

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

Petition No: 35 of 2022

Instituted on: 08.06.2022

Heard on: 17.11.2022

Decided on: **27.12.2022**

M/s Brua Hydrowatt Pvt. Ltd. through,
Sh. Anil Kumar Dogra (General Manager),
Plot No.2 Industrial Area, Baddi,
Distt. Solan-173205., through its
Sh. Anil Kumar Dogra, General Manager.

..... **Petitioner**

Versus

1. The HP Power Transmission Corporation Ltd. through,
Managing Director,
Himfed Bhawan, Panjari, Near New ISBT,
Shimla-171004.
2. The State of Himachal Pradesh through,
the Additional Chief Secretary (MPP & Power),
to the Govt. of Himachal Pradesh,
Shimla-171002.
3. M/s Darjeeling Power Pvt. Ltd.
(Developer of Shaung 3MW SHEP),
214, Empire House, 3rd Floor, Dr. DN Road,
Fort Mumbai-400001, Maharashtra.
4. M/s Roura Non-Conventional Energy (P) Ltd.,
(Developer of Roura-II, 24 MW SHEP),
Plot No.226, Road No.78, Phase-III,
Jubilee Hills, Hyderabad

.....**Respondents**

Petition under Section 86 (1) (f) read with Section 158 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 adjudication of dispute

qua the demand of bay charges raised by the Respondent No.1 vide letter dated 30.05.2022 from the Petitioner.

CORAM

**DEVENDRA KUMAR SHARMA
CHAIRMAN**

**YASHWANT SINGH CHOGAL
MEMBER (Law)**

**SHASHI KANT JOSHI
MEMBER**

Present:

For the Petitioner: Sh. Vinay Mehta, Ld. Counsel.
For the Respondent No.1: Sh. Vikas Chauhan, Ld. Counsel
For the Respondent No.2: Sh. Shanti Swaroop, Ld. Legal Consultant.
For the Respondent No.3: Sh. Deepak Bhandari, Senior Manager.
For the Respondent No. 4: Sh. Abhishek Sethi, Ld. Counsel.

ORDER

M/s Brua Hydorwatt Pvt. Ltd. (Petitioner for short), a registered Company, has setup Brua Hydro Electric Project (9MW) on Brua Khad, a tributary of Satluj River in Distt. Kinnaur (hereinafter referred to as Project for short). The Respondent No.1 is the State Transmission Utility (STU for short) and obligated to ensure the development of the efficient, coordinated and economical system of Intra-state Transmission Line for smooth flow of electricity from a generating stations to the load centers and to provide non-discriminatory open access transmission system for the use of any licensee or generating company on payment of the transmission charges. The Respondent No. 2 is responsible for promotion and sustainable development of renewable energy

within the State. The Respondents No. 3 and 4 are also generating companies like the Petitioner.

2. The Respondent No.2 executed an Implementation Agreement (IA for short) on 25.07.2006 (Annexure P-2) with M/s Contransys Private Ltd. for setting up of Brua HEP (5MW) specifying therein the interconnection point as the physical touch point(s) where the projects 33 kV single circuit transmission line is connected to the grid at nearby points as per proposal being finalized by Himachal Pradesh Electricity Board Ltd. (HPSEBL for short). The Respondent No.2 vide order dated 19.07.2007 has permitted the change of name of Company from M/s Contransys Private Ltd. to M/s Brua Hydrowatt Pvt. Ltd. and accordingly, fresh IA dated 23.09.2011 (Annexure P-6) was signed with the Govt. of HP. The Petitioner in turn has signed a Power Purchase Agreement (PPA for short) on 06.04.2009 and a Supplementary Power Purchase Agreement (SPPA for short) on 09.07.2018 with Himachal Pradesh State Electricity Board Limited (HPSEBL for short) for sale/purchase of the Power from the Project. On 03.12.2010, the Petitioner requested the HPSEBL that as per PPA, evacuation of Power from the Project is given at Karcham Sub-station and the Petitioner accordingly prepared the land case for the transmission line upto Karcham Sub-station and got it approved from HPSEBL.

