

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

Suo Motto Case No.279 of 2008

In the matter of:-

Amendments in the Model Power Purchase Agreement
(approved in case No. 2 of 2002) for Small Hydro
Electric Projects upto 5 MW and including 5 MW
capacity being executed by the Independent Power
Producers in the private sector in the State of Himachal
Pradesh.

CORAM

**YOGESH KHANNA
CHAIRMAN**

The following were present in the hearing held at Shimla on the
7th Feb., 2009:-

For Respondents/Intervenors-

The Himachal Small Hydro Power Association, Grover Cottage, OPP Brokhurst, Chhotta Shimla	Sh. Pushpinder Singh Sh. Shyam Vaidya Sh. V.S. Rao
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HIMURJA

Sh. Ajay Rane

H.P. State Electricity Board

Sh. Narinder Singh Thakur
Advocate

Sh. R.K. Dhiman
C.E. (Comml.)

Sh. R.K. Punshi
Consultant

Er. Des Raj
Director (SERC&Tariff)

ORDER

Dated 6th March, 2009

(The matter was heard on the 7th Feb., 2009 and order reserved)

The key role of the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred to as “the HPERC or the Commission”) is to regulate the working of the electricity industry in the State of Himachal Pradesh. Section 86 of the Electricity Act, 2003 (36 of 2003), which corresponds to section 22(1) of the Electricity Regulatory Commissions Act,

1998 (14 of 1998) (now repealed), delineates the functions of the State Electricity Regulatory Commission. By virtue of clause (b) of sub-section (1) of the said section, purchase and procurement process (including procurement/purchase price) of the distribution licensee is required to be regulated by the Commission in discharge of its mandatory functions. To achieve this objective the H.P. State Electricity Board, under clause (c) of sub-section (1) of section 22 of the Electricity Regulatory Commissions Act, 1998, read with guidelines issued by the Commission for preparation of Power Purchase Agreement of the Small Hydro Projects (SHPP) upto 5 MW filed a petition with the Commission on Feb., 8, 2002 for approval of Model Power Purchase Agreement (MPPA) for projects upto including 5 MW being executed by Independent Power Producers (IPPs) in the private sector in the State of Himachal Pradesh. The Commission, after the due process of public participation, approved the Model PPA subject to the modifications as stipulates in chapter 7 of Commission's order titled "Model Power Purchase Agreement for SHPPs upto 5 MW" dated 24th March, 2003. Thereafter, in the exercise of the rights vested in direction No. 38 of Chapter 7 titled "Direction and Orders" of the order dated 24th March, 2003, the Commission issued first amendment order and directions on 12th Jan., 2004 and then another modification of section 10.7.2 of Model PPA with respect to "buy out" option was issued by the Commission on 7th May, 2004. The aforesaid amendments were issued by the Commission based on the petitions filed by the stakeholders and also under the powers conferred rights vested by direction No. 38 of the order on Model PPA dated 24.3.2003, which stipulates as under:-

"The Commission reserves the right to review and modify the provisions of the Model PPA as more experience is gained in the implementation and performance of the specific PPAs in future. Such changes in the Model PPA, however, would have only the prospective effect."

2. Subsequently, the Government of H.P. has issued its Hydro Policy in the year 2006 and has also made some other policy changes. Apart from this the Commission has also framed the HPERC (Power Procurement from Renewable Sources and Co-generation by Distribution Licensees)

Regulations, 2007 and further thereunder has also issued the Small Hydro Projects Tariff and Other Related Issues Order dated 18.12.2007 (hereinafter referred as “the SHP Order, dated 18.12.2007”). All these policy changes made by the State Government and the regulations and orders issued by the HPERC, as mentioned in the succeeding para of this order, have an impact on the Model PPA, and have necessitated further amendments/ modifications in the Model PPA to simplify of the process for obtaining the Commission’s approval for incorporation of the consequential amendments/ modifications in the PPAs, being executed by the HPSEB and the IPP. This has made process for obtaining the Commission’s approval complicated and unnecessary repetitive in nature and therefore simplification of the said process has become necessary.

