

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

Petition No: 30 of 2023
Date of Institution: 05.04.2023
Arguments Heard on: 25.04.2023
Decided on: 20.05.2023

CORAM

DEVENDRA KUMAR SHARMA
CHAIRMAN

YASHWANT SINGH CHOGAL
MEMBER (Law)

SHASHI KANT JOSHI
MEMBER

In the matter of:

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

....Joint Petitioner No. 1

AND

M/s Excel Hydro Power Pvt. Ltd. through,
Sh. Aman Sharma (Authorised Signatory),
Lutuksa, Post Office Solding, Tehsil Nichar,
Distt. Shimla, Himachal Pradesh.

....Joint Petitioner No. 2

Joint Petition under Section 86 (1) (b) of the Electricity Act, 2003 read with Regulation 50-A of the Conduct of Business Regulations, 2005, for approval of the Power Purchase Agreement under Generic Levellised Tariff to be executed by the HPSEBL with M/s Excel Hydro Power Pvt. Ltd. in respect of the Kaachrang HEP (5 MW).

Present:-

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

Sh. Vikas Chauhan, Ld. Counsel for the Joint Petitioner No. 2.

ORDER

This Joint Petition has been filed under Section 86 (1) (b) of the Electricity Act, 2003 (Act for short) read with Regulations 50 and 50-A of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 by the Himachal Pradesh State Electricity Board Limited (HPSEBL or Joint Petitioner No. 1 for short) and M/s Excel Hydro Power Private Limited (Joint Petitioner No. 2 for short) for the approval of Long Term Power Purchase Agreement at Generic Levellised Tariff in respect of Kaachrang HEP (5 MW) situated at Salaring Khad, a tributary of Satluj river, Distt. Kinnaur, Himachal Pradesh (Project for short).

2. The Joint Petitioner No. 2 signed the Implementation Agreement (IA for short) on 20.05.2011 (Annexure-III) for implementation of the Project with the Government of Himachal Pradesh (GoHP for short). The revised Techno Economic Clearance (TEC) was accorded to the Project vide Order No. HPSEB/CE(PCA)/CC-Kaachrang/09- 8518-28 dated 10.03.2010 (Annexure-VIII). As per the Petition, the Scheduled Commercial Operation Date (SCOD for short) of the Project is

11.01.2024 as per the certificate issued by the HIMURJA for the purpose of the tariff and other terms and conditions.

3. It is averred that the SCOD of the Project falls beyond the current control period but the Joint Petitioner No. 2 requires the Power Purchase Agreement (PPA for short) in order to achieve the financial closure and to meet the timelines specified in the Second Supplementary Implementation Agreement (2nd SIA for short) executed by the Petitioner on 12.01.2021 (Annexure-III) with the GoHP.

4. It is also averred that both the parties have agreed for sale and purchase of power from the Project at generic levellised tariff to be determined by the Commission for the control period where SCOD of the project falls in accordance with the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 (RE Regulations, 2017 for short) or the prevalent tariff Regulations at any later stage.

5. As per the Joint Petition, the Ministry of Commerce and Industry vide notification No. 2 (2)/ 2018-SPS dated 23/04/2018 has notified the 'Industrial Development Scheme for Himachal Pradesh and Uttarakhand' whereby Central Capital Investments Incentive is being given for access to credit @ 30% of the investment in plant & machinery

with an upper limit of Rs. 5 crores. However, the company could not apply for the same within the outer date of said Scheme i.e. 31/03/2022. Thus, the admissible subsidy as per the eligibility of the Company has been worked out to Rs. 2.85 Crore by considering 30% of the electro-mechanical cost approved in the TEC dated 10/03/2010. The same shall be adjusted in accordance with the provision of SHP tariff order(s) as may be issued by the Hon'ble Commission for the control period in which SCOD of the Project falls. A copy of TEC dated 10/03/2010 is attached as Annexure-VIII.

6. As per the Joint Petition, the Joint Petitioner No. 2 has signed the Connection Agreement with the Joint Petitioner No. 1 on 27.08.2021 in respect of the Project and as per the Connection Agreement, the interconnection point of the Project is at 22 kV Rakchad Bay at 66/22 kV, Nathpa Sub-station in Joint mode with Rakchad SHEP (5 MW).