3. It is averred that the Respondent No.1 convened a meeting on 05.05.2010 wherein it was resolved that Brua and Shaung Projects of the Petitioner and Respondent No.3 will evacuate their power at Urni (Karcham) at proposed 66 kV

switching yard in joint mode and, therefore, the route of transmission line was changed and Petitioner deployed survey team to revise the transmission route for acquiring the forest land and that the Respondent No1 requested to confirm the interconnection point enabling the Petitioner to re-plan and revise the transmission route. The HPSEBL vide letter dated 16.12.2010 (Annexure P-3) intimated Respondent No.1, with a copy to the Petitioner that the PPA of the Project has already been executed with interconnection point at 22 kV proposed control point (unmanned) at Karcham and the Respondent No.1 was requested by the HPSEBL to confirm the latest interconnection point of the Project.

4. The HPSEBL intimated the Petitioner vide letter dated 09.02.2011 (Annexure P-4) that the interconnection point has been confirmed by the Respondent No.1 as “Power from Brua and Shaung HEP shall be evacuated in joint mode at 66 kV level upto 66/62 kV pooling station located at Kilba”. The Respondent No.1 vide letter dated 30.09.2011 Annexure P-5, in response to letter dated 17.09.2011, sent the transmission plan for taking further necessary action to the Petitioner and intimated that the power from the Project shall be evacuated in joint mode with Respondent No.3 though 66kV line upto 66 kV proposed pooling station of Respondent No.1 at Urni. Vide letter dated 04.07.2012, the Petitioner submitted an application for grant of connectivity to the Respondent No.1 in response to which, the Respondent No.1 intimated the Petitioner for grant of connectivity to the Project vide letter dated 18.03.2013. The Petitioner also executed an agreement on 27.06.2012 (Annexure P-8) with Respondent No.3 for

sharing the cost of establishment, operation and maintenance of the joint evacuation system including interconnection facility at HPSEBL at interfacing point. The Respondent No.1 vide letter dated 24.05.2014 sent the Minutes of Meeting of the 35th meeting of STU Coordination Committee (Annexure P-9 Colly) that the timeline for completion of 66kV GIS Switching Station at Urni and 66 kV Urni–Wangtoo D/C Line was scheduled in April, 2015.

5. The Petitioner signed connection agreement dated 04.06.2014 (Annexure P-10) with Respondent No.1 in respect of the Project showing interconnection facility at the connection point of 66 kV switching station Urni. The Clause (C) of the connection agreement dated 04.06.2014 provides that in the case of a generating plant seeking connection to the electrical system not owned by the STU, Tripartite connection agreement is to be signed by the STU, the distribution licensee and the Petitioner. The Petitioner thus, executed an agreement on 14.08.2015 (Annexure P-11) with Respondent No.3 for joint evacuation of power and nominating an Independent Power Producer (IPP for short) to sign the Operation and Maintenance (O&M) agreement with HPSEBL/Respondent No.1 and for sharing the charges levied thereof by HPSEBL/Respondent No.1 and to share charges of O&M of 66 kV Urni Pooling Sub-station and allied transmission line infrastructure. The Respondent No.1 vide letter dated 04.12.2015 (Annexure P-12) intimated the Petitioner that Urni switching station shall be effective only after commissioning of Urni-Wangtoo 66 kV line and 66/220/400 kV Sub-station at Wangtoo and that the commissioning of this line and Sub-station shall take

