

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

Petition No: 03 of 2022
Date of Institution: 19.01.2021
Arguments Heard on: 30.08.2022
Decided on: 28.09.2022

The HP State Electricity Board Ltd. through,
Chief Engineer (System Operation)
Vidyut Bhawan, Shimla-171004.

....**Joint Petitioner No. 1**

AND

M/s Swadeshi Distributors LLP,
Registered office at One First Floor Building, Vill. Guganh,
Teh. & Distt. Chamba, HP-176314

....**Joint Petitioner No. 2**

Versus

The Directorate of Energy, Govt. of HP,
Shanti Bhawan, Sector-6, Phase III,
New Shimla-171009.

....**Respondent No. 1**

The Ministry of New and Renewable Energy
(Small Hydro Power Division), Govt. of India,
Block No. 14, C.G.O. Complex, Lodhi Road,
New Delhi 110003.

....**Respondent No. 2**

Joint Petition under the provisions of Section 86 (1) (b) of the Electricity Act, 2003, read with the draft guidelines issued by the HPERC for the approval of Second Supplementary Power Purchase Agreements in respect of Salun HEP (9.0MW).

CORAM

DEVENDRA KUMAR SHARMA

CHAIRMAN

BHANU PRATAP SINGH

MEMBER

YASHWANT SINGH CHOGAL

MEMBER (Law)

Present:-

Sh. Kamlesh Saklani, Authorised Representative for the Joint Petitioner No. 1.

Sh. Rajesh Kumar, Director-cum-Authorised Signatory of Joint Petitioner No.2.

Sh. Shanti Swaroop, Legal Consultant for the Respondent No. 1.

Sh. Rajinder Thakur, Ld. Central Government Standing Counsel for the Respondent No. 2.

ORDER

The present Joint Petition has been filed by the Himachal Pradesh State Electricity Board Ltd. (hereinafter to be referred as Joint Petitioner No. 1) and

M/s Swadeshi Distributors LLP (hereinafter to be referred as Joint Petitioner No. 2) for the approval of Second Supplementary Power Purchase Agreement under Section 86 (1) (b) of the Electricity Act, 2003, in respect of Salun Hydro Electric Project (9.00 MW) situated at Vill. Heiling, Teh. Holi, Distt. Chamba on Toral Kundalini Nalla, a tributary of river Ravi in Distt. Chamba (Project for short).

2. According to the Joint Petition, a Petition No. 72/2020 was filed before the Commission by the Petitioners for signing Long Term Power Purchase Agreement and vide interim Order dated 16.10.2020, the Petitioners were allowed to sign the Long Term Power Purchase Agreement on provisional tariff @ Rs.3.17 per kWh as an interim measure which has been executed on 01.12.2020. Also averred that the Commission allowed the Petition No. 72/2020 on 14.07.2021 allowing provisional tariff of 4.04 (Rupee four and four paise only) per kWh, subject to adjustment on account of financial assistance/subsidy, as per the provisions of applicable Renewable Energy Regulations and pursuant thereto, Supplementary Power Purchase Agreement was signed by the Joint Petitioners on 03.09.2021 subject to the following conditions:

(a) This provisional tariff shall be applicable from effective date of Power Purchase Agreement i.e. on 01.10.2020 upto one (1) year from the issuance of Hon'ble HPERC's order dated 14.07.2021 passed in petition No. 72.2020.

(b) Both the parties shall approach Hon'ble HPERC after completion of one (1) year reckoned from date of issuance of ibid order dated

14.07.2021, or immediately after settlement of the issue of financial assistance/subsidy between them, whichever is earlier, for continuation of this tariff or for any other tariff as may become applicable to the Project.

(c) The issue of adjustment of financial assistance/ subsidy under the various Government Schemes by the Company and the HPSEBL as per the provisions of applicable HPERC Renewable Energy Regulations.

(d) The Company shall intimate HPSEBL the receipt of financial Assistance/Subsidy released to the Project within 15 days of receipt of the same. Company has furnished affidavit to this effect and is annexed at Annexure-VII.

(e) The above provisional tariff shall be adjusted in accordance with the orders as may be issued by the Hon'ble HPERC after filling of petition by the parties as per item (b) of this para.

3. It is averred that the Joint Petitioner No. 2 has received Central Captive Investment Incentive amounting to Rs. 5.00 Crore through Himachal Pradesh State Industrial Development Corporation Ltd. (HPSIDCL) on 10.09.2021 as evident from letter No. HPSIDC/F&A/3537 dated 28.09.2021 (Annexure-S2-III). Accordingly, the subsidy amount of Rs.5.00 Crore only is required to be adjusted in the permitted provisional tariff of Rs. 4.04 per kWh to arrive at a final tariff in respect of the Project in Terms of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from Renewable Energy Sources and Terms & Conditions for Tariff Determination) Regulations, 2017 and its subsequent amendments (hereinafter referred as "RE Tariff Regulations 2017").