3. The policy changes made by the State Government and provisions made in the regulations and orders framed by the Commission, which necessitate the modifications in the Model PPA, are summarized as under:-

(A) Changes due to deletion of the Government Guarantee

Presently the Model PPA provides for the of Govt. Guarantee. The Govt. of H.P. vide its order dated 22.1.03 has withdrawn the State Guarantee for unconditional irrevocable payment to the generators by the GoHP for money which the Board is liable to pay under PPA. This change impacts the clause(s) 2.2.37, 8.3, 9.2, 10.4 and 15.10 of the Model PPA. Uptil now the Commission has been approving the PPA’s by first incorporating all clauses relating to the Govt. Guarantee as per the approved Model PPA and then waiver thereof is being accorded only on separate joint petitions to be filed subsequently by the IPPs/generators concerned and the HPSEB which is unnecessary repetition.

(B) Changes due to Hydro Policy of the Government of H.P.

The Model PPA stipulates that the IPP shall, on account of royalty, provide free to the H.P. Govt. 10% of the energy, generated by the project, for 15 years from the date on which the company synchronises the first unit of the project. This provision was incorporated based on the previous Hydro Policy of the Govt. Subsequently, as per new H.P. Hydro Policy, 2006 the waiver of royalty is for 12 years reckoned after 30 months from the date of signing of IA and thereafter, the IPP shall provide free to H.P. Govt. 12% of the energy

generated for the next 18 years and beyond that 18% of the energy generated by the project. Thus the amendment in the preamble of the Model PPA has become necessary. The PPA's being submitted now are as per new Hydro Policy whereas the Model PPA provision still remain as per the old policy. The Commission however has been approving this deviation only after the parties have filed joint petitions for approval in this regard with the Commission which is an unnecessary repetition.

(C). Changes on account of the HPERC (Power Procurement from Renewable Sources and Co-generation by Distribution Licensees) Regulations, 2007 and Order on Small Hydro Projects and Tariff and other Related Issues dated 18.12.2007.-

(i) The Commission right now is approving the PPA's with the following condition:-

“Tariff and other terms and conditions of the PPA shall be subject to the provisions of the Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewable Sources and Cogeneration by Distribution Licensee) Regulations, 2007”.

The tariff has been revised from Rs. 2.50 to Rs. 2.87 vide SHP Order dated 18.12.07

(ii) The existing definition of interconnection facilities” in clause 2.2.42 of PPA reads as follows:-

“Interconnection Facilities” means all the facilities which shall include, without limitation, switching equipment, protection, control and metering devices etc. for the incoming bay(s) for the Project Line(s), to be installed and maintained by the Board at _____ KV Sub-station at _____, Distt. _____ at the cost of the Company, to enable evacuation of electrical output from the Project in accordance with the Agreement.

However, Commission's SHP Order dated 18.12.07 also includes other expenditures like reorganization of bays at the inter connecting sub-stations and associated civil works alongwith the related operation and maintenance cost.

(D). Consequential changes

(i) Consequent to the commencement of the Electricity Rules, 2005, with effect from 8th June, 2005, Reference to the Electricity Rules, 1956 in the Model PPA is required to be suitably corrected.

(ii) For clarity and better implementation of PPA the following additional expressions need to be defined in Article 2 :-

- (i) Auxiliary Consumption
- (ii) Available Capacity
- (iii) Generating Company
- (iv) Independent Engineer
- (v) Transformation Losses
- (vi) Transmission Losses

4. Keeping in view the Government policy changes and statutory provisions, as mentioned in the foregoing para, the Commission proposed the following amendments/modifications in the Model PPA:-

(i) In the recital of the PPA, para 2 shall be substituted as under :-

“WHEREAS royalty on water usage in the shape of free power (energy) is deliverable at the interconnection point, by the company, as per the State Hydro Power Policy and the Implementation Agreement And”;

(ii) In LIST OF CONTENTS under the heading “SCHEDULES” Schedule -IV shall be omitted.