some more time. Therefore, to facilitate the evacuation of power from the Project, interim arrangement was envisaged by charging one of the 220 kV Kashang-Bhaba line circuit at 66kV and allowing solid tapping at 66 kV. The Petitioner vide letter dated 31.12.2015 (Annexure P-13) requested the Respondent No.1 that Rala and Shaung Small Hydro Projects (SHPs for short) and the Petitioner's Project have been instructed/authorized by the HPSEBL to construct a 66kV feeder bay, at their own cost, at existing 66/22 kV Nathpa Sub-station of HPSEBL for interim evacuation arrangement of power to be generated from the above SHPs till commissioning of 400/220/66 kV Wangtoo Sub-station of Respondent No.1 to be commissioned during 2017. As per the Petition, the construction work of 66 kV feeder bay is complete and the aforesaid Projects now want to connect to circuit –II of Kashang Bhaba 220 kV D/C Line at Tower No.100 and the Project of Petitioner and Shaung HEP are ready for commissioning and will evacuate their power through the above interim arrangement. The Petitioner requested the Respondent No.1 to issue direction to the site authority to allow the SHPs to connect the cable with Tower No.100 and to accord the permission for jointing the circuit-II of 66 kV cable at Tower No.100 Kashang-Bhaba 220 kV D/C transmission line to enable them to commission the bay at the earliest and also requested that the circuit-II of the 220 kV D/C Kashang- Bhaba Line for charging Tower No. 52 to Tower No.100 so as to enable them to synchronize their power houses with the HPSEBL grid.

6. A detailed representation (Annexure P-14) was made on 06.01.2016 to the HPPTCL that the Respondent No.1 has no right to levy the transmission charges of Rs. 80,591/- and it is the responsibility of the HPPTCL to provide evacuation arrangement beyond proposed interconnection point at 66/220 kV Urni Sub-station and since there is delay on the part of Respondent No.1 in commissioning of Urni and Wangtoo Sub-stations, the arrangement would be provided by the HPPTCL free of cost. As per Petitioner, huge expenditure of Rs. 2.00 Crore was incurred in 66 kV feeder bay at 66/22 kV Nathpa Sub-station and the action of HPSEBL to curtail the load has resulted in huge generation loss and that the Petitioner had also deployed about 50 numbers of labours for speedy readiness of interim evacuation arrangement by spending Rs.5.00 lacs and since the power from the Project of Petitioner and Respondent No.3 is to be sold to the HPSEBL at proposed Urni Sub-station, the charges, if any, applicable for wheeling the power from Urni Sub-station to interconnection point and at 66 kV feeder bay to 66/22 kV Nathpa Sub-station of the HPSEBL may be borne by the HPSEBL. The Respondent No.1 vide letter dated 06.01.2016 sent the Minutes of Meeting of 42nd meeting held on 15.12.2015 [(Annexure P-15(Colly)], revising time lines to 31.12.2016 for completion of 66 kV GIS Switching Station at Urni and 66 kV Urni-Wangtoo D/C Line.

7. Meanwhile, Petitioner signed the tripartite connection agreement with the Respondent No.1 and HPSEBL on 20.11.2015 (Annexure P-16) providing interim connection at 66/220 kV Sub-station at Nathpa of HPSEBL on 66 kV and

using the distribution and communication system of HPSEBL/SLDC. The Petitioner also executed Interim Power Transmission Agreement on 23.01.2016 (Annexure P-17) with Respondent No.1 vide which the HPPTCL agreed to the connection of the Petitioner in joint mode with Shaung (3MW) at Tower No 52 of one of the 220 kV Kashang-Bhaba D/C Transmission line and charging it at 66 kV. The Chief Engineer (System Operation), HPSEBL intimated the Chief Engineer (ES) vide letter dated 25.06.2016 (Annexure P-18) with regard to letter dated 30.04.2015 regarding evacuation of 3 MW of power each from the Projects of Petitioner, Respondent No. 3 and Rala (10 MW) upto interconnection point and that Rala HEP is not going to be commissioned upto April, 2017 and thus, for the optimum utilization of transmission line, the Project of the Petitioner was allowed to evacuate the power upto 6 MW till the commissioning of Rala HEP. The Petitioner intimated HPPTCL vide letter dated 21.12.2016 (Annexure P-19) that due to capacity constraint on Nathpa-Kotla line and Kotla Sub-station, the Petitioner is forced to curtail its generation by 1/3rd and loosing heavily and there is no possibility of free flow of entire generation in near future and requested to convey the tentative time frame of evacuation of the power so that the Petitioner completes the balance work of 66 kV transmission line. The HPSEBL vide letter dated 24.04.2017 (Annexure P-20) intimated the Petitioner and Respondent No.3 that said Projects are connected through solid tap to 220 kV Kashang-Bhaba line (charged at 66 kV) and requested the Petitioner and Respondent No.3 to take immediate action for installation of main and check meters on the 66 kV feeders

