

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

Petition No: 32 of 2022
Instituted on: 11.05.2022
Heard on: 17.12.2022
Decided on: 07.02. 2023

CORAM

Devendra Kumar Sharma
CHAIRMAN

Yashwant Singh Chogal
MEMBER (Law)

Shashi Kant Joshi
MEMBER

In the matter of:

M/s DLI Power (India) Pvt. Ltd. through,
Sh. V.S.V.A. Rao, Divisional Manager (Commercial)
House No. 16, HP Officers Colony (West End),
Panthaghati, Shimla-171013

..... Petitioner

Versus

1. The HP Power Transmission Corporation Ltd. through its,
Managing Director,
Himfed Bhawan, Panjari, Near ISBT,
Shimla-171004.
2. The State of Himachal Pradesh through,
the Additional Chief Secretary (MPP & Power),
to the Govt. of Himachal Pradesh,
Shimla-171002.

.....Respondents

Petition under Section 86 (1) (f) and other enabling provisions of Electricity Act, 2003 and Regulations 53, 68 & 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for the adjudication of dispute qua unreasonable and inequitable demand of Bay charges made by the Respondent No.1 vide letter dated 06.01.2022 in respect of Raura SHP (12 MW).

Present:

For the Petitioner: Sh. L.S. Mehta, Ld. Counsel.
For the Respondent No.1: Sh. Vikas Chauhan, Ld. Counsel
For the Respondent No.2: Sh. Shanti Swaroop, Ld. Legal Consultant.

ORDER

This is a Petition under Section 86 (1) (f) of the Electricity Act, 2003 read with Regulations 53, 68 & 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for the adjudication of a dispute qua unreasonable and inequitable demand of Bay charges made by the Respondent No. 1 vide letter dated 06.01.2022 in respect of 12 MW Raura Small Hydro Project (SHP for short). As per the Petitioner, Raura SHP 12 MW has been setup on the Raura Khadd, a tributary of Satluj River in Distt. Kinnaur, HP (the Project for short) which has been synchronized with the Grid w.e.f. 09.09.2019 and the power is being sold to Himachal Pradesh State Electricity Board Limited (HPSEBL for short) under a short term Power Purchase Agreement (PPA for short).

FACTUAL MATRIX

2. According to the Petitioner, Respondent No. 1, a State Transmission Utility (STU for short) is obligated to ensure the development of an efficient, coordinated and economical system of Intra-state Transmission Lines for smooth flow of electricity from the generating stations to the load centers and the Respondent No. 1 is mandated to provide non-discriminatory open access to its transmission system for the use by any licensee or generating company. An

Implementation Agreement (IA for short) dated 24.03.2008 (Annexure P-2) was signed by the Petitioner with the Government of Himachal Pradesh (GoHP for short) for setting up the Project vide which interconnection point was defined as per 1.2.32 as under:-

“Interconnection Point(s)” as the physical touch point at Karcham sub-station of the Board where the Project’s transmission line for evacuating the power from the Project is connected to the Grid.

3. The Petitioner vide letter dated 08.08.2011 applied for connectivity for the Project at the nearest 66 kV Sub-station, proposed at Village Urni at a distance of 2 km from the switch yard of the Project and the Respondent vide letter dated 02.12.2011 (Annexure P-3) intimated the Petitioner of the grant of connectivity wherein the Scheduled Date of Commissioning of the Project was stipulated as January, 2014 and the interconnection point for connectivity was mentioned as 66 kV Switching Station, Urni. The Respondent No. 1 vide letter dated 24.05.2014 while sending the minutes of meeting (MoM for short) of the 35th meeting of STU Coordination Committee dated 12.05.2014 (Annexure P-4 (Colly)) informed that the Transmission Projects within the State are planned to be built by ADB loan in Tranche-II and the time line for completion of 66 kV GIS Switching Station at Urni and 66 kV Urni- Wangtoo D/C Line was scheduled in April, 2015. Meanwhile, the capacity of the Project was allowed to be increased from 8 MW to 12 MW vide Order dated 08.10.2015 (Annexure P-5) by the

Department of Energy (DoE for short) specifying the amended interconnection point for the Project for evacuation of power by interfacing with 66 kV Switching Station at Urni. Accordingly, a fresh application for connectivity was submitted on 17.10.2015 and the Respondent No. 1 vide letter dated 26.10.2015 intimated the Petitioner of connectivity stating the Scheduled Date of Commissioning of the Project as January, 2017 (Annexure P-6 Colly) and the connectivity was stated to be applicable from the date of Commissioning of 66 kV Urni-Wangtoo lines and Sub-station at Urni. Meanwhile, MoM of 42nd meeting of STU held on 15.12.2015 (Annexure P-7) were communicated revising the time line for completion of 66 kV GIS Switching Station at Urni and 66 kV Urni Wangtoo D/C line as 31.12.2016. On 23.06.2016, the Petitioner signed the Connection Agreement (Annexure P-8) with the HPPTCL providing for interconnection arrangement for evacuation of Power by interfacing the Project with 66 kV Switching Station at Urni.

