations, including those covered by the aforesaid guidelines.

The petition is disposed of accordingly.

--Sd/-
(Bhanu Partap Singh)
Member

--Sd/-
(S.K.B.S. Negi)
Chairman