7. We have heard Sh. Kamlesh Saklani, Authorised Representative for Joint Petitioner No. 1 and Sh. Vikas Chauhan, Ld. Counsel for Joint Petitioner No. 2 and have perused the record carefully.

8. It is apparent from the record that the Joint Petitioner No. 2 had signed the IA with the GoHP on 20.05.2011 (Annexure-III) for the implementation of the Project for the capacity of 2.50 MW. It is evident from the Supplementary Implementation Agreement (SIA for short)

dated 25.09.2012 that on the enhancement of the generation capacity of the Project from 2.50 MW to 5.00 MW, the SIA dated 25.09.2012 (Annexure-III) was executed. It is also evident that one time amnesty to the Project was allowed by the Govt. of H.P. in terms of notification dated 07.11.2020 and accordingly, the 2nd SIA dated 12.01.2021 (Annexure-III) was executed by the Joint Petitioner No. 2 with the GoHP whereby the zero dates for the Projects under investigation and clearances stage where IAs have been signed and by redefining SCOD for the Projects under construction stage have been redefined. It is also evident from the 2nd SIA that various timelines for the Project have been defined. The record also shows that the SCOD of the Project is 11.01.2024 as evident from Certificate, (Annexure-I) annexed to the letter of the HIMURJA SHP-III/ECL(30)/2004-2605 dated 15.07.2021 (Annexure-V). It is also evident from the record that the Joint Petitioner No. 2 has signed the Connection Agreement with the HPSEBL on 27.08.2021 which shows that the HPSEBL has agreed to the connection of the Project (Kaachrang HEP 5MW) at 22 kV Rakchad Bay at 66/22 kV Nathpa Sub-station in Joint mode with Rakchad SHEP (5 MW).

9. The Joint Petitioner No. 2 on 01.05.2023, has also filed a copy of the joint power evacuation agreement dated 29.06.2018 whereby the

developer of Rakchad SHEP has agreed to evacuate the power of the Project of Joint Petitioner No. 2 through existing 22 kV system to 66/22 kV Nathpa Station and shall play the role of lead developer.

10. The record also shows that the Company could not apply for the incentive available under the “Industrial Development Scheme for Himachal Pradesh & Uttarakhand” within the outer date of said Scheme i.e. 31.03.2022. However, the Joint Petitioner No. 2 has agreed for adjustment of incentive i.e. Rs. 2.85 Crore as per TEC issued on 10.03.2010, as per the price level of March, 2008, for adjustment of Central Assistance/ Subsidy under “Industrial Development Scheme for Himachal Pradesh & Uttarakhand” notified by the Ministry of Commerce & Industry on 23.04.2018, being project less than 10 MW capacity. Since the base level of TEC is 2010 and indicative tariff of 3rd control period for this project is determined considering normative capital cost i.e. Rs. 11 Crore per MW.

11. It is also evident from the record that the Joint Petitioner No. 2 requires PPA for achieving the financial closure failing which it would not be possible to complete the Project within stipulated period as mentioned in the SCOD.

12. The Petition is duly supported by affidavits of the Joint Petitioners.

13. Taking into consideration the aforesaid facts and circumstances and in exercise of the powers vested in the Commission under Section 86 (1) (b) of the Electricity Act, 2003 and Regulations 50 & 50-A of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 and also taking into consideration the notifications dated 15.05.2018 and 10.10.2018 of the GoHP, Swaran Jayanti Policy, 2021, 'One Time Amnesty' Scheme dated 07.11.2020, the Connection Agreement dated 27.08.2021, the Implementation Agreement dated 20.05.2011, the Supplementary Implementation Agreement dated 25.09.2012, the 2nd Supplementary Implementation Agreement dated 12.01.2021, the SCOD Certificate dated 13.07.2021 (Annexure-I) and the Joint Power Evacuation Agreement dated 29.06.2018, the Joint Petitioners have made out a case for the approval of the Long Term PPA under the Generic Levelled Tariff.