4. The Petitioner vide letter dated 13.07.2017 (Annexure P-9) informed the Respondent No. 1 that the Project is going to be commissioned in next 8/9 months and requested the HPPTCL to confirm power evacuation arrangement, in case the system at Urni and Wangtoo is delayed and vide letter dated 16.09.2017 (Annexure P-10), the Petitioner informed the Respondent No. 1 that Project is Scheduled for Commissioning by April, 2018 and in case Sub-station Urni and Urni-Wangtoo 66 kV D/C line do not come up prior to the commissioning of the Project, interim power evacuation facility be provided to the Project which was

also discussed in the 45th meeting of STU held on 20.09.2017 (MoM annexed as Annexure P-11).

5. Meanwhile, IA dated 24.03.2008 was followed by Supplementary Implementation Agreement (SIA for short) dated 01.02.2018 (Annexure P-12) providing for the interconnection point as physical touch point at 66 kV Switching station at Urni where projects transmission line for evacuating the power from the project is connected to the Grid.

6. On providing the Interim Power Evacuation arrangement, the Petitioner executed Interim Power Transmission Agreement (IPTA) dated 05.02.2018 (Annexure P-13) regarding interim evacuation of power, the relevant portion whereof is reproduced as under:-

- *Whereas 66 kV switching substation at Urni and 66/220/400 kV Sub Station at Wangtoo are under construction and Raura SHP have not availed Open Access from HPPTCL and Long Term Access applications are still to be filed.*
- *And whereas as discussed in various STU Meetings, it has been decided to provide an interim arrangement for evacuation of the power generated by the Applicant till the commissioning of 66 kV switching substation at Urni and 66 kV line from Urni to Wangtoo and 66/220/400 kV Sub-station at Wangtoo.*
- **As an interim power transmission arrangement in national interest the HPPTCL has agreed to the connection of Raura SHP (12 MW) at Tower No. 61 of one of the 220 kV Kashang-Bhabha D/C Transmission line and charging it at 66 kV.**

- *The power shall be transmitted at 66 kV level to 22/66/220 kV Sub Station of HPSEBL at Bhabha Power House.*
- *The Interim Transmission charges shall be calculated @ 14 paise per unit of the energy wheeled including the O&M charges.*
- *The interim tariff remain in force till the final outcome of MYT petition filed by HPPTCL for determination of Tariff for FY 2016-17 to FY 2018-19 of 220 kV D/C Kashang-Bhaba Transmission line and Tariff will be applicable as per HPERC Order. The excess/less amount so charged shall be adjustable by either side accordingly as per HPERC Order.*

7. It is averred that the Respondent No. 1 vide letter dated 11.06.2018 sent MoM of the 46th meeting of STU held on 29.05.2018 (Annexure P-14) apprising that 66 kV Switching Station at Urni shall be ready for commissioning on 31.12.2018 but 12 km long 66 kV Urni-Wangtoo associated line is delayed and cannot be completed before 30.06.2019 but on the indulgence of ACS (Power), the compressed schedule was given as April, 2019. The Respondent No. 1 vide letter dated 14.08.2018 sent MoM of 47th meeting of STU held on 25.07.2018 (Annexure P-15) that a detailed program to commission 66 kV Urni-Wangtoo D/C line by March/April, 2019 has been worked out and it shall now be possible to commission the line by the committed date.

8. Meanwhile, the Petitioner obtained the documents under the Right to Information Act on 20.12.2018 and 10.01.2019 from the DoE, GoHP, which processed the extension request of SCOD of Raura SHP and the Director (Energy) while recommending the Petitioner's case made various observations on

20.12.2018 and one of the observations was that the project can only be commissioned as and when the full evacuation arrangement is made to the project by the HPPTCL and recommended the extension of SCOD in respect of Raura HEP as per the Government of H.P. notification dated 17.08.2016.

9. The Petitioner also came to know from letter dated 10.01.2019 (Annexure P-16 Colly) that the SCOD of the Project has been extended upto 08.01.2019. The Petitioner vide letter dated 01.01.2019 intimated the DoE, GoHP of synchronization of Project on 28.02.2019, in compliance of Govt. notification dated 17.08.2016 giving 60 days advance notice and accordingly, the DoE sent intimation to all the concerned departments vide letter dated 07.01.2019 that the Project is ready for commercial production. Copy of letters dated 01.01.2019 and 07.01.2019 are annexed as (Annexure P-17 (Colly)).

10. The Respondent No. 1, vide letter dated 07.02.2019 sent MoM of the 48th meeting of STU held on 03.01.2019 (Annexure P-18) that the Urni-Wangtoo D/C line can be completed only by 30.12.2019. In response to DoE's letter dated 07.01.2019, the Respondent No. 1 vide letter dated 30.01.2019 (Annexure P-19) informed the DoE and HPSEBL that the designated regular evacuation facility for Raura SHP will come up only by September 2019 but the Project has been provided interim connectivity by allowing solid tap with one circuit of 220 kV Kashang-Bhaba D/C line whose one circuit is charged at 66 kV and other circuit is charged at 220 kV and the interim arrangement can partially evacuate the power till the regular evacuation arrangement. The HPSEBL vide letter dated

12.02.2019 (Annexure P-20) informed the Respondent No. 1 that even partial power of the Raura SHP cannot be evacuated during peak generation period (May to September) on interim connectivity and advised for commissioning of the Project only after commissioning of Wangtoo Sub-station. The HPSEBL continued raising the said objection which is evident from letters dated 06.04.2019, 08.04.2019 and 24.04.2019 (Annexure P-2 Colly) and consequently, the commissioning of Raura SHP had to be delayed. As a result, the Petitioner suffered a huge financial loss to the tune of Rs. 14.6 Crores on account of forced loss of generation from March, 2019 till the readiness of Wangtoo Sub-station being the peak generation period.