4. According to the Petition, the RE Regulations, 2017 and Small Hydro Project (SHP) Tariff Order dated 15.02.2020, *interalia*, provide that:-

“8.13 Subsidy or incentive or grant/budgetary support by the Central/State Government.-

The sub-regulation (1) of regulation 22-A of the RE Tariff Regulations, 2017 provides as under:-

“(1) While determining the generic levellised or project specific levellised tariff, as the case may be, for the renewable energy project(s) under these Regulations, the Commission shall take into consideration any incentive and/or subsidy and/or grant available under the schemes of the Central or State Government or its agencies, but excluding accelerated depreciation benefit under the Income Tax Act:

Provided that the Commission may evolve suitable mechanism(s) for incorporating impact of the subsidy component for determination or adjustment of generic levellised tariffs for various categories of projects:

Provided further that the capital subsidy under the schemes of the Central or State Government or its agencies, shall, unless the circumstances otherwise warrant, be ordinarily adjusted in the middle of first 12 months from the commencement of the tariff period against the principal component of the loan amount as additional reduction apart from the normal payment.

5. It is averred that in accordance with sub-regulation (3) of regulation 22-A of RE Tariff Regulations, 2017, the amount of subsidy shall be considered for each renewable source as per the applicable policy of the MNRE/State Government/Central Government and if the amount and/or mechanism of subsidy is changed by the MNRE/State Government/Central Government, consequent corrections in tariffs may be carried out by the Commission in accordance with regulation 20 of the RE Tariff Regulations, 2017. Since the

MNRE, Government of India is yet to notify the subsidy scheme for the SHPs for the current plan period and the SHPs coming up in this period may fall under different subsidy schemes depending upon the eligibility conditions, it is considered appropriate not to adjust any subsidy, at this stage while determining the generic levelled rate under this order and to adjust the tariff at appropriate subsequent stage after duly considering the eligibility conditions under the relevant applicable schemes of Government of India. Similarly adjustment on account of subsidy available under the Ministry of Commerce & Industry, Government of India and /or any other subsidy scheme(s) of Government (Central/State) shall also be made at appropriate stage(s) after taking into account the extent of subsidy(ies) available under such scheme(s). The adjustments on account of subsidies shall be made on normative basis. Hence, the petition.

6. We have heard Sh. Kamlesh Saklani, Authorised Representative of Joint Petitioner No. 1 and Sh. Rajesh Kumar, Director-cum-Authorised Signatory of Joint Petitioner No. 2 and have perused the record carefully.

7. It is apparent on record that a Petition No. 72/2020 was filed by the Joint Petitioners and Long Term Power Purchase Agreement was signed by the Joint Petitioners on 01.12.2020 for tariff @ Rs.3.17 per kWh and the Supplementary Power Purchase Agreement for tariff @ 4.04 per kWh has also been signed on 03.09.2021 pursuant to order dated 14.07.2021 subject to certain conditions

regarding adjustment on account of financial assistance/subsidy applicable under the government schemes.

8. It is apparent from the Petition and the letter dated 10.09.2021 of the Manager Financial Assistance, HPSIDCL (Annexure-S2-III) that Central Captive Investment Incentive amount of Rs. 5.00 Crore has been received by the Joint Petitioner No. 2 and the consequent adjustment qua same in the tariff is required to be made.

9. As per RE Tariff Regulations, 2017, amount of subsidy shall be considered for each renewable resource as per the applicable policy of the MNRE/State Government/Central Government and if the amount and/or mechanism of subsidy is changed by the MNRE/State Government/Central Government, consequent corrections in tariffs may be carried out by the Commission in accordance with regulation 20 of the RE Tariff Regulations, 2017.

10. The MNRE, Government of India is yet to notify the subsidy scheme for the SHPs for the current plan period i.e. after 2017 and the SHPs coming up in said period after 2017 may fall under different subsidy Schemes depending upon the eligibility conditions as may be notified by MNRE. However, the Project was eligible for MNRE subsidy as per Subsidy/Financial Assistance Scheme as notified by Ministry of New and Renewable Energy, Govt. of India vide letter No. 14(03) 2014-SHP dated 02.07.2014.

