

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

**Petition No: 104 of 2024**  
Instituted on: 30.05.2024  
Heard on: 01.08.2024  
**Decided on: 09.09.2024**

**CORAM:**

DEVENDRA KUMAR SHARMA  
CHAIRMAN.

YASHWANT SINGH CHOGAL  
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 Sai Eternal Foundation,  
Sai Bhawan, Sector-4, New Shimla, HP-171009. through  
Sh. Munish Sharma, Chief General Manager.  
.....Joint Petitioner No.2.

**Petition/Application under Regulation 68 of the Himachal Pradesh  
Electricity Regulatory Commission (Conduct of Business) Regulations,  
2005 read with Section 151 of the Code of Civil Procedure, 1908 on  
behalf of the Joint Petitioner's for the appropriate order in furtherance  
to the Commission's Order dated 14.07.2021 passed in Petition No. 20  
of 2021.**

Present:-

Sh. Sumit Dhiman, Authorised Representative for the Joint  
Petitioner No. 1.

Sh. R.K. Barwal, Law Officer for the Joint Petitioner No. 2.

**ORDER**

This Joint Petition has been filed under Regulation 68 of the  
Himachal Pradesh Electricity Regulatory Commission (Conduct of

Business) Regulations, 2005 (the CBR, 2005 for short) read with Section 151 of the Code of Civil Procedure, 1908 by the Himachal Pradesh State Electricity Board Ltd. (the HPSEBL/ Joint Petitioner No. 1 for short) and M/s Sai Eternal Foundation (the Joint Petitioner No. 2 for short) pursuant to the Commission's order dated 14.07.2021 in Petition No. 20 of 2021 in respect of Kareri Small Hydro Electric Project (4.80 MW) situated in Shimla Distt., Himachal Pradesh (Project for short) under the generic levelised tariff.

2. According to the Joint Petition, the parties have signed the Power Purchase Agreement (PPA for short) on 06.08.2021 subject to the following terms and conditions as per Order dated 14.07.2021 in Petition No. 20 of 2021:-

*"5. Since the HPSEBL has conveyed that it may take some more time to furnish the information as sought by the Commission vide letter dated 15.06.2021, the Commission, under sub-section (1) (b) of Section 86 of the Electricity Act, 2003, allows a provisional tariff of Rs. 4.67 (Rupee four and sixty seven paise only) per kWh, which shall be subject to adjustment on account of the financial assistance/subsidy, as per the provisions of applicable renewable energy regulations. The following conditions shall apply in this regard:-*

*(i) Issue relating to adjustment of financial assistance/subsidy under the Government schemes mentioned in para-2 & 3 of this order are yet to be resolved by the Company and HPSEBL as per the provisions of applicable HPERC Renewable Energy regulations, so this provisional rate shall be applicable for 1 (one) year from the issuance of this Order.*

*(ii) The petitioners shall approach the Commission after completion of one year or immediately after the settlement of such adjustment, whichever is earlier, for continuation of this tariff or for any other tariff as may become applicable to the project.*

*(iii) The Company shall intimate, to HPSEBL, the receipt of financial assistance/subsidy released to the Project, by the State/Central*

*Government or its designated Department(s)/agency(ies), within 15 days of receipt of the same and an affidavit to this effect shall be furnished by the Company which shall also form a part of the PPA.*

*(iv) 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.*

*(v) The clause 6.2 of PPA shall be modified to the extent that the levellised provisional tariff of 4.67 (Rupee four and sixty seven paise only) per kWh shall be subject to further adjustment as per the orders as may be issued by the Commission after receipt of petition as per item (ii) of this para.”*

The copy of the order dated 14.07.2021 has been annexed as Annexure A-1 along with the Petition.

3. According to the Joint Petition, the Commission vide Order dated 22.12.2020 passed in Suo Moto Petition No. 76 of 2020 (SHP Order dated 22.12.2020 for short) had determined the generic levellized tariff for the 3<sup>rd</sup> Control Period w.e.f. 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 (RE Regulations, 2017 for short) and since the Project was falling under the ambit of the 3<sup>rd</sup> Control Period, the generic levellized tariff determined vide Order dated 22.12.2020 was applicable to the Project of the Joint Petitioner No. 2.

