

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

Petition No: 34 of 2022
Date of Institution: 30.05.2022
Arguments Heard on: 17.11.2022
Decided on: 15.12.2022

The All India Renewable Energy
Protection Association
Top Floor 3, Scindia House, Janpath,
New Delhi, 110001.

Petitioner

Versus

The HP State Electricity Board Ltd., through its
Chief Engineer (Commercial),
Vidyut Bhawan, Shimla 171004.

Respondent No. 1

The HIMURJA, through its
Chief Executive Officer,
SDA Complex, Kasumpti Shimla 171009

Respondent No. 2

The Directorate of Energy, through its
Director,
Shanti Bhawan, Sector-6, Phase III,
New Shimla-171009.

Respondent No. 3

**Petition under Section 62 and Sections 86 (1) (b), (e) and (k) of the
Electricity Act, 2003 read with Regulation 45 of the HPERC (Promotion
of Generation from the Renewable Energy Sources and Terms and
Conditions for Tariff Determination) Regulations, 2017 seeking re-
determination of annual generic tariff for the period between 01.04.2022
to 30.09.2023.**

CORAM

**DEVENDRA KUMAR SHARMA
CHAIRMAN**

**YASHWANT SINGH CHOGAL
MEMBER (Law)**

**SHASHI KANT JOSHI
MEMBER**

Present:-

- Sh. Vikas Chauhan, Ld. Counsel for the Petitioner.
- Sh. Surinder Saklani, Ld. Counsel for Respondent No. 1.
- Ms. Kamlesh Shandil, Ld. Counsel for the Respondent No. 2.
- Sh. Shanti Swaroop, Ld. Legal Consultant for Respondent No. 3.

ORDER

This Petition has been filed under Section 62 and Sections 86 (1) (b), 86 (1) (e) and 86 (1) (k) of the Electricity Act, 2003 read with Regulation 45 of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017, as amended from time to time (hereinafter to be referred to as RE Tariff Regulations, 2017) seeking re-determination of annual generic tariff for the period between 01.04.2022 to 30.09.2023, by the Petitioner, a non-profitable organization aimed to protect and promote the Renewable Energy.

2. It is averred that the Commission vide Notification No. HPERC/428, dated 16.11.2017 has notified the RE Tariff Regulations, 2017, providing for terms and conditions and the procedure for the determination of generic tariff of the different categories of Renewable Energy generating stations. The Regulation 3 of the RE tariff Regulations, 2017, applies to all the renewable energy generating projects, commissioned during the control period, whose tariff is to be determined by this Commission under Section 62 read with Section 86 of the Electricity Act 2003 (hereinafter to be referred as the Act for the short).

3. As per Regulation 9 of RE tariff Regulations, 2017, the control period for the Small Hydro Projects (SHPs for short) was from 1st Oct., 2017 to 31st March, 2020. However, the RE Tariff Regulations, 2017 were further amended

by the Commission vide Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (4th Amendment) Regulations 2020 vide which the third control period has been fixed from 1st April 2020 to 30th September 2023. It is averred that as per Regulation 9 (2) of the RE Tariff Regulations, 2017, as amended by the 4th Amendment read with Regulation 10 of the said Regulations, the tariff determined in accordance with said Regulations for the SHPs Commissioned during the control period shall remain valid for a period of 40 years. Further averred that the tariff period has been further defined under Regulation 2(1) (ab) of the aforesaid Regulations, as the period for which the tariff is to be determined by the Commission in accordance with the norms specified under the RE Tariff Regulations 2017 as amended. Also averred that Regulation 14 of the RE Tariff Regulations, 2017 as amended further provides that the Commission shall specify the financial norms for the duration of respective control period to be used for determination of tariff for various renewable energy technologies and shall determine the separate Generic Levellised Tariff for the SHPs within (90) days from the date of notification.