11. The Petitioner vide letter dated 18.04.2019 (Annexure P-21) informed the DoE regarding rescheduling of commissioning of the Project and to resolve the matter to enable them to commission the Project. The Respondent No. 1 vide letter dated 03.08.2019 (Annexure P-22) informed the HPSEBL that keeping in view the ambient temperature and the fact that 220 kV Bhaba-Kunihar line is more than 30 years old and the representatives of Shaung and Brua SHEPs have confirmed that they have no objection for evacuation of power of Raura SHP through cable installed by them provided the generation of their Projects is not compromised and in post Wangtoo scenario, the evacuation of full power of Raura HEP can be allowed through Bhoktoo Sub-station for which the developer of Project/Petitioner has to lay a cable at Wangtoo from 220 kV Tower up to 66 kV feeder system and that the developer of Raura HEP shall survey the site for

laying of cable in consultation with PIU of the Respondent No. 1 for approval and the said arrangement shall continue till Respondent No. 1 Commission 66 kV Urni-Wangtoo D/C line.

12. The units of the Project were synchronized with the Grid on 09.09.2019 with limitation of power evacuation i.e. 1-4 MW and the DoE also extended SCOD of the Project upto 09.09.2019 through letter dated 27.01.2021. The additional cable arrangement from 220 kV line tower No. 91 to 66 kV feeders system was completed by the Petitioner for the interim arrangement as per MoM dated 02.08.2019.

13. The Respondent No. 1, vide letter dated 16.07.2020 (Annexure P-23) confirmed that from 08.05.2020, full power generated from the Project is being successfully evacuated through Wangtoo Sub-station. The Respondent No. 1 vide email dated 07.10.2021 shared with Petitioner, the copy of draft O&M agreement (Annexure P-24 Colly) and the Petitioner on 24.11.2021 submitted the final draft of O&M agreement (Annexure P-25) for execution. The Respondent No. 1 vide email dated 22.12.2021 (Annexure P-26) advised the Petitioner that before signing the O&M Agreement, the proof of complete payment of Bay cost in respect of 1 No. 66 kV Bay at 66 kV Switching Sub-station, Urni be produced and asked to take up the matter with System Planning Wing of the Respondent No. 1. The Petitioner accordingly took up the matter with System Planning Wing of the Respondent No. 1 vide letter dated 01.01.2022 (Annexure P-27). The Respondent No. 1 vide letter dated 06.01.2022 (Annexure P-28) asked the

Petitioner to deposit Bay cost for Bay No. 606 amounting to Rs. 3,33,26,851/- and informed the Petitioner that 66 kV Urni Sub-station has been commissioned and the Urni-Wangtoo Transmission line is expected to be completed by March, 2022. The Petitioner vide letter dated 09.03.2022 (Annexure P-29) requested the Respondent No. 1 to take a judicious and equitable view of the matter and requested to distribute the Bay cost equally amongst all the beneficiaries instead of making the Petitioner to bear all the cost and for distributing 24 MW in each Bay and charge the Bay cost accordingly.

14. It is averred that the Respondent No. 1 vide letter dated 14.03.2022 (Annexure P-30) had also sent a demand/bill approximately of the same amount i.e. 3,42,85,447/- to Brua Hydrowatt Private Limited (BHPL) for the another Bay out of the set of two Bays in the Urni Sub-station stating that the Brua SHP is sharing the Bay cost with two other Individual Power Producers i.e. Brua (9 MW), Shaung (3 MW) and Raura-II (24 MW). The Respondent No. 1 vide letter dated 01.04.2022 (Annexure P-31) refused to consider the request which has compelled the Petitioner to file the present Petition.

15. According to the Petitioner, the HPPTCL has abused its dominant position as imposition of entire Bay cost of one of the Bays on the Petitioner on the basis of connection agreement having installed capacity of only 12 MW is not justified. As per the Petitioner, the Urni Sub-station has been created for four Individual Power Producers but imposition of total cost of one Bay of Rs. 3,33,26,851/- out of total cost of Rs. 6.75 Crore for both Bays on the strength of

Connection Agreement is unjustified. Also averred that the liability of the Petitioner is liable to be restricted to the extent in proportion of its share i.e. 12 MW. Also that the Respondent No. 1 had initially created the facility of two Bays for the Projects of 40 MW and later on increased it to 48 MW and that the decision of the HPPTCL to construct two Bays of over installed capacity for only four IPPs having capacity of 48 MW in the region is without application of mind, illegal, arbitrary, discriminatory and against the settled position of law, especially when all the IPPs could be adjusted in a single Bay. Also averred that on the one hand, the Respondent No. 1 has allowed the three IPPs i.e. Brua (9 MW), Shaung (3 MW) and Raura-II (24 MW) having total capacity of 36 MW to share the cost of one of the Bays, but on the other hand, the Petitioner having capacity of 12 MW only has been asked to bear entire cost of one Bay which is illegal, arbitrary, discriminatory and without adopting the fair and transparent method.