emanating from their switchyard so that the system may be connected to 220 kV Bhoktoo Sub-station. The HPPTCL vide letter dated 04.12.2017 (Annexure P-21) intimated the Petitioner that commissioning of Urni-Wangtoo line and Urni Sub-station shall take some more time and interim arrangement has been envisaged for evacuation of power by charging one of the 220 kV Kashang- Bhaba circuit at 66 kV and allowing solid taping at 66 kV and the work of said line is expected to be completed by February, 2017.

8. The HPPTCL vide letter dated 11.06.2018 sent Minutes of Meeting of the 46th Meeting of STU Coordination Committee held on 29.05.2018 [Annexure P-22(Colley)] that 66 kV switching station at Urni shall be ready for commissioning on 31.12.2018 but the 12 KM long 66 kV Urni-Wangtoo line cannot be commissioned before 30.06.2019 and the Additional Chief Secretary (Power) directed the HPPTCL to compress the schedule. The HPPTCL vide letter dated 14.08.2018 sent Minutes of Meeting of the 47th Meeting of STU Coordination Committee held on 25.07.2018 (Annexure P-23) that the detailed program to commission the 66 kV Urni-Wangtoo D/C line by March/April, 2019 has been worked out. Meanwhile, the Petitioner executed an agreement dated 27.12.2019 with Respondents No. 3 and 4 (Annexure P-24) and as per Clause 2 of the said agreement, the entire cost of common 66 kV terminal bay including metering arrangements shall be shared by said Projects in proportion to their individual generating capacities and as per Clause 4 of the Agreement, the cost of operation and maintenance of the interconnection facilities at the HPPTCL grid

shall be borne by the said three Projects injecting power therein in proportion to the installed capacity of projects and that Respondents No. 3 and 4 shall reimburse the proportionate O&M charges to the Petitioner within 15 days of raising the bills which were to be deposited with the HPPTCL by the Petitioner within 3 days.

9. The Petitioner vide letter dated 10.11.2020 (Annexure P-25) informed the HPPTCL that the remaining work of 66 kV D/C joint transmission line is being scheduled for construction from solid tapping point of Tower No. 52 upto Urni Sub-station and intimated the action plan and status with detailed Tower wise schedule to be submitted shortly. The HPPTCL vide letter dated 27.04.2021 (Annexure P-26) informed the Petitioner and Respondent No.3 that in order to avoid any mishap in the interim period, the power of the IPPs is to be evacuated via 400/220/66 kV Wangtoo Sub-station and that construction of 66 kV D/C Urni-Wangtoo transmission line will be completed within 2 months and power will be evacuated via 66 kV switching station at Urni. The Petitioner signed the revised connection agreement on 02.07.2021 with Respondent No.1 (Annexure P-27). The HPPTCL vide letter dated 17.09.2021 (Annexure P-28) intimated the Petitioner and Respondent No.3 about the completion of 66 kV D/C transmission line from Urni to Wangtoo that the same will be completed by the end of the month facilitating the evacuation through Urni Sub-station through said transmission line and that all formalities relating to change in connection point be done to avoid delay. Such intimation was not given to the Respondent No.4. The

Petitioner vide letter dated 25.09.2021 (Annexure P-29) intimated the HPPTCL that the line of Petitioner and Respondent No. 3 is ready to be connected to Urni GIS Sub-station and requested to provide a copy of the draft O&M agreement enabling them to complete the formalities for changing their connection point. The Petitioner vide email dated 03.10.2021 (Annexure P-30) provided the copy of draft O&M to the HPPTCL. Vide letter dated 06.10.2021 (Annexure P-31), HPPTCL intimated the Petitioner that main and check energy meters are already installed by HPPTCL in 66 kV Shaung-Brua-Urni feeder at 66 kV Urni switching station. The HPPTCL vide email dated 30.09.2021 (Annexure P-32) intimated the Petitioner that in the mode of joint evacuation of power by two or more generators through a common bay in the system of HPPTCL, one of the generators is required to act as a lead generator and O&M agreement to be executed for the said bay is to be signed between HPPTCL and the lead generator and requested the Petitioner to authorize one of the generators as lead generator and send a draft copy of O&M agreement. The HPPTCL vide email dated 07.12.2021 (Annexure P-32) further informed the Petitioner that before signing the O&M agreement, the Petitioner is required to produce documentary evidence of complete payment of bay cost in respect of 1 No. 66 kV switching Sub-station Urni and take up the matter of finalization/deposit of cost with the planning wing.