4. Further that the Commission vide Order dated 22.12.2020 in Suo-Moto Petition No. 76/2020 (hereinafter to be referred as the Tariff Order) has determined the Generic Levellised Tariffs for the SHPs for the third control

period w.e.f. 1st April, 2020 to 30th September, 2023 by considering the Normative Capital Costs for the SHPs as under:-

Category of SHP	Rupees (in Lac) per MW of the installed capacity
Above 100 kW to 2 MW capacity	1100
Above 2 MW but below 5 MW capacity	1100
5 MW to 25 MW capacity	1100

5. Further the Commission vide aforesaid Tariff Order, Annexure P/2 has determined the Tariff for the SHPs by considering the Normative Capital Cost as Rs. 1100 lakh per MW as under :-

Category of SHP	Generic Levellised Tariff (without Subsidy)	Indicative Generic Levellised Tariff by considering Subsidy/Incentive/Grant etc of Rs 100 Lac/MW
Above 100 kW to 2 MW capacity	Rs. 4.54 /kWh	4.27/kWh
Above 2 MW but below 5 MW capacity	4.67 /kWh	4.39 /kWh
5 MW to 25 MW capacity	4.49 /kWh	4.19 /kWh

6. As per the Petitioner, after the aforesaid Tariff Order, the prices of material required for the construction of a hydroelectric power plant have increased manifold and as per the Wholesale Price Index (WPI) as published by the Office of the Economics, Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, Annexure P/3, the WPI of the following commodities required for the construction of the hydroelectric power plant in November, 2020 and April 2022 is as under:-

Commodity	WPI in November 2020	WPI in April 2022
Manufacture of clay building materials	113.3	135.5
Manufacture of cement, lime and plaster	119.1	131.6
Mild Steel - Semi Finished Steel	100	133.8
Manufacture of fabricated metal products, except machinery and equipment	115.9	137.8

7. It is averred that as a natural corollary of the sharp inflation in the price of the commodities required for the construction of a hydroelectric power plant, the cost of the construction of the plant has also increased proportionately. Therefore, the Normative Capital Cost of the hydro electric power plant which might be commissioned in April 2022 onwards would be far greater than the normative capital cost arrived at by the Commission while deciding the tariff in December 2020 vide the aforesaid Tariff Order. Consequently, the generators of the recently commissioned projects would incur huge losses and, therefore, the decision of keeping the same tariff in April 2022 as that of December 2020 is totally unjustified.

8. According to the Petitioner, the Hon'ble Central Electricity Regulatory Commission (hereinafter to be referred as CERC for short) has made a provisions for the determination of generic tariff for the Renewable Energy Projects atleast one month before the commencement of the year for each year of the control period in the Regulation 8 of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2020 (hereinafter to be referred as CERC Tariff Regulations 2020). Further that even though the control period under CERC

Tariff Regulations 2020 is for three years but the CERC determines the tariff for each year of the control period. Therefore, the Commission (HPERC) may consider doing the same so as to ensure that the tariff is in conformity with ground realities and the rate of tariff which may be applicable for the first year of the control period may not be applicable to the final year.

9. Also averred that Covid-19 Pandemic, has severely affected the power sector and, therefore, all the renewable energy as also the transmission and generation projects have been granted the extension in their Scheduled Date of Commissioning but due to the under pricing of the tariff, the SHPs are facing severe financial hardships as there has been massive inflation in the prices of the commodities required for the construction of the hydroelectric power plant as indicated in the WPI, the average of which between October 2019 and March 2020 and October 2020 and March 2022 was as under:-

Commodity	Average WPI between October 2019 and March 2020	Average WPI between October 2021 and March 2022
Manufacture of clay building materials	104.1	127.00
Manufacture of cement, lime and plaster	118.5	127.80
Mild Steel - Semi Finished Steel	94.6	121.60
Manufacture of fabricated metal products, except machinery and equipment	115.2	132.90

10. As per the Petitioner, the Tariff fixed vide Tariff Order is not reflective of hardship faced by the SHPs, especially Covid-19 Pandemic, due to which return of the power developers has drastically gone down. It is claimed that the

Petitioner is not asking for an increase in the rate of tariff but requesting the Commission to offset losses in respect of SHPs. Also averred that the Scheme of the Electricity Act, 2003 (Act for short) envisages a reasonable return on the investments made by the power developers and it is the responsibility of the Commission under Section 61 read with Section 86 of the Act to ensure reasonable returns on the investment made by the power developers but the Tariff Order dated 22.12.2020 has not taken this fact into account. Also averred that the increase in the cost for setting up of SHPs and non increase in the generic tariff will result in not taking keen interest by the developers to build the SHPs.

