

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

Petition No: 103 of 2024
Instituted on: 05.06.2024
Heard on: 12.08.2024
Decided on: 09.09.2024

CORAM:

DEVENDRA KUMAR SHARMA
CHAIRMAN.

YASHWANT SINGH CHO GAL
MEMBER (Law).

SHASHI KANT JOSHI
MEMBER.

In the matter of:-

The HP State Electricity Board Limited. through
Chief Engineer (System Operation),
Vidyut Bhawan, Shimla-171004.Joint Petitioner No.1.

AND

M/s Varun Jal Vidyut Shakti Pvt. Ltd.,
Skipton Villa, The Ridge, Shimla, HP-171001. through
Sh. Arun Kumar, Authorised Signatory.

.....Joint Petitioner No.2.

**Petition under Section 86 (1) (b) of the Electricity Act, 2003 read with
Regualtion 50 & 50-A of the HPERC (Conduct of Business) Regualtions,
2005 for approval of Supplementary Power Purchase Agreement to be
executed by the HPSEBL with M/s Varun Jal Vidyut Shakti Pvt. Ltd. in
respect of Banu SHEP (5.0 MW).**

Present:-

Sh. Kamlesh Saklani, Authorised Representative for the
Joint Petitioner No. 1 with Sh. Mandeep Singh, Chief
Engineer (System Operation)

Sh. Arun Kumar, Authorised Signatory for the Joint
Petitioner No. 2.

ORDER

This Joint Petition has been filed under Section 86(1) (b) of the
Electricity Act, 2003 read with Regulation 50 & 50-A of the Himachal

Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 (the CBR, 2005 for short) by the Himachal Pradesh State Electricity Board Ltd. (the HPSEBL/ Joint Petitioner No. 1 for short) and M/s Varun Jal Vidyut Shakti Pvt. Ltd. (the Joint Petitioner No. 2 for short) seeking approval to execute Supplementary Power Purchase Agreement (SPPA for short) at Generic Levelized Tariff in respect of Banu HEP (5.0 MW) (Project for short) pursuant to the PPA signed on 10.06.2022 after approval of the Commission vide order dated 24.03.2022 in Petition No. 49 of 2021 & order dated 18.05.2022 in Suo Moto Petition No. 23 of 2022.

2. It is averred that the Commission vide Order dated 24.03.2022 and 18.05.2022 in Petition No. 49 of 2021 and 23 of 2022 respectively has allowed a provisional tariff of Rs. 4.28 per kWh. The copy of Order dated 24.03.2022 has been annexed as Annexure P-1. The tariff as allowed was based on the 3rd Control Period but the tariff applicable in respect of the Project is for the 4th Control Period which was yet to be determined. Paras 16, 17 and 18 of the Suo Moto Petition No. 23 of 2022 have been reproduced as under:-

“16. Since the SCOD of the Project is beyond the 3rd Control Period and the Power Purchase Agreement is required only for the purpose of the loan and the generation would be only after 3rd control period, certainly the tariff as would be applicable beyond the 3rd Control Period in which SCOD of the Project is Scheduled will be applicable.

17. The Petition is disposed of accordingly that the Project is for the capacity of 5 MW and the tariff as applicable shall be Rs.4.28 per unit without considering the impact of subsidy and royalty structure applicable

to this Project i.e. (6+1)% for 1st 12 years and (12+1) % for remaining useful life of the Project.

18. All other conditions of the Order dated 24.03.2022 shall remain unchanged.”

3. Further the Commission vide Order dated 24.03.2022 in Petition No. 49 of 2021, has observed as under:-

“9. 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.”

4. It is averred that both the parties are under an obligation to approach the Commission on release of financial assistance/ subsidy or one month before the SCOD of the Project for the appropriate tariff which shall be applicable after adjustment of admissible subsidy. The SCOD of the Project has been fixed on 12.01.2025 but the Joint Petitioner No. 2 aims to commission the Project ahead of the SCOD. A copy of letter dated 15.07.2021 and SCOD certificate issued by the Chief Executive Officer, HIMURJA are annexed as Annexure P-2 & Annexure P-3 that the SCOD of the Project is 12.01.2025.

5. Further averred that the Commission vide Order dated 17.11.2023 in Suo Moto Petition No. 7 of 2023 has determined the generic levellised tariff for Small Hydro Projects (SHPs) above 100 kW under Regulation 14 of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Seventh Amendment) Regulations, 2017 for the 4th Control Period i.e.