10. The Petitioner vide letter dated 24.01.2022 (Annexure P-33) informed HPPTCL about the readiness of dedicated 66 kV line for being connected to 66 kV GIS Urni Sub-station and that revised connection agreement has also been

signed with HPPTCL on 02.07.2021 for connection of the Projects of the Petitioner and Respondents No. 3 and 4 to the STU System and requested to complete the formalities as per Clause 2.4 of the connection agreement enabling to deposit the bay cost, sign O&M agreement and to provide the status by which date Urni Sub-station including the 66 kV line from Urni Sub-station to Wangtoo Sub-station shall be made functional. The Petitioner vide email dated 15.03.2022 (Annexure P-34) also intimated the Respondents No. 3 and 4 to arrange their share of funds in terms of the revised connection agreement dated 02.07.2021. The HPPTCL vide letter dated 14.03.2022 (Annexure P-35) intimated the Petitioner to deposit the bay cost of Bay No. 609 amounting to Rs. 3,42,85,447/- alongwith detailed estimate for bay cost and that 66 kV Urni Sub-station has been commissioned and the Urni-Wangtoo transmission line is expected to be commissioned within one month after the resolution of Court case pending in the Hon'ble High Court pertaining to 1 No. Tower. The Petitioner vide letter dated 30.03.2022 (Annexure P-36) intimated Respondents No. 3 and 4 that as informed by the HPPTCL, documentary evidence is required to be produced regarding complete payment of bay cost in respect of one No. 66 kV bay at 66 kV Switching Sub-station Urni and requested them to arrange and deposit their individual share on or before 10.04.2022 enabling to sign O&M agreements. In response to this, Respondent No.3 vide letter dated 28.4.2022 (Annexure P-37) expressed its willingness to deposit its share of bay charges amounting to Rs. 28,57,121/- at any time.

11. The Petitioner vide letter dated 10.05.2022 informed HPPTCL that a representation has been made by Respondent No. 4 to the HPPTCL, with a copy to the Petitioner and Respondent No. 3, informing that it will not be possible for the Respondent No.4 to remit its share of the bay charges at this moment for the reason that the loan disbursement cannot be operative till the work on the Project starts. The Respondent No.4, however, made an undertaking of deposit of its share of bay cost alongwith interest at the time of commissioning of the Project as done in the past, in the case of joint evacuation mode of power in respect of Rala, Wanger-Homte, Selti-Masrang SHPs, which were allowed to deposit their share of the bay cost with interest at the time of commissioning. The copy of letter dated 25.04.2022 is annexed alongwith letter dated 10.05.2022 [Annexure P-38 (Colley)]. The HPPTCL vide letter dated 30.05.2022 (Annexure P-39) intimated the Petitioner that the connection agreement has been signed between the HPPTCL and the Petitioner on 02.07.2021 for evacuation of power in joint mode with the Respondents No. 3 and 4, as such, cost of the interconnection facility shall be deposited by the Petitioner and the apportionment of cost between the Petitioner and the Respondents No. 3 and 4 is to be done mutually and requested the Petitioner to sign the O&M agreement for interconnection facility.