14. Accordingly the Petition succeeds and the PPA is ordered to be approved subject to the following terms and conditions:-

- (i) The Company has not applied for the incentive available under the "Industrial Development Scheme for Himachal Pradesh and Uttarakhand" within the outer date of said Scheme i.e. 31.03.2022. The Petitioners, as per Petition has agreed for adjustment of incentive i.e. Rs. 2.85 Crore as per TEC issued on

10.03.2010, as per the price level of March, 2008, for adjustment of Central Assistance/subsidy under “Industrial Development Scheme for Himachal Pradesh and Uttarakhand” notified by the Ministry of Commerce and Industry on 23.04.2018 being project less than 10 MW capacity. The base level of TEC is 2008 and considering the indicative tariff of 3rd control period for the project, normative capital cost comes to Rs. 11 Crore per MW. Accordingly, considering the financial assistance of Rs. $11 \times 0.30 \times 0.30 = 0.99$ Crore per MW and restructuring the energy to 5 MW project, the tariff shall be subject to the adjustment on account of the financial assistance/subsidy, as per the provisions of applicable Renewable Energy Regulations.

- (ii) The SCOD of the Project is 11.01.2024, The present tariff determined as per the provisions of RE Regulations, 2017 is only upto 30.09.2023. Therefore, the Joint Petitioner No. 2 would be entitled for the tariff which would be prevalent in the control period, where the SCOD of the Project falls, which may be higher or less and if, the tariff in the prevalent control period, when the SCOD of the Project falls, is less, Joint Petitioner No.2 will have to supply the power to the Joint Petitioner No.1 on the said tariff only.

- (iii) In case of delay of project beyond the SCOD i.e. 11.01.2024, the tariff of the Control Period in which the SCOD falls, subject to further adjustment shall be applicable and the same shall be firm and final.
- (iv) The Joint Petitioner No. 2 shall intimate the Joint Petitioner No.1 i.e. the HPSEBL of 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 Joint Petitioner No. 2 which shall form part of the PPA and the Joint Petitioner No. 1 shall carry out the adjustment in the tariff accordingly.
- (v) The Petitioners shall approach the Commission for ascertaining the final tariff applicable to the project as may be determined by the Commission beyond the period i.e. 30.09.2023.
- (vi) 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 (v) of this para.
- (vii) 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 passed by the Commission after receipt of Petition as per item (v) of this para.

(viii) The Joint Petitioner No. 2 is directed to pursue the matter of Subsidy/Central Capital Investment Incentive with the Industries Department. However, in case no response is gathered from the Joint Petitioner No. 2 by the Joint Petitioner No. 1, the adjustment in the tariff as per applicable amount of Central Capital Investment Incentive shall be carried out by the Joint Petitioner No. 2 on commissioning of the Project.

- (a) the Clause (2.2.27) of draft PPA shall be modified, namely;-
“2.2.27 ‘Due Date of Payment’ means the date by which the bill for the charges for power supplied by the Company are to be paid, in accordance with the Power Purchase Agreement and in case not specified in the Power Purchase Agreement, forty-five days from the date of presentation of the bill by the Company:

Provided that if the due date for payment of any invoice falls on a bank non-working day, the next bank working day shall be considered as due date for payment;”

- (b) the proviso to clause 2.2.57A shall be deleted.
(c) the clause (2.2.58) shall be deleted.
(d) for item (c) of clause 10.4 under article 10 of draft PPA, the following shall be substituted, namely :-

“(c) if the HPSEBL fails to make payment of undisputed amount of the monthly bill within six months after regulating the 100% power by the Company.”

- (ix) The additions and alterations qua ‘Base Rate of Late Payment Surcharge’, ‘Default Trigger Date’, ‘Due Date’, ‘Outstanding Dues’, ‘Payment Security Mechanism’ and Regulations 31-B, and Regulation 31-BB, as per Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Sixth Amendment) Regulations, 2023 shall be carried out at appropriate places in the draft PPA before draft approved PPA is sent to the parties. Similarly, any other necessary addition and alteration, if any, required to be carried out as per Connection Agreement dated 27.08.2021 or the prevailing Regulations be also carried out before approved draft PPA is sent to the parties.
- (x) The water cess, as made applicable by the Govt. of H.P. for the Hydro Electric Projects, shall be dealt accordingly as per the notification of the Government.

15. The Joint Petitioners are directed to execute the 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
20.05.2023

-Sd-
(Shashi Kant Joshi)
Member

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

-Sd-
(Devendra Kumar Sharma)
Chairman

HPERC