11. There was no mention of MNRE subsidy in the Petition, therefore, the Joint Petitioner No. 2 was asked vide order dated 22.03.2022 to file a detailed affidavit giving details of applying for the MNRE subsidy and subsequent action pursuant thereto taken by MNRE. The Directorate of Energy was also arrayed as Respondent No. 1 to the Petition vide Order dated 22.03.2022. The detailed affidavit was filed by the Joint Petitioner No. 2 on 30.04.2022 and 28.06.2022. It was alleged by the Joint Petitioner No. 2 in its affidavit dated 22.03.2022 that Joint Petitioner No. 2 had submitted all the papers for availing the MNRE subsidy but the same was not granted. The Directorate of Energy also did not clearly elaborate the aspect of MNRE subsidy in its reply dated 28.04.2022. Accordingly, this Commission vide Order dated 28.06.2022 impleaded Ministry of New and Renewable Energy (MNRE) as Respondent No. 2 in the Petition with a direction to file a detailed reply giving details of entitlement of subsidy of those applicants who had submitted their applications well before the validity of MNRE subsidy Scheme and subsequent action pursuant thereto. The said detailed affidavit has been filed on 06.08.2022 that the Ministry of New and Renewable Energy is responsible for the development of Small Hydro Projects up to 25 MW capacity and in order to promote Small Hydro Development in the Country, circulated SHP scheme dated 02.07.2014 (Annexure-I) which was valid for 12th plan i.e. upto 31st March, 2017 (extended upto 30 September, 2017). Also mentioned in the affidavit that the Joint Petitioner No. 2 applied for such subsidy to the MNRE vide letter dated

28.03.2016 (Annexure-II to the affidavit of MNRE), which was incomplete at the time of submission of application as the following documents were not enclosed:-

1. Proforma B-II of application.
2. Copy of letter of allotment of SHP site to the developer from State Government/Agency.
3. Copy of MOU between State Govt. and the developer for setting up of project.
4. Copy of Power Purchase Agreement.

12. It is also mentioned in the affidavit by MNRE that as per Clause 31 of Annexure B of the SHP Scheme 2014, the incomplete proposals were not required to be entertained and that the proposal of Joint Petitioner No. 2 dated 16.09.2017 (Annexure-III to the affidavit) was received by MNRE on 29.09.2017 informing the date of start of work with request to release 50% of subsidy. The MNRE vide letters dated 13.10.2017, 02.02.2018 and 22.10.2018 (Annexure-IV (a, b and c respectively to the affidavit) informed the Joint Petitioner No. 2 about short fall in the application and asked to submit the documents required for release of subsidy. The Joint Petitioner No. 2 provided few documents vide letter dated 11.12.2017, 15.05.2018, 23.10.2018, 05.12.2018, 26.12.2018 and 06.02.2021 (Annexure-V (a, b, c, d, e and f respectively to the affidavit) and requested for release of subsidy but by that time, the Scheme had come to an end and hence, the Ministry of New and Renewable Energy vide letter dated 16.02.2021 (Annexure-VI to the affidavit)

informed the Joint Petitioner No. 2 that no SHP Scheme is available at present, for supporting the SHP Projects. Therefore, the requests of the Joint Petitioner No. 2 cannot be considered as of now. A detail of few other Projects was also mentioned in the affidavit, whose case for subsidy has also not been considered for want of complete application.

13. It is apparent from the affidavit of Respondent No. 2, the MNRE that the documents which were sent by the Joint Petitioner No. 2 pursuant to the query of MNRE vide letter dated 13.10.2017, 02.02.2018, 22.10.2018 were supplied on 11.12.2017, 15.05.2018, 23.10.2018, 05.12.2018, 26.12.2018 and 06.02.2021. The Scheme was valid till the 12th plan period ending on 31.03.2017 which was extended till 30.09.2017. It is evident from the affidavit that the Ministry of New and Renewable Energy asked the Joint Petitioner No. 2 to submit complete documents vide letter dated 13.10.2017, 02.02.2018 and 22.10.2018 despite that the scheme was valid till 30.09.2017. The entire affidavit is silent that the documents submitted on 11.12.2017, 15.05.2018, 23.10.2018, 05.12.2018, 26.12.2018 and 06.02.2021 were still incomplete. Apparently, the letters dated 13.10.2017, 02.02.2018 and 22.10.2018 were issued by MNRE after the validity period of the Scheme and the Joint Petitioner No. 2 in good faith believed that the application will be considered. The Joint Petitioner No. 2 has furnished all the details as desired by the Ministry of MNRE.