12. It is averred that the HPPTCL, in abuse of its dominant position, has asked the Petitioner to pay the entire bay cost, which has given rise to a dispute between the Petitioner and the Respondent No.1 which requires adjudication by

the Commission. It is also averred that the action of the HPPTCL is illegal, arbitrary and not sustainable in the eyes of law. Further, the HPPTCL is duty bound to maintain and operate an efficient coordinated and economical Inter-state and Intra-state Transmission System and to provide non-discriminatory open access to its transmission system for the use by any licensee or generating company. Not only this, the Respondent No.4 has also not refused to deposit its share and thus, imposition of entire cost on the Petitioner and refusing to sign the O&M agreement by the HPPTCL with the Petitioner too is illegal. Also the Petitioner is subjected to huge expenditure in getting the interim arrangement which was allowed on restricted load and the refusal to sign O&M agreement will also result in huge generation loss to the Project of the Petitioner in particular and to the Government in general. Also the Petitioner has incurred huge expenses for repair and completion of Kashang-Bhaba D/C line and due to the delay in making the interconnection facility, the Project has suffered huge generation loss as the Petitioner has made evacuation of the power through interim arrangement with load restriction paying transmission charges for which the Petitioner is not legally liable, hence, the action of the HPPTCL is not sustainable.

13. Further averred that merely because one of the generators acts as a lead generator, said lead generator would not be required to pay the entire bay cost and rather, the arrangement of lead member has been made in order to establish that instead of corresponding with all the Projects, only lead generator shall be one touch point for convenience to the HPPTCL. Also, no where it is mentioned

that if one Project does not pay the charges of the bay, the others two will have to pay the same. Further the bills raised by the HPPTCL for construction of bay are not on the actual bases but an estimated one for supply, erection and testing alongwith all associated works of 66 kV bays at Urni Sub-station. Also that in Column No 1 of Annexure–A of letter dated 14.03.2022, the HPPTCL has mentioned the cost of supply and transportation of materials for 1 No.66 kV bay (Bay No. 609) at Urni Sub-station as Rs.2,32,59,593/ and it appears and presumed that there is double taxation of GST in the bills, thus, the bay charges are estimated and not actual and therefore, liable to be set aside.

14. The Petition has been resisted and contested by the Respondents No. 1, 3 and 4 by filing separate replies.

15. The Respondent No.1 i.e. the HPPTCL in its reply has averred that no cause of action to maintain the Petition has accrued to the Petitioner and the Petition is an attempt to avoid the liability that has accrued in favour of HPPTCL. It is averred that the Petitioner had applied for connection of Brua (9.00MW) in joint mode with Shaung (3.00MW) and Roura-II (24.00MW) and to use the transmission system of HPPTCL to transmit electricity to and from the facility through Intra-state Transmission System. It is averred that the HPPTCL had agreed to connect Brua (9.00MW) in joint mode with aforesaid Shaung and Roura-II Projects to the HPPTCL system at the connection point i.e. 66 kV feeder bay at 66 kV Switching Station, Urni through 66 kV S/C Line in joint mode with

Shaung and Roura-II and connection agreement dated 02.07.2021 (Annexure P-27) was executed between the Petitioner and the HPPTCL.

16. It is averred that the action of the HPPTCL is as per Regulations 2,5,16 of the Himachal Pradesh Electricity Regulatory Commission (General Conditions of Transmission License) Regulations, 2004 and Sections 39 & 40 of the Electricity Act, 2003. As per the HPPTCL, the Petitioner in furtherance to the internal agreement dated 27.12.2019 (Annexure P-24) executed with the Respondents No. 3 and 4 had agreed to interface their power to be generated from their aforesaid Projects through a common 66 kV terminal bay which stood proposed at that time at 66 kV Sub-station at Urni (which has now been commissioned). As per Clause 2 of the agreement (Annexure P-24) it was agreed that *“the entire cost of the common 66 kV terminal bay including metering arrangements required to be in place for metering purpose etc. shall be shared by the IPPs in proportionate to their individual generating capacities.”* Therefore, the Petitioner was put in charge as a lead member to the consortium of the IPPs was supposed to deal the power interface through/ at common 66 kV terminal bay at Urni Sub-station with HPPTCL. Not only this, Clause 6 of the agreement dated 27.12.2019 (Annexure P-24) provides as under:-

“Events of Default:-The following shall be the event of default by either parties:-

d) In the event of default from one party, the defaulting party losses it's right to evacuate its power from the common 66 kV feeder bay at 66 kV

Urni Sub-station of HPPTCL in District Kinnaur and other remaining parties take over the right of use under arrangements with in the HPPTCL.

e) The defaulting party shall be allowed to evacuate through the said 66 kV feeder bay only if rectifies the defect, and or paying the penalty as decided by IPPs mutually.”