4. It is averred that in Para 8.14 (ii) of the SHP Order dated 22.12.2020, the Commission has held as under:

*“8.14 (ii) No adjustment on account of incentive and/or subsidy and/or grant etc. is being made in the value base for the calculations of Generic Levellised Tariffs under this order. However, the rates at which adjustments*

*shall be made in 13 the Generic Levellised Tariffs on this account have been worked out and mentioned in the attached calculation sheets for each category of the SHPs. The 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 applicable subsidy(ies) available under such scheme(s). The adjustments on account of incentives and/or subsidies and/or grants etc. are to be made at the rates indicated in the calculation sheets on normative basis by considering the provisions of regulations 20-B, 23-B, 24-B, 25-B and 26-B. For this purpose the total amount (in crore rupees) of incentive and/or subsidy and/or grant etc., shall be divided by the installed capacity of the projects and the per MW amount (in crore rupees) so arrived at, shall be multiplied by the rate indicated in the calculation sheet for the relevant category of SHPs.”*

5. It is also averred that the Ministry of Commerce & Industry, Government of India, vide Notification No. 2(2)/2018-SPS dated 23.04.2018 has notified an Industrial Development Scheme for the States of Himachal Pradesh & Uttarakhand wherein Central Capital Investment Incentive (Industry Subsidy for short) was being given for access to credit @ 30% of the investment in plant & machinery with an upper limit of Rs. 5.0 Crores. The scheme was effective from 01.04.2017 till 31.03.2022. The Joint Petitioner No. 2 has intimated the Joint Petitioner No. 1 that though it has applied for the Industry Subsidy yet the same has not been received by the Joint Petitioner No. 2. The Joint Petitioner No. 2 has also furnished a certificate dated 16.02.2023 issued by the General Manager, District Industries Centre, Shimla-1 to the effect that online claim of the Joint Petitioner No. 2 to the tune of Rs.

4,98,69,432/- has been received on the portal on 16.09.2020 which is under consideration.

6. The averments regarding the adjustment of subsidy by the Joint Petitioners in the Petition are at variance. The Joint Petitioner No. 1 has claimed that the Industry Subsidy as available to the Joint Petitioner No. 2 is required to be adjusted in provisional tariff of Rs. 4.67 per kWh in accordance with the provisions and methodology specified at Para 8.14 (ii) of the SHP Order dated 22.12.2020 in Suo Moto Petition No. 76 of 2020 and after adjustment of said subsidy, the tariff in respect of the Project shall be Rs. 4.38 per kWh.

7. However, the Joint Petitioner No. 2 has claimed in the Petition that the Long term PPA was signed on 06.08.2021 and as per Article 6.2 (c) of the PPA dated 06.08.2021, both the parties were required to approach the Commission on completion of one year or immediately on grant of subsidy but the Joint Petition as directed was not filed to avoid repetition/ multiplicity and unwanted load of work in the Commission as the Joint Petitioner No. 2 has not yet received such subsidy despite getting the subsidy case processed by the Industry Department. The certificate of Registration with the Ministry of Commerce & Industry (Annexure A-3), copy of Diary No. 7996 dated 23.11.2021 of the application submitted offline (Annexure A-4), the copy of the letter of Director of Industries, GoHP dated 06.12.2022 (Annexure A-5) have

been annexed with the Petition. Further, the Joint Petitioner No. 2 has submitted the requisite documents to the Director, HIMURJA vide letter No. 1821 dated 27.12.2022 (Annexure A-6). Also that the Joint Petitioner No. 2 has been following up the case with the Director, Industry Department and even the joint inspection of the project was conducted but no subsidy has been released. The copy of letter dated 05.09.2023 of Industry Department and joint inspection report have been annexed as Annexure A-7 and Annexure A-8, respectively. The Joint Petitioner No. 2 has not agreed to the proposal of the Joint Petitioner No. 1 for adjustment of subsidy without actual receipt.

8. We have heard Sh. Sumit Dhiman, Authorised Representative for the Joint Petitioner No. 1 and Sh. R.K. Barwal, Law Officer for the Joint Petitioner No. 2 and have perused the entire record carefully.