(iii) In article 2 i.e. “Definitions and Interpretation”-

(a) after clause 2.2.5, the following clauses 2.2.6 and 2.2.7 shall be added, namely:-

“2.2.6 “Auxiliary Consumption” means energy consumed in the various auxiliaries of the Project during generation of electricity but shall exclude the power supply to colony and its water pumping system etc. Auxiliary consumption shall be deemed to be 0.5% of the energy generated for the purpose of computation of Saleable Deemed Generation;

2.2.7 “Available Capacity” means the power station’s available capacity in each settlement period and the “available capacity” shall be equal to the declared capacity in that settlement period, less any capacity reduction attributable to a capacity failure affecting the power station in that settlement period;”;

(b) existing 2.2.6 to 2.2.32 shall be renumbered as clauses 2.2.8 to 2.2.34 respectively and after these clauses so renumbered, the following clause 2.2.35, shall be added, namely:-

“2.2.35“Generating Company” means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;”;

- (c) existing clauses 2.2.33 to 2.2.36 shall be renumbered as clauses 2.2.36 to 2.2.39 respectively and existing clause 2.2.37 shall be omitted:
- (d) existing clauses 2.2.38 to 2.2.40 shall be renumbered as clauses 2.2.40 to 2.2.42 respectively and after clause 2.2.42 so renumbered, the following new clause 2.2.43 shall be added, namely:-

“2.2.43“Independent Engineer” means the independent consulting engineer or consulting firm or group that is jointly qualified by the company and the Board for the purposes of this agreement who shall be appointed three months before the COD;”;

- (e) existing clauses 2.2.41 and 2.2.42 shall be renumbered as 2.2.44 and 2.2.45 respectively and after so renumbered clause 2.2.45, the following Explanation shall be added, namely:-

“Explanation.- For the purpose of this clause, the expression “cost” shall include “other expenditure borne by the company like re-organisation of bays at interconnecting sub-station and associated civil works alongwith related operation and maintenance cost;”;

- (f) existing clauses 2.2.43 to 2.2.67 shall be renumbered as clauses 2.2.46 to 2.2.70 respectively and after clauses so renumbered, the following new clauses 2.2.71 and 2.2.72 shall be added, namely:-

“2.2.71 “Transformation Losses” means the difference between-

- (a) the number of energy units supplied to the incoming terminals of step-up transformer(s) and
- (b) the number of energy units available at the outgoing terminals of the step-up transformer(s).

The transformation losses shall be deemed to be 0.5% of energy generated for the purpose of computing the Saleable Deemed Generation;

2.2.72 “Transmission Losses” means the difference of the electrical energy measured at the sending end and receiving end of transmission lines (i.e. the Station and the Interconnection Point). Transmission Losses shall be deemed to be 4.5% of the energy to be generated for the purpose of computing the Saleable Deemed Generation”;

- (g) existing clause 2.2.68 shall be renumbered as clause 2.2.73;
- (iv) In item (ii) of clause 4.1.2 for the sign “/” occurring after the words and figure “the Electricity Act, 2003”, the words “and the rules framed thereunder and” shall be substituted.
- (v) In clauses 6.2 and 6.4, the figures, brackets and words “2.50 (rupees two and paise fifty)” the figures, brackets and words “2.87 (rupees two and eighty seven paise)” shall be substituted.
- (vi) In clause 6.2 the sentence “This rate is firm and fixed without indexation and escalation and shall not be changed due to any reason whatsoever” shall be omitted.
- (vii) In article 7, for the figure “0.5” wherever it occurs the figure “0.2” shall be substituted.
- (viii) In clause 8.3, the sentence “ In case the Board does not make payment of undisputed bill within three month from the receipt of bill, the company shall be at liberty to invoke the provisions of the Govt. Guarantee after giving a notice of atleast 15 days to the Board” shall be omitted;
- (ix) In clause 9.2, the sub-clause (e) of clause 9.2 shall be omitted; and sub-clauses (f) and (g) shall be renumbered as sub-clauses (e) and (f) respectively.
- (x) In clause 10.4(a), the words “(i) the Govt. Guarantee (if it has not previously expired in accordance with the term thereof) is in place and is effective as to the Board’s successor under the Agreement and (ii)” shall be omitted;
- (xi) In clause 10.2(b), the words “(i) the Govt. Guarantee (if it has not previously expired in accordance with the term thereof) is in place and

is effective as to the transferee under the Agreement and (ii)” shall be omitted;