16. It is averred that neither any agreement as per Clause 2.4 of the connection agreement at 23.06.2022 has been executed for the construction of Bay, if required, nor the construction cost of the Bay has ever been mutually agreed, hence, the demand is unreasonable. Also averred that the Respondent No. 1, has ignored the vital aspect that construction of Bays was its responsibility under the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium Term Open Access in Inter-state Transmission and Related Matters) Regulations, 2010 and Central Electricity Authority (Technical Standards for connectivity to the Grid) Regulations, 2007

and, thus, the action of the Respondent No. 1 by creating two Bays of approximately 60 MW each capacity and a transmission line capable of transmitting approximately 80 MW power with installed capacity of 48 MW only has resulted in wasteful expenditure. Also averred that the Petitioner has incurred huge expenses of approximately 65 lakh for erecting two additional transmission lines from Project switchyard to Tower No. 61 and the cost of cable scheme at Wangtoo from Tower No. 92 to Bay No. 607 of Wangtoo Sub-station as part of interim evacuation arrangement but ignoring all this, entire Bay cost has been imposed upon the Petitioner. Also averred that the Respondent No. 1 can't abuse its dominant position to burden the Petitioner with heavy cost.

REPLY OF RESPONDENT NO. 1

17. The Petition has been resisted and contested by the Respondent No. 1/HPPTCL by filing reply. As per the Respondent No. 1, the Petitioner has no cause of action to maintain the Petition which has been filed to avoid the liability accrued in favour of the Respondent No. 1, as the charges of the Bay are to be borne by the beneficiaries connected to the Bay and the Petitioner is the only beneficiary of the Bay and, thus, the charges have to be borne by the Petitioner and can't be shared among the others. As per Respondent No. 1, the matter is covered under Regulations 2 (32), 2 (33), 2(34), 5 (1) and (2) and Regulation 16 of the HPERC (General conditions of Transmission Licence) Regulations 2004 which have been re-produced in verbatim.

18. According to the Respondent No. 1, the Petitioner vide letter dated 17.10.2015 (Annexure P-6) had applied for the connectivity for Raura SHP (12 MW) which was granted vide letter dated 06.04.2016 (Annexure R-1/A) and the Respondent No. 1 vide Order dated 22.06.2016 (Annexure R-1/B) asked the Petitioner for signing the Connection Agreement on 23.06.2016. The connection details were conveyed by the HPPTCL vide letter dated 06.04.2016 for connection to Intra-state Transmission System and vide said letter at Sr. No. 8, one number of feeder/ Bay at Urni Sub-station was allotted to the Petitioner which was never objected to by the Petitioner and the Petitioner executed the Connection Agreement dated 23.06.2016 (Annexure P-8) as per the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long-term and Medium-term Intra-state Open Access and Related Matters) Regulations, 2010. It is averred that the Respondent No. 1 has calculated the Bay charges as per Clause (C) and Clause 2 of the Connection Agreement dated 23.06.2016 and in terms of mechanism approved by the Board of Directors (BOD for short) in its 47th meeting held on 19.11.2020. It is denied that the action/demand raised by the HPPTCL is illegal, unilateral, arbitrary, discriminatory and without adopting fair and transparent procedure.

19. It is reiterated that the charges of the Bay are to be borne by the beneficiaries for evacuating the power in joint mode being connected to the Bay which cannot be shared amongst the beneficiaries of other available Bays. As per the Respondent No. 1, 66 kV Urni Switching station with 4 number of 66 kV

Bays was constructed out of which 2 number of Bays have already been utilized for 66 kV Urni-Wangtoo transmission line and the other two Bays are constructed for injection of power from various Hydro Electric Projects. Further averred that the three IPPs namely Shaung (3 MW), Brua (9 MW) and Raura-II (24 MW) were also granted connectivity at Urni Sub-station which had planned to evacuate their power in a joint mode by signing connection agreement dated 02.07.2021 (Annexure R-1/D). As per Respondent No. 1, the Petitioner had applied for connectivity at 66 kV Urni Switching Station for which connection agreement was also signed.

20. According to Respondent No. 1, the Bay has been constructed by the HPPTCL on its own cost for the Project, hence Clause 2.4 of connection agreement does not come into play as no amount has been spent by the Petitioner and the said clause could have been applicable had the Bay was to be constructed by the Petitioner.

21. Also averred that all the 4 Bays (66 kV) have been constructed as per the standard rating used in the industry and have been kept identical to minimize the overall cost as well as O&M and inventory. The capacity of the Bay is limited by the conductor used to terminate the transmission line at Bay. Further in the present case, ACSR wolf conductor has been used as per manual of the Central Board of Irrigation and Power. The current rating of the same, at maximum Ambient Temperature of 35° C, Maximum conductor Temperature of 75° and July Month, is 392 Ampere. (i.e. maximum power being $3 \times 66 \times 354 \times 1 = 44.8$ MW).