9. The Commission vide Order dated 14.07.2021 in Petition No. 20 of 2021 had provided provisional tariff of Rs. 4.67 per kWh for the Project subject to adjustment on account of financial assistance/ subsidy as per RE Regulations, 2017 and it was also specifically mentioned by the Commission in said Order that Clause 6.2 of the PPA shall be modified to the effect that the levelized tariff of Rs. 4.67 per kWh shall be subject to further adjustment as per the orders as may be passed by the Commission.

10. The Joint Petitioners were under an obligation to approach the Commission after completion of one year from 14.07.2021 as per Order dated 14.07.2021 in Petition No. 20 of 2021 but both the parties have miserably failed in this regard. An explanation has been offered that the Joint Petitioner No. 2 was hopeful of sanction of the Industry subsidy but the subsidy having not been sanctioned, the Joint Petitioner No. 2 did not approach the Commission to avoid multiplicity of litigation.

11. It is apparent from the Petition that the Joint Petitioner No. 1 had been requesting the Joint Petitioner No. 2 to get the amount of subsidy reflected in the tariff even without receiving the same but the said proposal was not acceptable to the Joint Petitioner No. 2, as it is claimed by the Joint Petitioner No. 2 that such proposal would have put the Joint Petitioner No. 2 at loss by reducing the rate of power per kWh. It is the stand of the Joint Petitioner No. 2 that the case for grant of Industry Subsidy was vigorously pursued but the office of the Director of Industry informed that the funds under the Scheme are not available. Thus, after mutual deliberations, the parties have decided to file the Joint Petition leaving the issue of subsidy for the decision of the Commission. Since, a long term PPA has been entered into and both the parties were required to approach the Commission on completion of one year of the Order and the case for sanction of Industry Subsidy is at

an advanced stage, as claimed, the explanation of delay appears to be reasonable.

12. As per Order dated 14.07.2021 in Petition No. 20 of 2021, not only the Project of the Joint Petitioner No. 2 was eligible for the Industry subsidy to be provided by the Ministry of Commerce & Industry, Government of India but the Project of the Joint Petitioner No. 2 was also eligible for the subsidy being provided by the Ministry of New and Renewable Energy (MNRE for short) for financial support to set up new SHPs upto 25 MW capacity, as observed in Para 3 of Order dated 14.07.2021. However, not even an iota to this effect has been averred in the Joint Petition. Paras 2 and 3 of the Order dated 14.07.2021 in Petition No. 20 of 2021 are reproduced as under:-

*“2.The petitioners have submitted that the project explicitly falls under the “Industrial Development Scheme for Himachal Pradesh & Uttrakhand” notified by the Ministry of Commerce & Industry, Government of India on 23.04.2018 and a subsidy @ 30% on the plant & machinery cost of the project is applicable to Kareri HEP, which works out to Rs. 2.67 Crores, based on costs mentioned in TEC granted to the project. But no financial assistance has been released to Kareri SHP (4.80 MW).*

*3. A Scheme for Financial Support to set up new SHP Projects up to 25 MW capacity in the private, Co-operative, Joint Sector etc” was notified by the Ministry of New and Renewable Energy (MNRE) on 02.07.2014 and as per the guidelines of the MNRE, the project developer was eligible for availing Central Assistance/subsidy under the said scheme.”*

13. Apparently, the Order dated 14.07.2021 in Petition No. 20 of 2021, regarding the provisional tariff of Rs. 4.67 per kWh was subject to the deduction of MNRE subsidy being provided by the Ministry of New



and Renewable Energy as also the Industry Subsidy being provided by the Ministry of Commerce and Industry, as mentioned above but as observed above, the Petition is totally silent about MNRE subsidy.

14. The Commission in Para 8.14 (ii) of the SHP Order dated 22.12.2020 has held as under:-

*“8.14 (ii) No adjustment on account of incentive and/or subsidy and/or grant etc. is being made in the value base for the calculations of Generic Levellised Tariffs under this order. However, the rates at which adjustments shall be made in the Generic Levellised Tariffs on this account have been worked out and mentioned in the attached calculation sheets for each category of the SHPs. The 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 applicable subsidy(ies) available under such scheme(s). The adjustments on account of incentives and/or subsidies and/or grants etc. are to be made at the rates indicated in the calculation sheets on normative basis by considering the provisions of regulations 20-B, 23-B, 24-B, 25-B and 26-B. For this purpose the total amount (in crore rupees) of incentive and/or subsidy and/or grant etc., shall be divided by the installed capacity of the projects and the per MW amount (in crore rupees) so arrived at, shall be multiplied by the rate indicated in the calculation sheet for the relevant category of SHPs.”*

15. Not only this, Regulation 22-B of the RE Regulations, 2017 as amended by the (Fourth Amendment) Regulations, 2020 dated 08.09.2020 provides as under:-

**22-B. 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 available 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 levelled 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 levelled 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.”

