

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

**Petition No. 5 of 2022**

Instituted on 21.01.2022

Heard on 22.03.2022

Decided on **22.03.2022**

In the matter of:-

M/s Soiel Dashal Hydro Power Pvt. Ltd.  
SCO 5, Block No.2, SDA Complex Kasumpti,  
Shimla-171009

.....Petitioner

**Versus**

1. The Principal Secretary (MPP& Power),  
to the Govt. of HP, Shimla-171002
2. The HP State Electricity Board Ltd.  
through Chief Engineer (Commercial),  
Vidyut Bhawan, Shimla-171004

.....Respondents

**CORAM**

**DEVENDRA KUMAR SHARMA  
CHAIRMAN**

**BHANU PRATAP SINGH  
MEMBER**

**YASHWANT SINGH CHOGAL  
MEMBER (Law)**

Counsel: -

For the Petitioner: Sh. D.R. Sharma, Authorised Representative

For the Respondent No.1: Sh. Shanti Swaroop, Legal Consultant

For the Respondent No.2: Sh. Kamlesh Saklani, Authorised Representative

**ORDER**

An application under Section 151 CPC for early hearing has been filed. Copy of the application had been supplied to the opposite parties. No reply to said application has been filed.

2. It is averred in the application that the Petitioner/Applicant applied for term loan from the UCO bank and the bank vide letter dated 25.11.2021 has approved the proposal subject signing of the Power Purchase Agreement within 90 days from the issuance of the letter dated 25.11.2021 extendable by another period of

90 days in the event of failure to sign the PPA. As per the Petitioner signing of the PPA is necessary to avail the facility of loan so as to commence the construction of the Hydro Power Project. The Application supported by an affidavit.

3. No reply to application has been filed nor intended to be filed. The main Petition is listed for regular hearing on 2<sup>nd</sup> April, 2022. As per application, the bank vide letter dated 25.11.2021 has asked for signing the PPA with the HPSEBL within a period of 90 days extendable by another period of 90 days. The authorized representative of the Petitioner states that the bank has also insisted for processing the loan matter at the earliest so as to achieve financial closure.

4. We have gone through the application and the submission. Since the approved PPA is essential for availing the loan facility, we are of considered opinion that there is urgency in the matter. Thus, the application is considered and allowed and the matter is preponed for today. This application stands disposed of and ordered to be tagged to the main file.

5. The Petition No. 5 of 2022 has been filed by the Petitioner under Sections 62, 86 and 94 of the Electricity Act, 2003 for directing the HPSEBL (Respondent No.2) to sign the PPA, in view of the notification of the State Govt. and on the tariff determined by the Commission for 3<sup>rd</sup> Control Period. The Petitioner has executed Implementation Agreement dated 20.06.2011 with the Govt. of HP (Annexure P-2) for establishing, operating and maintaining, a Small Hydro Project known as M/s Soiel Dashal Hydro Power Pvt. Ltd. (hereinafter defined and referred to as Project) on Fozal Nallah, a tributary of Beas river in Kullu Distt. with an installed capacity of 4.50 MW. Further, a Supplementary Implementation Agreement (SIA) dated 04.02.2015 (Annexure P-3) has also been executed between the State of HP and the Petitioner. The TEC of the project was accorded on 27.03.2008 initially and revised estimate was approved on 22.09.2015 and validity of the TEC was extended upto 21.09.2021 as evident from letter dated 22.09.2015 (Annexure P-4) and letter dated 26.12.2018 (Annexure P-5).

6. The Commission vide letter dated 22.12.2020 has determined generic levellised tariff for Small Hydro Project (SHP) of 3<sup>rd</sup> Control period (i.e. 01.04.2020 to 30.09.2023) under Regulation 14 of the HPERC (Promotion of generation from Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 and as per said order, the tariff of the project above 2 MW and below 5MW capacity is Rs.4.67 per unit.

7. It is the case of the Petitioner that the Petitioner approached the Respondent No.2 for signing the PPA in terms of Order dated 22.12.2020. However, the Respondent No.2 vide letter Annexure P-8 (dated 29.12.2021) has declined to accede to the request of the Petitioner that the SCOD of the project of Petitioner falls beyond 30.09.2023 and, as such, the request cannot be considered in view of the order of the Commission in Petition No. 40 of 2021. It is averred that the State Govt. vide notification dated 15.05.2018, while modifying the Hydro Policy of 2006 has made it mandatory for the HPSEBL to purchase power produced by the hydro projects with capacity upto 10 MW and as per the Implementation Agreement, the life period of the project is 40 years to be reckoned from the date of commercial operation of the first generating unit.