17. It is averred that on failure on the part of Respondent No.4 to pay its share towards the bay charges, the Petitioner has resorted to the present unwarranted litigation with the HPPTCL, hence, the Petition is not maintainable. Also averred that the HPPTCL has signed connection agreement on 02.07.2021 (Annexure P-27) 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 for granting connectivity to the Petitioner and two others Projects in joint mode subject to following terms and conditions:-

“ (C) the Parties shall enter into this Connection Agreement to record the terms and conditions upon which the parties will carry out their respective Connection Works, in addition to the estimated cost required to be carried out by the STU for works related to the interconnection, in accordance with the Connection Agreement. In the case.....”

“2. Agreement to pay Charges and Costs

2.2 Agreement to additional costs:-

The Applicant declares that it shall pay the cost towards modification/alternations to the infrastructure of STU or Intra-State transmission licensee/Distribution Licensee other than the STU, as the case may be, for accommodating the proposed

connection as specified in the letter of STU furnishing connection details.

2.3 Agreement to pay Charges for construction of Bays:

The Applicant will execute an Agreement with STU for the erection of equipment of Applicant or inter-state transmission licensee/Distribution Licensee in the substation premises of the STU for the construction of bays, if required. For the purpose the Applicant shall pay charges to the STU on mutually agreed terms.”

18. It is averred that the bay charges raised vide bill (Annexure P-35) dated 14.03.2022 are calculated as per the mechanism approved by BOD in its 47th meeting held on 19.11.2020 and as per approved methodology and that the bay has been erected by the HPPTCL out of its own cost for the connectivity of Brua (9.00MW) in joint mode with Shaung (3.00MW) and Roura-II (24.00MW) and now the charges are required to be reimbursed by the Petitioner to the HPPTCL as per actual in terms of the connection agreement dated 02.07.2021.

19. It is denied that only the internal agreement dated 27.12.2019 (Annexure P-24) has been considered to establish that the lead partner shall be one touch point for convenience. As per the Respondent No. 1, the Petitioner and the Respondents No. 3 and 4 have executed internal agreement dated 27.12.2019 qua the arrangement for the payment of the bay charges and the O&M charges to the HPPTCL which also contain a penalty clause for defaulting Projects that in case of default, the defaulting IPPs will lose its right to evacuate the power from the common 66 kV feeder bay at 66/22 kV Urni Sub-station of HPPTCL. As per the

Petition, the Petitioner in terms of said internal agreement dated 27.12.2019 had approached the HPPTCL, as a lead member to the consortium, for entering into the connection agreement on 02.07.2021. Also averred that as per the agreement dated 27.12.2019, the Petitioner is at liberty to initiate action against the Respondent No.4 in case of violation of terms and conditions of said agreement dated 27.12.2019 but being the party to the connection agreement dated 02.07.2021, the Petitioner cannot be allowed to violate the terms and conditions of the connection agreement dated 02.07.2021 on the pretext of non-payment of its share by the Respondent No.4.

20. As per the Respondent No. 1, HPPTCL, the letter dated 17.09.2021 (Annexure P-28) was addressed only to the beneficiary IPPs whose Projects were commissioned and ready to interface their power. It is denied that the promoters /IPPs of the Rala, Wanger-Homte and Silit-Masrang SHPs were allowed to deposit their respective shares of the bay cost with interest at the time of commissioning of the Projects. Further, M/s Taranda Hydro Power Pvt. Ltd., promoter of Rala SHP was the lead member/generator to the consortium of IPPs and had deposited the entire bay cost alongwith interest on the delayed payments on behalf of the other Projects promoters in the months of February, 2019 and September, 2021. As per the HPPTCL, the Petitioner has been rightly asked to deposit the complete bay charges and that the HPPTCL has not abused its dominant position by directing the Petitioner to deposit entire bay cost and that

the Petitioner wrongly intends to put onus on the HPPTCL for the wrongs of Respondent No. 4.