14. Significantly the project of the Joint Petitioner No. 2 has been commissioned on 13.12.2019 and ever since 28.03.2016, the Joint Petitioner No. 2 had been making sincere efforts for availing the MNRE subsidy. The Scheme floated by the MNRE on 2nd July, 2014 is for facilitating the implementation of Small Hydro Power Projects (upto 25 MW capacity). It is a promotional Scheme, therefore, the application of the Joint Petitioner No. 2 was required to be considered in its right perspective. The MNRE being patron and promoter of the Scheme, it was expected from them to guide the Small Hydro Producers to avail the subsidy but it appears that the Joint Petitioner No. 2 was neither properly guided nor any interim subsidy was released by MNRE in respect of the Project. It is apparent from the affidavit of MNRE that the Joint Petitioner No. 2 supplied the requisite documents from time to time. The entire affidavit of the MNRE is silent that the application of Joint Petitioner No. 2 was rejected and the rejection was conveyed to Joint Petitioner No. 2. No doubt, as per Clause 31 of the Annexure 'B' of the Scheme, the incomplete applications, in any form and without requisite documents would not required to be entertained but the case of Joint Petitioner No. 2 is entirely different as Joint Petitioner No. 2 has complied with all the requirements and submitted the documents time to time as called for. Since, the Joint Petitioner No. 2 has sent all the documents and the applications of the Joint Petitioner No. 2 has not been rejected and some queries were raised even after lapse of the Scheme, we presume that the MNRE shall consider all such cases which were delayed for

want of a few documents, where the applications were filed well within the validity of the Scheme. Therefore, we are of opinion that the Joint Petitioner No. 2 has submitted the requisite documents well within time and the MNRE did not provide the subsidy within the currency of the Scheme which was required to be provided. Therefore, the case of the Joint Petitioner No. 2 shall be considered sympathetically by the MNRE which is otherwise in the interests of the Consumers as direct impact of non grant of subsidy would be on the Consumers.

15. As per RE Regulations 2017, the amount of Subsidy is required to be considered for each Renewable Source as per applicable policy, which in the case of Project of Joint Petitioner No. 2 was for 12th plan period ending on 31.03.2017 extended upto September, 2017. Hence, the subsidy of Rs. 5.00 Crore is being deducted while determining the tariff as deemed availed.

16. The Petition is duly supported by the affidavit of Joint Petitioners. Therefore, taking into consideration the aforesaid and the powers vested in the Commission under Section 86 (1)(b) of the Electricity Act, read with Regulations 50 and 50-A of the HPERC (Conduct of Business) Regulations, 2005, the Joint Petitioners have made out a case for approval of Second Supplementary Power Purchase Agreement. Hence, the Petition succeeds and allowed with tariff as under:-

- (i) The Applicable Tariff without considering the subsidy under Generic levellised tariff of 2nd Control Period was Rs.4.04 per unit.

- (ii) Considering the adjustment of Rs. 5.00 Crore Central Assistance/Subsidy as received from the Ministry of Commerce & Industry (MCI), the tariff comes to Rs. 3.93 per unit.
- (iii) After adjustment of the admissible subsidy/Financial assistance of MNRE, the interim tariff of the Project of the Joint Petitioner No. 2 comes to Rs. 3.82 per unit.

17. Thus, the provisional tariff which shall be applicable to the project of Petitioner comes to **Rs. 3.82** per unit. Therefore, the Second Supplementary PPA is ordered to be approved accordingly subject to the following conditions:-

- (i) The Company shall intimate to the joint Petitioner No. 1 i.e. HPSEBL, about the receipt of financial assistance/subsidy released to the Project by the Ministry of New and Renewable Energy, within 15 days of the receipt of the same and an affidavit to this effect shall be furnished by the Company i.e. joint Petitioner No. 2 which shall form part of the PPA.
- (ii) The provisional tariff shall be valid for a period of two years or immediately after the settlement of such adjustment as per item (i) above, whichever is earlier, for continuation of this tariff or for any other tariff as may become applicable to the Project.
- (iii) The matter regarding adjustment of financial assistance/subsidy shall be governed as per the orders as may be issued by the Commission after receipt of Petition as per item (ii) of this para.
- (iv) The clause 6.2 of PPA shall be modified to the extent that the levelled provisional tariff shall be subject to further adjustment as per the order(s) as may be issued by the Commission after receipt of Petition as per item (ii) of this para.

18. We trust and believe that the MNRE shall consider the case of the Joint Petitioner No. 2 sympathetically and shall allow the subsidy of Rs. 5.00 Crores under the MNRE Subsidy Scheme in the interest of Public/Consumers as discussed in para 14 above.

19. In case the subsidy/financial assistance is denied by the MNRE by rejecting the application of Joint Petitioner No. 2 for valid reasons, it shall be open to the Joint Petitioner No. 2/Joint Petitioners to approach the Commission for appropriate order.

20. Necessary additions and alternations in the draft Second SPPA be carried out by the Technical Division before the same is sent to the parties. The Petitioners are directed to execute the Second Supplementary Power Purchase Agreement accordingly within a period of 30 days from the date of this order. Three copies of the executed Power Purchase Agreement be submitted to the Commission for record.

Announced
28.09.2022

-Sd- (Yashwant Singh Chogal) Member (Law)	-Sd- (Bhanu Pratap Singh) Member	-Sd- (Devendra Kumar Sharma) Chairman
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