At present, the power of Raura-II (24 MW), Shaung (3 MW) and Brua (9 MW) totaling 39.6 MW (with 10% over load) shall be evacuated in a joint mode as per connection agreement through one 66 kV Bay and the power from Raura SHEP the Project of the Petitioner shall be evacuated independently from/ through the single Bay as per Connection Agreement signed by the Petitioner and no violation of the Regulations or the Electricity Act, 2003 has been made.

22. No reply has been filed by Respondent No. 2.

REJOINDER

23. In rejoinder, the contents of the reply have been denied and those of the Petition have been reaffirmed.

SUBMISSIONS OF THE LD. COUNSEL

24. We have heard Sh. L.S. Mehta, Ld. Counsel for the Petitioner, Sh. Vikas Chauhan Ld. Counsel for Respondent No. 1 and Sh. Shanti Swaroop Ld. Legal Consultant for Respondent No.2.

25. It has been submitted by Sh. L.S. Mehta, Ld. Counsel for the Petitioner that the Respondent No. 1 has raised unreasonable and inequitable demand of Bay charges amounting of Rs. 3,33,26,851/- against the Petitioner without distributing the cost of two Bays equally amongst four power producers and have failed to settle the terms of Bay charges as per Clause 2.4 of the Connection Agreement dated 23.06.2016. According to him, the liability of the Petitioner to pay the cost of Bay is required to be restricted to the extent and in proportion to its share and use out of the total Bay capacity. According to him, there was no

rationale to built Urni Pooling Station for much higher capacity of 80 MW (two Bays of 40 MW each) which is contrary to the master plan and the order of the Commission for the 4th control period. It is also submitted that the interconnection facility at Urni Pooling Station has been created by the Respondent No. 1 for four IPPs of the area but imposition of the entire Bay cost of one Bay on the Petitioner, on the basis of the Connection Agreement dated 23.06.2016 is not justified. Further submitted that in another case (M/s Brua Hydro Watt Pvt. Ltd. Versus H.P. Power Transmission Corporation Ltd. and others, Petition No. 35/2022), the Respondent No. 1 has allowed sharing of the cost of one Bay amongst three Projects i.e. Brua (9 MW), Shaung (3 MW) and Raura-II (24 MW) having total capacity of 36 MW but in the case of the Petitioner, having installed capacity of only 12 MW, the burdening of the Petitioner with entire Bay cost of Rs. 3,33,26,851 is illegal, arbitrary, unreasonable and unjustified. Further submitted that the Respondent No. 1 has constructed two Bays of over installed capacity for only 4 IPPs having capacity of 48 MW without the application of mind which is arbitrary and discriminatory as all the IPPs of the area could have been adjusted in a single Bay.

26. Sh. Vikas Chauhan, Ld. Counsel for the Respondent No. 1, on the other hand has submitted that the Petitioner has been allotted an exclusive and separate Bay in the Switching Station as it was not possible to accommodate him in the Bay allotted to other 3 IPPs and, therefore, charges of the Bay are to be borne by the Petitioner and cannot be shared with the beneficiaries of other Bays.

According to him, the Respondent No. 1 has provided non-discriminatory access to the Petitioner as per HPERC (Grant of Connectivity, Long Term and Medium Term Intra-state Open Access and Related Matters) Regulations, 2010 and Sections 39 and 40 of the Electricity Act, 2003 and the charges have also been calculated as per the settled norms and no justifiable cause of action has accrued to the Petitioner for filing the Petition. Also submitted that the Bays have been constructed as per standard rating used in the industry and the assertion of the Petitioner in this regard is without any basis.

POINTS FOR CONSIDERATION

27. We have carefully gone through the pleadings and the submissions and have perused the entire record carefully. The following points arise for determinations in the Petition:-

Point No. 1:

Whether the Respondent No. 1 is required to claim the Bay charges from the Petitioner to the extent and in-proportion to the installed capacity of the Project of the Petitioner and the demand raised vide letter dated 06.01.2022 (Annexure P-28) and letter dated 01.04.2022 (Annexure P-31) is illegal, unreasonable and inequitable as alleged?

Point No. 2:

Whether the Respondent No. 1 has wrongly refused to sign the O&M agreement for the maintenance of transmission facility?

Point No. 3: Final Order

28. For the reasons to be recorded hereinafter in writing, our point wise findings are as under:

Point No. 1: No

Point No. 2: No

**Point No. 3:
(Final Order)** The Petition dismissed per operative part of the Order.

Reasons for findings

Points No. 1 and 2

29. Both these points being interlinked and interconnected are being taken up together for adjudication.

30. The entire controversy in the matter revolves around the payment of Bay cost in respect of one no. 66 kV Bay at 66 kV Switching Station, Urni amounting to Rs. 3,33,26,851/- as mentioned in the demand notice/ letter dated 06.01.2022 (Annexure P-28) and reiterated vide letter dated 01.04.2022 (Annexure P-31). According to the Petitioner, the imposition of entire Bay cost of one Bay out of 2 Bays in 66 kV Urni Sub-station vide letter dated 06.01.2022 is arbitrary and unreasonable and that a request had been made to the Respondent No. 1 to distribute the Bay cost equally amongst all the beneficiaries by distributing 24 MW in each Bay and charge the Bay cost from the Petitioner proportionately but the Respondent No. 1 has not acceded to the request. It is also the case of the

Petitioner that almost a similar demand of Rs. 3,42,85,447/- has been sent to M/s Brua Hydrowatt Pvt. Ltd. for the use of another Bay, out of the aforesaid two set of Bays in the 66 kV Urni Sub-station.