11. It is also averred that the Commission has power under Regulation 45 of the RE Tariff Regulations, 2017 as amended to relax any of the provisions of the said Regulations, therefore, on account of circumstances as mentioned hereinabove, the Commission may consider granting appropriate relief. Also averred that the Commission under Section 86(1)(b) of the Act is vested with the powers to Regulate the purchase of electricity and procurement process of distribution licensees, including the price at which the electricity shall be procured. Not only this, the Hon'ble Supreme Court in catena of judgments has held that the power to regulate is a very wide power enabling the authority to take any such measures in order to achieve the objectives of the Act. Further Section 61 (h) of the Act also provides that the Commission while specifying the terms and conditions for determination of the tariff shall be guided by the

promotion of generation of electricity from the renewable sources of energy and Section 86 (1) (e) of the Act also enlists the promotion of co-generation and generation of electricity from the renewable sources by providing suitable measures for connectivity with the grid and sale of electricity, as one of the functions of the Commission and in case the SHPs are not appropriately compensated by determination of the appropriate tariff, the SHPs shall suffer losses in setting up of SHPs, which would amount to derogation of the Scheme of the Act. Hence, the Petition for re-determination of Tariff w.e.f. 01.04.2022 to 30.09.2023 during the 3rd Control period.

12. The Petitioner had not impleaded important stakeholders of the Power Sector i.e. HP State Electricity Board Ltd., HIMURJA (Himachal Pradesh Energy Development Agency) and Directorate of Energy, Govt. of HP as necessary parties, therefore, vide Order dated 28.06.2022, the Commission impleaded HP State Electricity Board Ltd., Himurja and Directorate of Energy as Respondents No. 1 to 3 to the Petition and issued notice to them.

13. The Respondent No. 1 HPSEBL, has contested the Petition by filling reply raising preliminary objection, *intra*lia, that the Petition is neither maintainable nor competent as determination of tariff is the statutory function of the Commission and that as per the mandate of the Tariff Policy, 2016 for the determination of tariff, Multi Year approach has been adopted by the Commission and that the frame work should feature a five year control period, however, the initial control period may be of three years duration for

transmission and distribution, if deemed necessary by the Commission, on account of data uncertainties and other practical considerations. Further averred that while determining the tariff for the 3rd Control Period, the Commission has considered all aspects and objections/suggestions (of stakeholders) and the Tariff Order has been issued after meeting all the codal formalities as required and, thus, the assertion of the Petitioner that the approach adopted by the Commission is required to be changed is totally fallacious and liable to be rejected. Also averred that MYT frame work has been designed to provide predictability and to reduce regulatory risk and the longer time span enables to propose investment plan with detail on the possible sources of financing and the corresponding capitalization scheme for each investment. Also averred that as per the Hydro Policy, 2006 (amended in 2018), the tariff has been linked with the Commercial Operation Date of the project, hence, the concern of the project developers have been duly addressed. Also averred that under the RE Tariff Regulations, 2017 as amended if the Renewable Project Developers are not satisfied with the Generic Levellised Tariff, the project developers are at liberty to seek project specific tariff. Hence, the Petition is misuse of the process of law.

14. As per Respondent No. 1, the contention of the Petitioner to re-determine the Tariff is wrong as the Tariff Order has been issued by the Commission as per the mandate of Section 64 of the Act after taking into consideration all relevant factors. Further averred that the plea of the Petitioner

that the Commission should re-determine the tariff for the remaining control period w.e.f. 01.04.2022 to 30.09.2023 is not tenable being contrary to the Tariff Order and RE Tariff Regulations, 2017, as amended, by the 4th Amendment Regulations, 2020. Also averred that after taking into consideration financial and Technological parameters, the Tariff Order has been passed and the adequate hike has been granted which is as under:-