01.10.2023 to 31.03.2027 and since the SCOD of the Project is 12.01.2025, the Project clearly falls under the ambit of the 4th Control Period and generic levelized tariff as determined for the 4th Control Period is applicable for the Project. Also averred that tariff Order dated 17.11.2023 provides for generic levelized tariff of Rs. 4.78 per kWh for SHPs having installed capacity of 5.0 MW which is subject to adjustment on account of the following:-

- Adjustment on account of incentive and/ or available to Project.
- Additional Tariff on account of O&M.
- Variation of Free Power Structure
- Rounding

6. In respect of Incentive/ Subsidy, it is averred that though the Ministry of Commerce and Industry has notified the Industrial Development Scheme for Himachal Pradesh & Uttarakhand, whereby the Central Capital Incentive/ Subsidy is given for access to credit @ 30% of the investment in plant & machinery with an upper limit of Rs. 5.0 Crores but the said scheme has expired on 31.03.2022 and is not applicable for the Project which is to be commissioned in April, 2023 or thereafter and presently no incentive/ subsidy is available for the Project.

7. However, the Joint Petitioner No. 1/ the HPSEBL has claimed that as per the SCOD certificate dated 13.07.2021 (Annexure P-3) issued by the HIMURJA, the revised zero date of Project was 12.01.2022 and on

said date, the aforementioned scheme was effective. Further, the Commission in Order dated 17.11.2023 has clarified that the adjustment of subsidy(ies)/ grant(s)/ incentive(s) etc. as per RE Tariff Regulations, 2017 is not linked to the actual release of subsidy etc but the same is linked to the availability under the relevant government scheme(s). Further, had the Joint Petitioner No. 2 registered with the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry through DIPP Portal, the Company could have received the incentive under the same. Thus, the Incentive of Rs. 329.86 lakhs calculated by taking into account 30% incentive rate to the electro-mechanical cost mentioned in the Techno Economic Clearance (TEC) dated 05.10.2011 may be considered available to the Joint Petitioner No. 2 and as per item (Para) No. 7.14 (ii) of the Tariff Order dated 17.11.2023, the adjustment of subsidy is to be made in accordance with the aforesaid tariff Order and since the parties have different view on the adjustment of subsidy, the Commission may decide the same. Hence the Petition.

8. We have heard Sh. Kamlesh Saklani, Authorised Representative for the Joint Petitioner No. 1 and Sh. Arun Kumar, Authorised Signatory for the Joint Petitioner No. 2 and have perused the entire record carefully.

9. Sh. Arun Kumar, Authorised Signatory producing the receipt dated 29.03.2022 has submitted that the Joint Petitioner No. 2 has made registration on the DIPP Portal on 29.03.2022 and the Project

stands duly registered. Further inviting attention to Clause 5 (g) of the notification dated 23.04.2018 (Notification No. 2(2)/2018-SPS) notified by the Ministry of Commerce and Industry, Government of India, he submits that the Project is not covered under the same as according to the scheme, the New Industrial Unit means an industrial unit which registers itself on DIPP portal on or after the 1st day of April, 2017 but not later than 31.03.2022 and such units had to commence the production/ operation within 18 months of registration. According to him, the SCOD of the Project is 12.01.2025, as such, the Project was not in a position to commence the commercial production/ operation as per the mandate of the above scheme. As such, a mere registration in the DIPP portal is of no significance and the adjustment of subsidy is not required to be made and the tariff without adjustment of the subsidy is required to be allowed. He has further submitted that at a later stage, if such subsidy is made available to the Joint Petitioner No. 2, he shall intimate the same to the Joint Petitioner No. 1 for appropriate adjustment.

10. Sh. Saklani on the other hand has submitted that when the scheme was introduced by the Ministry of Commerce and Industry, adequate time was made available for the Project Developers for getting the Project registered and to complete the construction but a huge time was taken by the Joint Petitioner No. 2 for registration and it has been wrongly presumed that the scheme is not available for the

Project of the Petitioner. It is also submitted that the incentive is provided to the Project Developers so that they execute the Project in a smooth manner.