31. According to the Petitioner, the installed capacity of the Project of the Petitioner is only 12 MW and the Respondent No. 1 had initially created the facility of the aforesaid two Bays for the Projects of 40 MW which was later on increased to 48 MW and the decision of the Respondent No. 1 to construct two Bays over and above the installed capacity for only 4 Projects having capacity of 48 MW in the region is without application of mind, illegal, arbitrary, discriminatory and against the settled position of law especially, when all the 4 IPPs/Projects could have been adjusted in a single Bay. It is also the case of the Petitioner that the Respondent No. 1 has also incurred wasteful expenditure by creating two Bays of approximately 60 MW each capacity and a transmission line capable of transmitting approximately 80 MW power of the IPPs with installed capacity of only 48 MW in the area.

32. The Respondent, on the other hand has come out with a stand that one number feeder/Bay at Urni Sub-station was allotted exclusively to the Petitioner for which the Petitioner has signed the connection agreement on 23.06.2016 as per HPERC (Grant of Connectivity, Long Term and Medium Term Intra-state Open Access and Related Matters) Regulations, 2010 and the charges of the Bay have been calculated as per Clause (2) of the Connection Agreement dated 23.06.2016 (Annexure P-8) and the demand of the Bay cost is neither illegal nor

unilateral, arbitrary, discriminatory and without adopting fair and transparent method. It is also the stand of the Respondent No. 1 that the charges of the Bay are to be borne by beneficiaries for evacuating the power in a joint mode which cannot be shared amongst the beneficiaries of other available Bays and that 66 kV Urni Switching station was constructed for four (4) number of 66 kV Bays, out of which two number of Bays have already been utilized for 66 kV Urni-Wangtoo transmission line and other 2 Bays are constructed for injection of power from various Hydro Electric Projects. Also that the three IPPs/Projects namely, Shaung (3 MW), Brua (9 MW) and Raura-II (24 MW) have been granted connectivity at Urni Sub-station and said Projects had planned to evacuate the power in a joint mode by signing the agreement dated 02.07.2021 (Annexure R-1/D) and that the Petitioner had also applied for connectivity at 66 kV Urni Switching Station which has been granted vide letter dated 06.04.2016 by allotting him a separate Bay as mentioned at Sr. No. 8 of the letter.

33. As per Respondent No. 1, the Bays/ Interconnection Facility has been constructed by the HPPTCL on its own cost for the project of the Petitioner and other Projects of the area. Therefore, Clause 2.4 of the Connection Agreement does not come into play. Also that four Bays have been constructed as per the standard rating used in the industry and have been kept identical to minimize the overall cost as well as O&M and the inventory and that the capacity thereof is limited by the conductor used to terminate the transmission line at Bay.

34. Before advertng to the rival contentions, it is relevant to mention that no document has been placed on record by the Petitioner that the Bays/ Interconnection Facility is contrary to any settled norms or that only two Bays of 60 MW each have been constructed by the Respondent. Similarly, the Petitioner has not placed on record any document that the Bay allotted to three other Projects is capable to evacuate the Power of the Project of the Petitioner also or that any one of the IPP/Project out of the three IPPs/Projects had agreed to evacuate its Power with Petitioner in a joint mode.

35. Admittedly, the connectivity to the Petitioner was provided vide letter dated 06.04.2016 (Annexure R-1/A) and pursuant thereto, the Petitioner has signed the Connection Agreement with the Respondent No. 1 on 23.06.2016 (Annexure P-8). As per Clause (B) of the Connection Agreement, the Respondent No. 1 had agreed for the connection of the Raura (12 MW) Hydro Electric Project (Project of the Petitioner) to the STU System and communication system at connection point i.e. 66 kV Switching Station at Urni using the (Wave length) transmission and communication system of the STU to transmit electricity as well as real time data to and or from the facility through the STU's transmission and communication system. It was specifically agreed by the Petitioner to abide by the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long Term and Medium Term Intra-state Open Access and Related Matters) Regulations, 2010 in respect of the procedure of grant of connectivity and other matters.

36. Not only this, as per Clause 2.4 and 2.5 of the Connection Agreement, the Petitioner has agreed to pay the charges for the construction of Bays and O&M charges. Clauses 2.4 and 2.5 of the Connection Agreement are reproduced as under:-

2.4 Agreement to pay Charges for construction of Bays:

“The Applicant will execute an agreement with STU for the erection of equipment of Applicant or Intra-state transmission licensee/Distribution Licensee in the sub-station premises of the STU for construction of Bays, if required. For this purpose the Applicant shall pay charges to the STU on mutually agreed terms.

2.5 Agreement to pay O&M Charges:

The Applicant shall pay O&M charges to the STU on mutually agreed terms for the Bay equipment of Applicant being operated & maintained by the STU in their substation. These O&M charges will be governed time to time as per the mutually agreed terms.”