SHP Category	Control Period Specified under RE Regulations 2017	Project Cost (in Lacs/MW)	Hike (in % stage)	O & M Exp. (in Lacs/MW)	Hike (in % age)	Tariff(Rs/kWh)	Hike (in %age)
above 100 kW upto 2 MW	1 st Control Period (wef 01.10.2017 to 30.09.2019)	880	12.8%	33	32.0%	3.79	13.5%
	2 nd Control Period (wef 01.10.2019 to 31.03.2020)	1000	13.6%	37	12.1%	4.49	15.6%
	3 rd Control Period (wef 01.04.2020 to 30.09.2023)	1100	10.0%	41.78	12.9%	4.54	1.1%
above 2 MW and below 5 MW	1 st Control Period (wef 01.10.2017 to 30.09.2019)	850	13.3%	29	31.8%	3.61	10.4%
	2 nd Control Period (wef 01.10.2019 to 31.03.2020)	1000	17.6%	32	10.3%	4.38	17.6%
	3 rd Control Period (wef 01.04.2020 to 30.09.2023)	1100	10.0%	41.78	30.6%	4.49	2.4%
5 MW and above upto 25 MW	1 st Control Period (wef 01.10.2017 to 30.09.2019)	800	14.3%	24	33.3%	3.44	8.5%
	2 nd Control Period (wef 01.10.2019 to 31.03.2020)	900	12.5%	27	12.5%	4.04	14.9%
	3 rd Control Period (wef 01.04.2020 to 30.09.2023)	1100	22.2%	31.34	16.1%	4.49	10.0%

15. Also averred that the Renewable Energy Generators have the option to go for the determination of the project specific tariff under Regulation 15 of the

RE Tariff Regulations, 2017, as amended, in case they are not satisfied with the Generic Levellised Tariff as determined by the Commission. Also averred that as per Regulations 14 (2) of RE Tariff Regulations, 2017, as amended, the tariff being normative, any shortfall or gain due to performance or on account of any other reason is to be borne/retained, as the case may be, by the Renewable Energy Generator. Also averred that the Regulations framed by the CERC are only of guiding in nature and the State Commission is vested with the Powers to frame its own Regulations under Section 181 of the Act and that the Commission has duly considered the same while framing the RE Tariff Regulations, 2017 further amended by 4th Amendment and while determining the tariff. Also averred that the grievances of Renewable Energy Project Developers have been duly redressed by the State Government while framing Hydro Policy, 2006 and providing COD linking tariff. Moreover One Time Amnesty Scheme is also a major incentive for the Renewable Energy Developers wherein the zero date has been redefined and that power to relax does not ipso facto mean the power to re-determine the tariff or amend/vary the mandate of the Regulations. Further that in view of the specific Regulations covering the area, the Commission may not invoke the powers in contravention of said Regulations. In nutshell, the case of the Petitioner has been denied.

16. No reply has been filed by Respondent No. 2 and 3.

17. In rejoinder, the contents of the reply of the Respondent No. 1 have been denied and those of the Petition have been reiterated.

18. We have heard Sh. Vikas Chauhan, Ld. Counsel for the Petitioner, Sh. Surinder Saklani, Ld. Counsel for Respondent No. 1, Ms. Kamlesh Shandil, Ld. Counsel for the Respondent No. 2 and Sh. Shanti Swaroop, Ld. Legal Consultant for Respondent No. 3.

19. Sh. Vikas Chauhan, Ld. Counsel for the Petitioners has submitted that the Commission has determined the Generic Levellised Tariff as per RE Tariff Regulations, 2017 as amended by 4th amendment Regulations 2020 vide which the 3rd control period was fixed with effect from 1st April, 2020 to 30 September 2023 and vide Tariff Order dated 22 December 2020 in Petition No. 76/2020 but after passing the Tariff Order, the prices of construction material for construction of Hydro Electric Power plants have increased manifold and the wholesale Price Index of the building materials, cement, steel and fabricated metal product etc. has also increased substantially and thereby the cost of construction of Hydro Electric Power has increased proportionately. Resultantly, the normative capital cost of the plant which might be commissioned in April 2022 would be far greater than the normative capital cost as arrived by the Commission while deciding the tariff in December, 2020. According to him, the decision of keeping the same tariff in the year April 2022 as that of December 2020 is totally unjustified. According to him, the CERC on the other hand, has made a provision for determination of Generic Tariff for the Renewable Energy Projects on year to year basis during the control period in the CERC Tariff Regulations, 2020 to address the issue of