8. According to the Petitioner, Regulation 2 (1)(g) read with Regulation 2 (1) (aa) of the HPERC ((Promotion of generation from Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 mandates that the useful life of a SHP is to be reckoned as 40 years from the date of commencement of the operation of the project. It is claimed that Respondent No.2 being owned and controlled instrumentality of the State Govt. is under legal obligation to implement the policy decision of the State Govt. and cannot take a stand contrary to the Policy of Govt. Therefore, the action of the Respondent No. 2 declining to sign the PPA is illegal, unjustified and arbitrary. Hence, the Petition.

9. The Petition has been resisted by the Respondent No.2 by filing reply. As per them, the Petitioner approached them on 13.01.2021 for signing of the Long Term PPA in respect of the project on the Generic Levellised Tariff as determined

by the Commission under prevalent Regulations. The Petitioner was intimated about the procedure to be followed. Meanwhile, one IPP M/s Shivalik Energy Pvt. Ltd. also approached the Respondent for execution of Long Term Agreement alongwith draft PPA and SCOD certificate issued by the Department of Energy that the SCOD of the said project falls in the FY 2025-26 whereas, the Generic Levellised Tariff was only upto 30.09.2023. Accordingly, the Respondent No. 2 and M/s Shivalik Energy Pvt. Ltd. filed a Joint Petition No.40 of 2021 before the Commission and the Commission disposed of the said Petition vide order dated 10.11.2021 (Annexure R/1) that the Scheduled Commencement Operation Date (SCOD in short) of the project falls beyond the current tariff control period i.e. after 30.09.2023, therefore, no effective order can be passed at this stage.

10. As per HPSEBL, the SCOD of the project of the Petitioner is 01.09.2024 and since the case of Petitioner was similar to that of Joint Petition No. 40 of 2021, the Petitioner was informed to submit the draft PPA to the HPSEBL within 6 months before the Commissioning of the project. As per HPSEBL the Tariff is crucial component of the PPA and in absence of the same, the PPA would be of no use and can only be signed after the determination of the Generic Levellised Tariff for the control period in which the SCOD of the project falls in view of the directions in Petition No. 40 of 2021.

11. Sh. Shanti Swaroop, Ld. Legal Consultant for Respondent No.1 states that no reply to the Petition is intended to be filed by the Respondent No.1. In rejoinder, the contents of the reply have been denied and the averments made in Petition have been reaffirmed.

12. We have heard the authorized representative of the Petitioner and Sh. Kamlesh Saklani, authorized representative of the Respondent No.2 and Sh. Shanti Swaroop, Ld. Legal Consultant for Respondent No.1. We have also perused record carefully. The authorized representative of the Petitioner has also placed on record the draft PPA to be signed by the parties.

13. The case of Petitioner in nutshell is that they have applied for the loan in the UCO bank for the construction of the Project but the bank has refused to sanction the loan for want of the signed Power Purchase Agreement and when they requested the Respondent No. 2 to file a Joint Petition, their request was not considered in view of the SCOD of the project which falls beyond the 3<sup>rd</sup> Control Period of the tariff and also in view of the Order dated 10.11.2021 passed in Petition No. 40 of 2021.

14. We have perused the Order dated 10.11.2021 (Annexure R-1) in Petition No. 40 of 2021. 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.

15. On careful perusal 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 for want of PPA.

16. Our attention has been invited to Regulations 50 & 50-A of the Conduct of Business Regulations, 2005 (CBR, 2005 in short) by Sh. Saklani that the Petition for approval of the Power Procurement Purchase Agreement shall be submitted jointly. 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.”*

17. Our attention has also been invited to Sub-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 that the parties shall file a Joint Petition before the Commission for approval of the proposed Power Purchase Agreement and shall execute the requisite PPA after approval of the Commission.

18. However, Sub-clause (2) of Regulation 50 provides that provisions of this Regulation are in addition to and not in derogation of any other Provision of these Regulations. Sub-regulation (2) of Regulation 50-A is being reproduced as under:

*“50-A (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.

18. Thus, the Conduct of Business, Regulations, 2005 specifically provides 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 No. 2 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 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. Thus, in order to mitigate the hardship of the Petitioner, the Commission is well within its jurisdiction to entertain the Petition even if no Joint Petition has come on record. Even the authorized representative of HPSEBL has submitted that the HPSEBL had simply asked the Petitioner to wait in view of the Commission order.

19. Therefore, there are the merits in the Petition. The Petition is accordingly allowed. The draft PPA as produced by the Petitioner 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 3<sup>rd</sup> Control Period comes to Rs.4.67 per unit as per the Petitioner 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.

20. 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 signed copies of the PPA to the Commission within one week well before 31.03.2022.

21. 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 merit 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 HSPEBL 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**