37. It is none of the case of the Petitioner that the cost of construction of Bay has been incurred by it. On the contrary, it has categorically been mentioned by the Respondent No. 1, in its reply, that the entire cost of construction of Bay has been borne by the Respondent No. 1. Once the Petitioner has specifically agreed to bear the construction cost of the Bay and one number Bay (Bay number 609) has specifically been allotted to the Petitioner, the cost thereof has to be borne by the Petitioner and none else. In so far as the contention of the Petitioner that no

agreement as per clause 2.4 of the Connection Agreement has been signed qua the Bay cost, it can safely be said that the construction of Bay/ Interconnection Facility is required for evacuation of the power and since no charges have been incurred by the Petitioner, the question of signing such agreement is not required. It is also relevant to mention here that without the construction of interconnection facility, it would not have been possible to evacuate the power.

38. Now the question arises for the consideration whether the Petitioner could have been accommodated with the other three IPPs/Projects i.e. Raura (24 MW), Brua (9 MW) and Shaung (3 MW). The total capacity of the aforesaid 3 Projects and the Project of the Petitioner comes to 48 MW without 10% overload. It has been claimed by the Petitioner that all the four Projects could have been accommodated in a single Bay and the cost could have been proportionately divided and there was no occasion to burden the Petitioner with the additional cost. The said contention of the Petitioner appears to be very attractive but is liable to be rejected for the reasons that the total capacity of the four Projects comes to 48 MW and during the peak season, the projects will generate energy with 10% overload meaning thereby the generation will certainly exceed 48 MW and as such it was not feasible to accommodate the Petitioner in another Bay allotted to 3 other IPPs as claimed. Thus, a separate Bay has been exclusively allotted to the Petitioner. Also that the three IPPs have agreed to evacuate the power in a joint mode by entering into the internal agreement dated 27.12.2019 and since the capacity of the each Bay is 40 MW only, hence, it was impossible

to accommodate the Project of the Petitioner in the Bay allotted to the other IPPs. Therefore, the arrangement which has been provided by the Respondent No. 1 is prudent and safe, not only for the purpose of smooth transmission of energy but also for the safety of the system.

39. It is relevant to refer to the reply of the Respondent No. 1 that the total 4 Bays have been constructed in the facility as per the standard rating used in the Industry which have been kept identical to minimize the cost as well as O&M and inventory which also negates the contention of the Petitioner. It is also mentioned in the reply that the capacity of the Bay is limited by the conductor used to terminate the transmission line at Bay and ACSR Wolf Conductor which has been used in the system, the current rating of the same, at maximum Ambient Temperature of 35° C, Maximum conductor Temperature of 75° and July Month, is 392 Ampere. (i.e. maximum power being $3 \times 66 \times 354 \times 1 = 44.8$ MW). At present, the power of Raura-II (24 MW), Shaung (3 MW) and Brua (9 MW) totaling 39.6 MW (with 10% over load) shall be evacuated in a joint mode as per the agreement through one 66 kV Bay and with 10 % overload, the capacity comes to 39.6 MW. Therefore, if the power of the Project of the Petitioner is also evacuated through the same Bay, as observed above, the same will exceed the capacity of the Bay and will result in non evacuation of any power and would also endanger the system. Hence, the Petitioner has been allocated a separate Bay so as to ensure smooth evacuation of power.

40. Now the next question which arises for consideration whether it was permissible for the Respondent No. 1 to accommodate any one of the three IPPs/ Projects in the Bay allocated to the Petitioner so as to divide the cost of Bay proportionately. The answer to aforesaid proposition is in negative for the reasons that the Petitioner has not produced any agreement entered by it with any of said 3 projects that they were ready for joint evacuation with the Petitioner. On the contrary, the other three IPPs Brua (9 MW), Shuang (3 MW) and (Raura-II 24 MW) had formed a consortium to evacuate power of their respective projects in a joint mode by signing an internal agreement mutually agreeing to pool their power to be generated from their respective Projects jointly through a common 66 kV terminal Bay at Urni and authorized M/s Brua Hydro Watt Private Limited to sign the Connection Agreement with HPPTCL and on the strength thereof, M/s Brua Hydro Watt Private Limited signed Connection Agreement dated 02.07.2021 (Annexure R-1/D) with the Respondent No. 1. Thus, it was not permissible for Respondent No. 1 to accommodate the Petitioner with the other three Projects as claimed. Therefore, the Petitioner has rightly been allocated a separate Bay.