Price escalation. According to him, the Covid-19 pandemic has further aggravated the situation and has impacted the power sector, as a result, the SHPs are facing severe financial hardship but the tariff fixed by the Commission vide Tariff Order dated 22nd December, 2020 is not reflective of hardship faced by the SHPs, Therefore, the return of the developers has drastically gone down. According to him, it is the responsibility of the Commission under section 61 read with section 86 of the electricity Act to ensure that there should be reasonable returns on the investment made by the power developers and increase in the cost of setting up the Small Hydro Projects and non-increase in the generic tariff will result in developers not taking interest to build the SHPs. According to him the Commission has wide powers under Regulations 45 of RE tariff Regulations 2017 to relax any of the provisions of the Regulations, therefore, the tariff determined vide order dated 22.12.2020 is required to be determined for the current control period w.e.f 01.04.2022 to 30.09.2023.

20. Sh. Surinder Saklani, Ld. Counsel for Respondent No. 1 on the other hand has submitted that the Commission while determining the tariff for the 3rd control period has considered all the aspects including price escalation, as such, the tariff as determined by the Commission vide Tariff Order does not require any change. Further that as per Hydro Policy 2006 (amended in 2018), the tariff has been linked with the Commercial Operation Date vide which all the concerns raised by the Project developers have been duly addressed. Not

only this, if the Renewable Project developers are not satisfied with the Generic Levellised Tariff, as determined by the Commission, the Project developers are at liberty to seek Project specific tariff. According to him, the Petition is neither competent nor maintainable and rather, the same is abuse of the process of law and liable to be dismissed.

21. We have carefully considered the submissions and have perused the record. The following points arise for determination in this Petition.

1. Whether the tariff for the Small Hydro Projects determined by the Commission vide Tariff Order dated 22.12.2020 determining the Generic Levellised Tariff for the Small Hydro Projects for the 3rd control period under the RE Tariff Regulations, 2017 as amended by the 4th amendment Regulations, 2020 is required to be re-determined for the period w.e.f. 01.04.2022 to 30.09.2023 ?

2. Final Order

22. For the reason to be recorded hereinafter, our point was finding are as under:-

Point No. 1: No

Point No. 2 : Petition dismissed per operative part of the Order.

Reasons for findings

Point No. 1

23. The simple contention of the Petitioner is that the Commission has determined the Generic Levellised Tariff for the 3rd control period w.e.f. 1st

April, 2020 to 30 September, 2023 but the prices of the construction material have increased substantially and WPI has also increased which is indicated as under :-

Commodity	WPI in November 2020	WPI in April 2022
Manufacture of clay building materials	113.3	135.5
Manufacture of cement, lime and plaster	119.2	131.6
Mild Steel-Semi Finished Steel	100	133.8
Manufacture of fabricated metal products, except machinery and equipment	115.9	137.8

24. Consequently, as per the Petitioner, the construction cost of the Hydro Power Project has been proportionately increased but the tariff determined for the 3th control period, vide Tariff Order does not take into account such escalation which is causing great financial hardship to the Project developers as the Project which is commissioned in April 2022 would be compelled to choose the tariff determined in the year 2020.

25. Thus, a question arises as to whether the Generic Levellised Tariff determined by the Tariff Order for the 3rd control period is operating as a great financial hardship to the Project developers. Apparently, the Generic Levellised Tariff as determined vide Tariff Order under RE Tariff Regulations, 2017, as amended by 4th Amendment Regulations, 2020, is for the entire 3rd control period ending on 30.09.2023. The RE Tariff Regulations, 2017, as amended, do not contain any provision for re-determination of tariff within the control period. However, while determining the tariff, for the entire 3rd control period, all relevant normative parameters on average basis for the control

period, normative capital cost components without limitation, escalation and interest costs likely to be incurred upto the end of 3rd control period have been taken into consideration. Therefore, the apprehension of the Petitioner that a Project being commissioned in April, 2022 would be compelled to choose the tariff determined in the year 2020 is not well founded.

