

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

Petition No: 49 of 2021

Instituted on: 06.12.2021

Heard on: 10.03.2022

Decided on: **24.03.2022**

In the matter of:-

M/s Varun Jal Vidyut Shakti Pvt. Ltd.
through its Sh. Arun Kumar (Director),
House No.13, Partrakar Vihar, Kachi Ghati,
Shimla-171010

.....Petitioner

Versus

The HP State Electricity Board Ltd.,
through its Chief Engineer (Sys. Op.),
Vidyut Bhawan, Shimla-171004

.....Respondents

CORAM

DEVENDRA KUMAR SHARMA
CHAIRMAN

BHANU PRATAP SINGH
MEMBER

YASHWANT SINGH CHOGAL
MEMBER (Law)

**Application for approval of Long Term Power Purchase Agreement on Generic
Levellised Tariff in respect of Banu Small HEP (3x1.66MW).**

Present:-

Sh. Arun Kumar, Director in person.

Sh. Kamlesh Saklani, Authorised Representative for Respondent.

ORDER

This is Petition for approval of Long Term Power Purchase Agreement on Generic Levellised Tariff in respect of Banu Small HEP (3x1.66MW) situated in Kangra District, HP (Project of short) under Section 86(1)(b) of the Electricity Act, 2003. As per Petitioner, Implementation Agreement has been signed in respect of the project on 15.02.2012 with Govt. of HP which was supplemented with Supplementary Agreement dated 18.09.2019.

2. According to Petitioner, as per the Hydro Policy of the Govt. of HP, the entire power generated from the projects having capacity upto 25 MW will be mandatorily purchased by the HPSEBL. The Govt. of HP vide notification dated 07.11.2020 has allowed one time amnesty by redefining the zero date for the projects which are under investigation and clearance stage where IAs have been executed by redefining the SCOD and in terms of notification dated 07.11.2020, the company has signed Second Supplementary Implementation Agreement on 13.01.2021 and pursuant thereto, SCOD of the project has been redefined upto 12.01.2025. According to the Petitioner, the draft PPA was submitted to Respondent during August, 2021 for signing but the HSPEBL has verbally declined to sign the Power Purchase Agreement on the ground that the projects whose Scheduled Commencement Operation Dates are falling beyond the 3rd Control Period (ending on 30.09.2023) are not being approved by the HPERC. The Petitioner also requested the Govt. of HP to intervene but to no avail. According to the Petitioner, term loan from the bank is essential for implementation of the project and the bank has asked the Petitioner to produce copy of the signed PPA before disbursal of loan.

3. The Petition has been resisted by filing reply that the Petitioner vide letter dated 25.05.2020 Annexure R/1 had intimated the Respondent that their financial institution has desired a consent letter for purchase of electricity by the Respondent Board for achieving financial closure and pursuant thereto, consent letter to enter into an agreement was issued by Respondent to the Petitioner on 11.06.2020 Annexure R/2. Further, the Petitioner vide letter dated 28.08.2021 approached the Respondent for signing Long Term Power Purchase Agreement on the Generic levelled tariff determined vide order dated 22.12.2020 by the Commission for 3rd control period from 01.04.2020 to 30.09.2023. In the meanwhile, Joint Petition No.40 of 2021 was filed by M/s Shivalik Energy Pvt. Ltd. and Respondent for approval of long term PPA. In said case, the SCOD of the project was in the financial year 2025-26, much beyond the expiry of the 3rd

Control Period. The said Petition was disposed of by the Commission vide order dated 10.11.2021 Annexure R/3 whereby the Commission has observed that since SCOD of the project falls beyond the current control period i.e. after 30.09.2023, no effective order can be passed. Therefore, the Petitioner was requested to submit the draft joint Petition alongwith draft PPA within 6 months before the commissioning of the project. It is averred that tariff is crucial component of power purchase agreement and in the absence thereof, PPA would be of no use.

4. We have heard the authorised representatives of the parties and have perused the record carefully. The case of Petitioner in nutshell is that their banker has insisted for approved power purchase agreement before disbursement of loan so as to meet the financial closure and when they requested the Respondent to file a Joint Petition, their request was not considered in view of the SCOD of the project which falls beyond the 3rd Control Period and also in view of the Order dated 10.11.2021 passed in Petition No. 40 of 2021. We have perused the Order dated 10.11.2021 (Annexure R-1) in Petition No. 40 of 2021 by the Commission. In the said order, the Commission has observed and directed the parties to approach the Commission within 6 months before the SCOD. However, situation in the present case is entirely different as in the present case, the banker of the Petitioner has refused to grant financial assistance (loan) for want of signed PPA. The Petitioner has submitted that in case the loan is not sanctioned, it would not be possible to construct the project and consequently, the scheduled COD will not be achieved.