- (xii) In clause 15.10, the words “and, provided further the Government Guarantee shall remain in place and shall be effective as to such successor” shall be omitted;
- (xiii) In clause 16.5, for figure “2.50”, the figure “2.87” shall be substituted; and
- (xiv) Schedule IV shall be omitted.

5. In relation to the aforesaid proposed modifications, the public objections/ suggestions have been invited, by making insertion in the leading local newspapers i.e. The Tribune and Amar-Ujjala dated 7th Oct., 2008. The draft of the proposed amendments was also made available to the various stakeholders (including the State Government; HPSEB) and the Consumer Representative and the text of the draft proposed was also made available on the HPERC Website: www.hperc.org. As no public objections/suggestions thereon were received, the Commission fixed the public hearing on 7th Feb., 2009 at the Commission Court room at Shimla, on which the representatives of the HPSEB, HIMURJA and Himachal Small Hydro Power Association and the Consumer Representative were present. Sh. P.N. Bhardwaj, Consumer Representative, appointed u/s 94 of the Electricity Act, 2003 and Sh. Narinder Singh Thakur, Learned Counsel for the HPSEB, has stated that they have no objections to the modifications/amendments in the Model PPA as proposed by this Commission. Only one stakeholder i.e. Himachal Pradesh Small Hydro Power Association, has stated that the Commission’s SHP Order dated 18.12.2007 does not taken into account the changes in the royalty status reflected in the State Government guidelines, regarding processing and allotment of Small Hydro Projects, issued vide State Government letter dated 11.12, 2008, where under the royalty status is changed as below:-

	Projects upto 5 MW	Projects above 5 MW and upto 25 MW
(i)	1 st to 12 th years = 6%	1 st to 12 th years = 15%
(ii)	13 th to 30 years = 15%	13 th to 30 years = 21%
(iii)	31 st to 40 years = 24%	31 st to 40 years = 33%

The said objector/stakeholder has, therefore, suggested that clause 8.8 in the Model PPA be substituted as under :-

“Any statutory taxes, levy, duties, cess or any other kind of imposition(s) including tax on generation of electricity whatsoever imposed/ charged by any Government (Central/State) and/or any other local bodies/authorities after 18.12.2007 i.e. the date when the Commission issued the tariff order of Rs. 2.87/unit, shall be reimbursed by the Board to the Company on the quantum of Net Saleable Energy”.

6. S/Shri Pushpinder Singh and Shyam Vaidya have reiterated the objection/suggestion of the Himachal Pradesh Small Hydro Association.

7. The Commission has carefully considered the suggestion made by the H.P. Small Hydro Association, and finds that the existing provisions in clause 8.8 of the Model PPA, which are general in nature, covers the issue raised by the objector stakeholder. Moreover, the suggestion made by the H.P. Small Hydro Association, does not fall within the ambit of the proposed amendments proposed by the Commission. The Commission, therefore, concludes that it would not be appropriate to accept the said suggestion..

The Commission, after hearing the stakeholders, objectors and the Consumer Representative present before the Commission in exercise of the powers vested in under clause (b) of sub-section (1) of section 86 of the Electricity Act, 2003 read with clause 38 of the Model PPA, hereby orders the modifications in the Model Power Purchase Agreement, as mentioned in para 4 of this order. It is, hereby further ordered that the said modifications in the Model PPA shall come into force with immediate effect.

(Yogesh Khanna)
Chairman