26. Significantly, the Project developers are not bound to choose the tariff determined by the Tariff Order for the 3rd control period under RE Tariff Regulations, 2017, as amended, as Regulation 15 of the RE Tariff Regulations, 2017, as amended, provides an alternate remedy to the developers to seek project specific tariff, which would certainly take into consideration the aspect of cost escalation, on being established by the Project developer. The Regulation 15 of RE Tariff Regulations, 2017, as amended is reproduced as under:-

“15. Project specific levelled tariff.—*(1) Where the parties to a power purchase agreement [for a project] have mutually agreed, in such power purchase agreement for which joint petition is filed before the Commission on or after commencement of these Regulations, and is thereafter approved by the Commission, and executed thereafter by the parties, opted for a project specific levelled tariff, the Commission shall determine such tariff taking into consideration—*

- (i) prudent capital cost as may be admitted by the Commission duly keeping in view normative capital cost under these Regulations, the cost approved in the Detailed Project Report, the actual expenditure incurred as per auditor’s certificate, the information furnished under regulation 19:*

Provided that in case of delay in execution of the project, the Commission shall consider the time over run cost as follows—

- (a) where the delay is due to factors entirely attributable to the renewable energy generator, the entire cost shall be borne by the renewable energy generator;*
- (b) where the delay is due to force majeure, the Commission may allow the net additional cost incurred on this account to the renewable energy generator; and*

- (c) *in a situation not covered under clauses (a) and (b), the Commission may allow the additional cost, not exceeding 50% of the net additional cost incurred due to time overrun:*

Provided further that the renewable energy generator shall be deemed to have subscribed to the requisite insurance policies covering the risks during construction stage and also to have stipulated provisions for the liquidated damages in the contracts relating to the construction of the project, awarded by him, as per the prudent practices, and accordingly, in case of any time and cost over runs, the Commission shall not allow any amount which is or would have been recoverable by him on account of such deemed provisions for Insurance and liquidated damages:

Provided further that any cost pertaining to allotment of the project, including upfront premium and any other amount charged by the State Government while granting extension or capacity enhancement or/and any liquidated damages/penalty imposed by the State Government in accordance with the implementation agreement and/or those imposed by the licensee in accordance with the power purchase agreement] will not form part of the capital cost;

- (ii) *the normative annual capacity utilisation factor specified under Chapter-V, or in case of small hydro projects upto 100 kW capacity fixed in the orders issued under Regulation 14 of these Regulations for the small hydro projects or the annual capacity utilisation factor worked out on the basis of data for 75% dependable year as per the approved/concurred Detailed Project Report, whichever is higher;*
- (iii) *the technology specific parameters as specified for the small hydro projects in Chapter V, or in case of small hydro projects upto 100 kW capacity fixed in the orders issued under Regulation 14, of these Regulations and as may be laid down by the Commission for the other renewable technologies as per regulation 18;*
- (iv) *financial norms/principles, in relation to the renewable energy technologies based power projects, as specified in Chapter-IV of these Regulations, which shall except for capital cost, be considered as ceiling norms; and*
- (v) *the ceiling tariff (s), if any, fixed by the Commission for the respective categories of the renewable energy technologies based power projects:*

Provided that if the licensee and renewable energy generator have, in accordance with regulations 32 or 32-A or 32-B and 42, agreed in the power purchase agreement executed by them after prior approval of the Commission to any improved norms, including operation and maintenance norms, which may lead to overall reduction in the levellised tariff, such improved norms shall apply for determination of the project specific levellised tariff.

- (2)Where the project specific levellised tariff, as determined under sub-regulations (1)—
- (i) *exceeds 105% of the corresponding generic levellised tariff, duly adjusted for permissible rate of free power if any, determined by the Commission in relation to the control period or other provisions under which the power*

purchase agreement was approved by the Commission, the distribution licensee shall have the option to exit from the power purchase agreement, provided that this option shall not be available to the distribution licensee if the renewable energy generator agrees to keep the tariff within the aforesaid limit;

- (ii) *is less than 95% of the corresponding generic levelled tariff, duly adjusted for permissible rate of free power if any, determined by the Commission in relation to the control period or other provisions under which the power purchase agreement was approved by the Commission, the renewable energy generator shall have the option to exit from the power purchase agreement, provided that this option shall not be available to the renewable energy generator if the distribution licensee agrees to keep the tariff within the aforesaid limit.*