5. On careful perusal of the matter, we are of the view that the observation made by the Commission in Order dated 10.11.2021 in Petition No. 40 of 2021 cannot be a ground for not approaching the Commission by way of Joint Petition for signing the PPA, if necessity arises as each case has its own peculiarities. In the present case, the Petitioner has faced great hardship by not being able to avail the loan facility for want of PPA.

6. Our attention has been invited to Regulations 50 & 50-A of the Conduct of Business Regulations, 2005 (CBR, 2005 in short) and clause (2) of Regulation 8 of the HPERC (Promotion of generation from Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 by Sh. Saklani authorized representative of the Respondent that the Petition for approval of the Power Procurement Purchase Agreement shall be submitted jointly by the parties. Regulation 50-A is reproduced as under:-

“50-A. Petition for approval of Power Procurement Purchase Agreements.-(1) *The petitions for approval of the power procurement purchase agreements shall be submitted before the Commission jointly by the contracting parties i.e. the distribution licensee and the generating company with ten hard copies, alongwith a soft copy, and shall be supported by affidavits and accompanied by such fees (to be shared equally between the contracting parties) as specified in the Schedule to these regulations.”*

7. We have carefully considered the submissions. Sub-clause (2) of Regulation 50 of Conduct of Business Regulations, 2005 provides that provisions of this Regulation are in addition to and not in derogation of any other Provision of these Regulations. Sub-clause (2) of Regulation 50 is being reproduced as under:

“(2) The provisions of this regulation are in addition to and not in derogation of any other provisions of these regulations”

Reference can also be made to Clause (1) of the Regulation 11 of the Conduct of Business Regulations, 2005 which provides that the Commission may initiate any proceedings Suo-Motu or on a Petition filed by any affected or interested person.

8. The conjoint reading of clause (1) of Regulation 11 read with clause (2) of Regulation 50 the Conduct of Business, Regulations, 2005 makes it abundantly

clear that the Commission may initiate proceedings Suo-Motu or on a Petition filed by any affected or interested person. The Petitioner had to approach the Commission due to the hardship faced by it for obtaining loan from the bank and refusal on the part of Respondent to file Joint Petition. Therefore, this Commission is well within its competence and jurisdiction to entertain the present Petition and to make suitable directions in this regard. Therefore, the stipulation under Clause (2) of the Regulation 8 of the HPERC (Promotion of generation from Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 and Regulation 50-A of the CBR, 2005 cannot come in the way of the Commission to pass an effective order to mitigate the hardship even if no Joint Petition has been filed as the Petitioner in this matter had at first approached the HPSEBL and on refusal, had to knock at the door of this Commission. As observed above, the loan will be sanctioned only after signing of the PPA by the parties.

9. Therefore, these are the merits in the Petition. The Petition is accordingly allowed. The draft PPA as annexed by the Petitioner with Petition is ordered to be approved subject to the condition that the tariff of the project of the Petitioner shall be the tariff which would be in the Control period of SCOD of the project. The present tariff of the 3rd Control Period comes to Rs.4.67 per unit (less than 5 MW) but same is inconsequential as SCOD of the project is beyond 30.09.2023 and generation, if any, will be only after the SCOD of the project and the tariff of the said control period would be applicable.

10. The Technical Division is directed to process the matter within 2 days, make necessary additions and alternations in the draft PPA and thereafter the PPA after its approval be sent to the parties and parties are directed to sign the PPA jointly and send three copies of the PPA to the Commission within one week well before 31.03.2022.

11. Before parting, we have requested Sh. Kamlesh Saklani, authorized representative to impress upon the HPSEBL that each matter for approval of PPA be examined on its own merits and wherever there is necessity, the order dated 10.11.2021 in Petition No. 40 of 2021 should not come in the way of the HPSEBL to file Joint Petition. We also believe that HPSEBL shall adhere to the same so that parties do not have to resort to file such Petitions.

-Sd-
(Yashwant Singh Chogal)
Member(Law)

-Sd-
(Bhanu Pratap Singh)
Member

-Sd-
(Devendra Kumar Sharma)
Chairman