16. Thus, the appropriate deduction of the admissible subsidy by the Central Government or the State Government is required to be made as per Para 8.14 (ii) of the SHP Order dated 22.12.2020 and Regulation 22-B of the RE Regulations, 2017 (as amended by Fourth Amendment Regulations), as the generating station shall be assumed/ deemed to have availed the benefit of any such generation based incentive notified for a particular renewable technology. Therefore, the parties were required to clearly mention as to how the impact of MNRE subsidy is to be considered but the entire Petition is silent.

17. As observed above, the Joint Petitioner No. 1 was unable to furnish the requisite information which was sought by the Commission at the time of passing Order dated 14.07.2021, as such, the provisional tariff without making adjustment of subsidy was provided to the Joint Petitioner No. 2 for a period of one year with a condition that the parties shall approach the Commission after completion of one year for appropriate tariff but none of the parties approached the Commission within stipulated time.

18. Though it is claimed by the Joint Petitioner No. 2 that the sanction of Industry subsidy is at advanced stage and may be released soon but as observed above, no mention about the subsidy being provided by the MNRE has been made. The Commission was of the clear view that the Project is also eligible for the subsidy/ incentive being provided by the MNRE. Since the generic levelized tariff is worked out on the basis of the total cost of the Project, certainly the adjustment of subsidy is required to be made in the interest of the Consumers and as per SHP Order dated 22.12.2020 and Regulation 22-B of the RE Regulations, 2017 (as amended by Fourth Amendment Regulations), so as to avoid wrongful gain to the Project Developer and wrongful loss and burden to the consumers. Accordingly, the provision to said effect was made in the RE Regulations, 2017 and SHP Order dated 22.12.2020.

19. It is relevant to mention here that the Commission has taken a consistent stand in various Petitions that the adjustment of subsidy will be made irrespective of the fact whether subsidy is availed or not. Though, in some cases, the Project Developers approached the Commission with a proposal for adjustment of admissible subsidy without actual release of such subsidy so that post release hassle of tariff may be avoided. In some cases, where the Project Developers have not volunteered for such adjustment, the Commission had been making appropriate adjustment as per the admissible subsidy. However, in the present case, neither the Joint Petitioner No. 2 had come out with such a proposal nor the Joint Petitioner No. 1 was able to furnish the requisite information constraining the Commission to allow provisional tariff of Rs. 4.67 per kWh without adjustment of admissible subsidy.

20. Thus, taking into consideration above, the adjustment of applicable Industry subsidy as per the Project capacity is required to be made as per Para 8.14 (ii) of SHP Order dated 22.12.2020 and Regulation 22-B of the RE Regulations, 2017 (as amended by Fourth Amendment Regulations), in the applicable tariff of Rs. 4.67 per kWh, as per the relevant control period. Thus, after adjustment of Industry subsidy, the tariff of Rs. 4.38 per kWh would be applicable to the Project. However, said tariff of Rs. 4.38 per kWh shall also be a

provisional tariff as the Petition is totally silent about the MNRE subsidy which too is required to be deducted. Thus, the aforesaid tariff of Rs. 4.38 per kWh shall be valid for a period of 6 months. After completion of a period of 6 months from today, either of the parties shall approach the Commission for the appropriate adjustment as per admissible MNRE subsidy for the Project.

21. The appropriate modification shall be made in the relevant clauses of the draft SPPA which is accordingly ordered to be executed subject to condition that the provisional tariff of Rs. 4.38 per kWh shall be applicable for a period of six months only and either of the parties shall approach the Commission after a period of six months for adjustment of the admissible MNRE financial assistance/ subsidy.

22. All other terms and conditions of Orders dated 14.07.2021 in Petition No. 20 of 2021 shall remain unchanged. Other terms and conditions of the Supplementary Power Purchase Agreement shall be subject to provisions of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 and SHP tariff order dated 22.12.2020.

23. 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**

HPPER