(3) *Where the exit option is exercised by any party under sub-regulation (2) and the interconnection point for that project falls under the control of the distribution licensee, it shall, on request from the renewable energy generator, provide open access through its system to the renewable energy generator as per the open access regulations.”*

27. Therefore, the tariff as determined vide order dated 22.12.2020 under the RE Tariff Regulations, 2017 as amended by the 4th Amendment Regulations, 2020, does not in any manner operate as hardship to the Project developers as projected. Otherwise also, the tariff, as determined under said Regulations, is not binding on the power generators, who have the option to seek Project Specific Tariff as mentioned above.

28. The next contention of the Petitioner that the Central Electricity Regulatory Commission has also devised a mechanism for determination of generic tariff for control periods and Regulation 8 of the Central Electricity Regulatory Commission i.e. Central Electricity Regulatory Commission (Tariff Regulations), 2020 provides that in case of the Renewable Energy for which generic tariff has to be determined, the CERC shall determine such generic tariff atleast one month before the commencement of year for each of the control period. Regulations 8 of the CERC (Terms and Conditions for Tariff

Determination from Renewable Energy Sources) Regulations 2020 is reproduced as under:-

“8. Petition and proceedings for determination of tariff

- (1) In case of renewable energy projects for which generic tariff has to be determined as per these regulations, the Commission shall determine such generic tariff at least one month before the commencement of year for each year of the Control Period:*
- (2) Provided that for first year of Control Period i.e., from 1.7.2020 to 31.3.2021, the generic tariff shall be determined upon issuance of these regulations.”*

29. Apparently, the State of HP has its peculiar circumstances. Thus, the above contention of the Petitioner is not tenable for two reasons. Firstly, as observed above, the tariff determined by the Commission vide Order 22.12.2020 under the RE Tariff Regulations, 2017, as amended, is not binding and, rather, the same facilitates the power generator to choose the tariff as determined under these Regulations. Secondly, the power generator is at liberty to seek Projects specific tariff as per Regulation 15 of the RE Tariff Regulations, 2017, as amended, by filing a Petition in this regard before the Commission, if the tariff as determined is not agreeable for any reason including cost escalation, as projected. Therefore, neither the RE Tariff Regulations, 2017, as amended, nor the Tariff Order dated 22.12.2020 operate in any manner against the power generators.

30. Otherwise also, the HPERC RE Tariff Regulations, 2017, as amended by 4th Amendment Regulations, 2020 has been framed keeping in view the State specific conditions. No doubt, the State Commission while specifying the terms and conditions for the determination of tariff, shall be guided by the principles and methodologies specified by the Central Commission for determination of tariff, applicable to generating companies, yet the State Commissions under Section 181 of the Act have the powers to frame their own Regulations in this regard. It is, therefore, not mandatory for the Commission to follow the CERC Regulations in toto. The Commission has accordingly framed its own Regulations for the purpose by taking into account the various State specific situations, after duly balancing the consumers interests in the State and the need for promotion of generation of electricity from renewable sources and also to encourage efficiencies. Since, the Regulations framed by the Commission and those specified by CERC are applicable under different situations, the question of any discrimination does not arise.

31. In view of the aforesaid, the Petitioner has not been able to establish that the RE Tariff Regulations, 2017, as amended by the 4th Amendment Regulations 2020 do not take to consideration the price escalation due to various reasons and the Generic Levellised Tariff as determined by the Commission is operating as hardship to the Renewable Energy Generators or that there are sufficient reasons to re-determine the tariff w.e.f. 01.04.2022 to

30.09.2023 of the 3rd control period. Point 1 is accordingly, answered against the Petitioner.

Point No. 2 (Final Order):

32. In view of our aforesaid discussion and finding, there are no merits in the Petition. Hence, the Petition is dismissed. The miscellaneous applications, if any, are also disposed off. The file after the needful be consigned to the records.

Announced
15.12.2022

-Sd-
(Shashi Kant Joshi)
Member

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

-Sd-
(Devendra Kumar Sharma)
Chairman