11. The Commission in the SHP Order dated 17.11.2023 in Suo Moto Petition No. 7 of 2023 has held in Para 7.13 as under:-

“7.13 Incentive and/or subsidy and/or grant/budgetary support by the Central/ State Government.-

(i) The Regulation 22-C 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 and/or budgetary support available, irrespective of whether the same is actually availed or not, under the schemes of the Central or State Government or their agencies, but excluding accelerated depreciation benefit under the Income Tax Act:

Provided that the capital subsidy under the schemes of the Central or State Government or their agencies shall be adjusted in the normative capital cost and the cost so arrived, after such adjustment, shall be considered for computing Debt-Equity Components for the purposes of determination of generic levellised tariffs:

Provided further that where the Central Government or the State Government notifies, or has notified, any generation based incentive (GBI) scheme for a particular kind of renewable technology, such technology based generating station shall be assumed to have availed the benefit of such a scheme and their tariffs shall be reduced by the amount of generation based incentive (GBI) per unit for the period during which such incentive remains applicable.

(2) Where any additional project specific grant or budgetary support is available to any project, apart from the incentive and/or subsidy and/or grant available under Sub-regulation (1) of this regulation, the Commission shall account for such budgetary support also, while determining project specific levellised tariff.

(3) 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.”

(ii) No adjustment of incentive and/or subsidy and/or grant is being made in the tariff calculations being carried out in this order. However, adjustment to be made in the rate on per Crore of subsidy for each MW capacity have been worked out and mentioned in the attached calculation sheets for each category of the project and adjustment, if any, on account of the same shall be made at appropriate stage while applying the tariff after taking into account the eligibility conditions in each case. 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, where available, are to be made at the rates indicated in the calculation sheets on normative basis by considering the provisions of regulations 20-C, 23-C, 24-C, 25-C and 26-C.”

12. The Regulation 22-C of the RE Regulations, 2017, as amended by the (Seventh Amendment) Regulations, 2023 dated 22.09.2023 provides for the adjustment of generation based incentive/ subsidy which reads as under:-

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

(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 and/or budgetary support available, irrespective of whether the same is actually availed or not, under the schemes of the Central or State Government or their agencies, but excluding accelerated depreciation benefit under the Income Tax Act:

Provided that the capital subsidy under the schemes of the Central or State Government or their agencies shall be adjusted in the normative capital cost and the cost so arrived, after such adjustment, shall be considered for computing Debt-Equity Components for the purposes of determination of generic levellised tariffs:

Provided further that where the Central Government or the State Government notifies, or has notified, any generation based incentive (GBI) scheme for a particular kind of renewable technology, such technology based generating station shall be assumed to have availed the benefit of such a scheme and their tariffs shall be reduced by the amount of generation based incentive (GBI) per unit for the period during which such incentive remains applicable.

(2) Where any additional project specific grant or budgetary support is available to any project, apart from the incentive and/or subsidy and/or grant available under Sub-regulation (1) of this regulation, the Commission shall account for such budgetary support also, while determining project specific levellised tariff.

(3) 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.”

13. When the PPA was approved vide Order dated 18.05.2022 in Suo Moto Review Petition No. 23 of 2022, the 3rd Control Period was under progress whereas the SCOD of the Project was in the 4th Control Period i.e. 12.01.2025. The validity of the 4th Control Period is from 01.10.2023 to 31.03.2027. Therefore, it was ordered that the tariff beyond the 3rd Control Period will be applicable.

14. This Commission has determined the tariff for the 4th Control Period w.e.f. 01.10.2023 to 31.03.2024 vide Order dated 17.11.2023 in Suo Moto Petition No. 7 of 2023 and as per the said tariff Order, the tariff for the Project(s) having installed capacity of 5 MW to 25 MW is Rs. 4.78 per kWh. Para 7.13 (ii) of said Order provides for adjustment of incentive/ subsidy as under:-

“7.13 Incentive and/or subsidy and/or grant/budgetary support by the Central/ State Government.-

(ii) No adjustment of incentive and/or subsidy and/or grant is being made in the tariff calculations being carried out in this order. However, adjustment to be made in the rate on per Crore of subsidy for each MW capacity have been worked out and mentioned in the attached calculation sheets for each category of the project and adjustment, if any, on account of the same shall be made at appropriate stage while applying the tariff after taking into account the eligibility conditions in each case. 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, where available, are to be made at the rates indicated in the calculation sheets on normative basis by considering the provisions of regulations 20-C, 23-C, 24-C, 25-C and 26-C.”