41. The Respondent No. 1, in its reply has relied upon Regulations 2, 5 and 16 of the HPERC (General Conditions of Transmission License) Regulations, 2004. The Petitioner has signed the connection agreement dated 23.06.2016 (Annexure P-8), the terms and conditions whereof are binding upon the parties. The Regulation 5 of the aforesaid Regulations provides that transmission licensee

shall duly discharge the duties of the transmission licensee as provided under Section 40 of the Electricity Act, 2003 which provides for non discriminatory open excess to the transmission system for the use of the licensee and the generating companies but said non discriminatory open excess is subject to availability of the transmission capacity in the transmission lines in the case of use of such transmission system and Regulation 16 of the aforesaid Regulations also provides for non discriminatory open excess to the use of the transmission system by the users, however, subject to the availability of the adequate transmission capacity in accordance with Open Access Regulations i.e. HPERC (Grant of Connectivity, Long Term and Medium Term Intra-state Open Access and Related Matters) Regulations, 2010 notified by the Commission and further subject to users agreeing to pay all applicable charges including the transmission charges and surcharges wherever applicable. Apparently, the Petitioner applied for the connectivity and such connectivity has been provided vide letter dated 06.04.2016 and 22.06.2016 (Annexure R-1/A and R-1/B) and as observed above, as per Serial No. 8 of letter dated 06.04.2016 (Annexure R-1/A), one number feeder Bay was exclusively allotted to the Petitioner meaning thereby that the power of the Project of the Petitioner has to be evacuated from said exclusive feeder allotted to the Petitioner and the Connection Agreement has been signed by the Petitioner without objecting to the same. The Petitioner had agreed to bear the charges of Bays etc. for using the transmission system. Therefore, the Open Access has been provided to the Petitioner without any discrimination. Hence, the

Petitioner has not been able to substantiate that the Respondent No. 1 has denied to it the open access or has discriminated in any manner preferring Petitioner to some other Project developers.

42. It is clear from the reply of the Respondent No. 1 that in the case of ACSR Wolf conductor, which has been used in the system, the current rating of the same, at maximum Ambient Temperature of 35° C, Maximum conductor Temperature of 75° and July Month, is 392 Ampere. (i.e. maximum power being $3 \times 66 \times 354 \times 1 = 44.8$ MW). At present, the power of Raura-II (24 MW), Shaung (3 MW) and Brua (9 MW) totaling 39.6 MW (with 10% over load) shall be evacuated in a joint mode as per connection agreement through one 66 kV Bay.

43. Since as per Regulations 16 of the HPERC (General Conditions of Transmission License) Regulations, 2004, the open access to the transmission system is to be provided subject to availability of adequate transmission capacity at maximum ambient temperature to the extent of 44.8 MW. Thus, it is not possible to accommodate the Petitioner with said three Projects in a single Bay as claimed as the total capacity of the four Projects without 10% overload itself becomes 48 MW (Brua 9 MW, Shaung 3 MW, Raura-II 24 MW and Project of the Petitioner Raura 12 MW). Therefore, neither the Respondent No. 1 has violated the HPERC (General Conditions of Transmission License) Regulations, 2004 nor the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long Term and Medium Term Intra-state Open Access and Related Matters) Regulations 2010) framed by this Commission nor the provisions of the

Electricity Act, 2003 in providing open access to the Petitioner. Once the Petitioner has agreed for evacuation of Power through the system of the Respondent No. 1, the Petitioner as agreed vide Connection Agreement has to bear the charges of Bay and other charges. The Petitioner has not been able to substantiate that the Bay charges claimed from it by the Respondent No. 1 to the extent of Rs. 3,33,26,851/- vide letter dated 06.01.2022 are illegal, unreasonable and inequitable or that such charges should be in-proportion to the installed capacity of the Project of the Petitioner.

44. Since the transmission facility has been created by the Respondent No. 1 for the use of the Petitioner and the other Project developers and a connection agreement has also been signed by the Petitioner vide which the Petitioner has agreed to bear O&M charges, the Petitioner has no option but to sign the O&M agreement for the maintenance of transmission facility and no fault can be attributed to the Respondent No. 1 for asking the Petitioner to pay the Bay charges before signing the O&M agreement.

45. Though, the Ld. Counsel for the Petitioner has relied upon the law laid down by Hon'ble APTEL in Appeal No. 264 of 2019, 232 of 2019 and 77 of 2020 decided on 03.11.2020 and the law laid down by Hon'ble Supreme Court in (2004) 3 Supreme Court Cases 214 and (1990) 3 Supreme Court Cases 752 but the law laid down therein has no application to the facts and circumstances of the present case.

46. In view of the above, the Petitioner has miserably failed to establish that the demand raised by the Respondent No. 1 vide letter dated 06.01.2022 to deposit the Bay cost amounting to Rs. 3,33,26,851/- is arbitrary, illegal, discriminatory and the Bay charges should have been demanded by the Respondent No. 1 from the Petitioner in-proportion to the installed capacity of the Project of the Petitioner. However, in future if any other IPP will be connected to the Bay already allotted to the Petitioner, in that case, the Petitioner will be entitled to recover the amount incurred by it as cost of Bay in-proportion to the installed capacity. Similarly, the Petitioner has failed to establish on record that the Respondent No. 1 has wrongly refused to sign the O&M agreement. Point No. 1 and 2 are accordingly answered against the Petitioner and in favour of the Respondent No. 1.

Point No. 3 (Final order)

47. In view of our aforesaid discussion and findings, there are no merits in the Petition which is accordingly dismissed. The pending applications, if any, are also disposed off.

The file after needful be consigned to record.

Announced
07.02.2023

(Shashi Kant Joshi)
Sharma)

Member

(Yashwant Singh Chogal)

Member(Law)

(Devendra Kumar

Chairman