15. Admittedly the Project stands registered successfully in the DIPP Portal as evident from receipt of registration dated 29.03.2022. The Ministry of Commerce & Industry has not yet decided the case for subsidy of the Project. Therefore, merely because Clause 5(g) of the Notification dated 23.04.2015 (Notification No. 2(2)/2018-SPS) provides that the Commercial production/ operation needs to be commenced within 18 months of registration, it can't be presumed that the subsidy for the Project is not available. Para 7.13 (ii) of Order dated 17.11.2023 and Regulation 22-C of the RE Tariff Regulations, 2017, as amended by the Seventh Regulations, 2023 clearly provide that the subsidy is required to be adjusted irrespective of the fact that the same has been released or not and shall be deemed to have been availed. Keeping in view of the aforesaid, the contention of the Joint Petitioner No. 2 has no merits at this stage.

16. Manifestly, the SCOD of the Project is 12.01.2025 which falls within the 4th Control Period. The capacity of the Project is 5.0 MW. As per SHP Order dated 17.11.2023 in Suo Moto Petition No. 7 of 2023 the tariff of the Projects from 5 MW to 25 MW is Rs. 4.78 per kWh and an additional tariff to the maximum extent of Rs. 26.1 paise per kWh shall

also be applicable to SHPs having installed capacity of 5 MW but not exceeding 6.5 MW. Since, the installed capacity of the Project is 5.0 MW, thus, the tariff of the Project comes to Rs. 5.04 (Rs. 4.78 + 26.1 paise) per kWh which is subject to adjustment of subsidy as per Regulation 22-C of the RE Regulations, 2017, as amended by Seventh Amendment Regulations, 2023 and Para 7.13 (ii) of the SHP Order dated 17.11.2023 in Suo Moto Petition No. 7 of 2023. After making adjustment of Industry Subsidy of Rs. 329.86 Crore, the provisional tariff after such adjustment comes to Rs. 4.84 per kWh. Thus, the provisional tariff of Rs. 4.84 per kWh shall be applicable to the Project.

17. The Joint Petitioners have agreed for the sale and purchase of Power and have executed the PPA as per Order dated 18.05.2022 in Suo Moto Review Petition No. 23 of 2022. The Petition is duly supported by the affidavits of Joint Petitioners No. 1 and 2. Therefore, the Commission in exercise of powers vested in it under Sub-section (1) (b) of Section 86 of the Electricity Act, 2003 read with Regulations 50 and 50-A of the CBR, 2005 and RE Regulations, 2017, as amended from time to time and SHP Order dated 17.11.2023 in Suo Moto Petition No. 7 of 2023 accords approval for execution of Supplementary Power Purchase Agreement in continuation of PPA executed on 10.06.2022 as approved vide Orders dated 24.03.2022 and 18.05.2022 in Petition No. 49 of 2021 and Suo Moto Review Petition No. 23 of 2022, respectively subject to the following terms and conditions:-

- (i) The provisional tariff of Rs. 4.84 per kWh (Four Rupees and Eight Four Paisa only) is allowed after adjustment of the above Industry subsidy.
- (ii) The provisional tariff as allowed shall be applicable for 1 (one) year from the date of issuance of this order.
- (iii) The Joint Petitioners either jointly or individually shall approach the Commission on completion of one year from the date of issuance of this Order or immediately after receiving such subsidy, or on rejection of the claim of Industry subsidy in favour of the Project, whichever is earlier, for continuation of the above provisional tariff or for any other tariff as may become applicable to the project.
- (iv) The final tariff shall be determined, after taking into account the Financial Assistance/ Subsidy(ies) available to the project, which shall be firm and shall not be subject to any indexation, escalation and change in case of delay in commencement of operation of the project beyond 4th control period.

16. All other terms and conditions of Orders dated 24.03.2022 and 18.05.2022 in Petition No. 49 of 2021 and Suo Moto Review Petition No. 23 of 2022 shall remain unchanged.

17. The Joint Petitioners are directed to execute the Supplementary Power Purchase Agreement (SPPA) as per the above order after carrying out the necessary additions and alterations within a period of

30 days from the date of this Order. Three copies of the executed SPPA be submitted to the Commission for record.

Let a copy of this order be supplied to the Joint Petitioners forthwith.

The file after needful be consigned to records.

Announced

09.09.2024

-Sd-

(Shashi Kant Joshi)
Member

-Sd-

(Yashwant Singh Chogal)
Member(Law)

-Sd-

(Devendra Kumar Sharma)
Chairman

HPERC