21. It is averred that the Respondent No.4, being stranger to the connection agreement dated 02.07.2021, cannot approach the HPPTCL for waiver to deposit its share and the plea of the Petitioner to deposit the bay charges qua share of Respondent No. 4 at the time of the commissioning of Project is unwarranted especially when the HPPTCL has not allowed any such IPPs to pay the bay charges on commissioning of their Projects. It is denied that imposition of entire construction cost of bay upon the Petitioner is discriminatory and illegal. In nutshell, the contents of the Petition have been denied.

22. The Respondent No.3 M/s Darjeeling Power Private Ltd. in its separate reply has submitted that as per Implementation Agreement dated 08.06.2005, the interconnection point will mean the physical touch points, where Project 33 kV single circuit transmission line is connected to the grid at nearby point as per the proposal finalized by the HPSEBL and that the HPSEBL through the HPPTCL had compelled the Respondent No.3 to shift to 66 kV switching Sub-station at Urni for evacuation of power of the Project of the Respondent No.3. Further, that the connectivity at proposed 66 kV switching Sub-station at Urni could not be commissioned in time, and thus, an interim arrangement was worked out to facilitate evacuation of power by charging one of the 220 kV Kashang-Bhaba line circuit at 66 kV and allowing solid tapping at 66 kV. Further that due to the

interim arrangement, the replying Respondent had to bear wheeling charges @ 14 paisa per unit including O&M charges. Also averred that the Petitioner on behalf of the replying Respondent has agreed to pay the commissioning charges of Urni 66/220 kV Sub-station and that in terms of the internal agreement dated 27.12.2019, the share of replying Respondent comes to Rs.28,57,121/- for which the replying Respondent has already given its consent and is ready and willing to pay the same as is evident from the letter (Annexure P-37). Also averred that due to the lackadaisical attitude of the Respondent No. 1, the replying respondent has suffered huge loss. Further, the Respondent No.4 has submitted the representation to the HPPTCL that it shall deposit its share of bay cost alongwith interest at the time of commissioning of the Project as has been done in the past, which may be considered.

23. The Respondent No.4 in its separate reply has averred that the Petition is premature, arbitrary and discriminatory as there is no dispute between the Petitioner and Respondents No. 3 & 4 as per the tripartite agreement (Annexure P-24). It is averred that the Respondent No.4 came into picture while signing the tripartite agreement dated 27.12.2019 (Annexure P-24) vide which all the three IPPs agreed to evacuate their power, from their respective generating stations at the common 66 kV terminal bay at the proposed 66/220 kV Sub-station at Urni. Further, the entire cost of the common 66 kV terminal bay including metering arrangements were to be shared by IPPs in proportion of their generating

capacities. Further, the cost of operation and maintenance of interconnection facilities at HPPTCL, as per the agreement (Annexure P-24), is to be borne by the IPPs injecting power therein in proportion to their installed capacity of the Project as per Para 4 of the tripartite agreement (Annexure P-24). It is averred that the conjoint reading of Paragraphs No. 2 and 4 of tripartite agreement (Annexure P-24), the Respondent No.4 is obligated to pay the entire cost of the common 66 kV terminal bay at Urni in proportion to its generating capacity but the stage of the Project at which such share is to be paid is not mentioned in the agreement and since the sanctioned generating capacities of the Projects of the Petitioner and Respondents No. 3 and 4 are 9.00 MW, 3.00 MW and 20.00 MW respectively, the answering Respondent is required to pay $20/32^{\text{nd}}$ share of the total cost of the above said common terminal, after completion of its hydro-power plant and in this regard, the IPPs have jointly nominated the Petitioner to settle the claims, if any, of the deemed generation of the Projects as mentioned in Para 4 of the Agreement (Annexure P-24). Further, as per Para 4 of the tripartite agreement (Annexure P-24), cost of O&M of interconnection facilities at HPPTCL grid are to be shared by the IPPs injecting of power at interconnection bay, in proportionate to their installed capacity of the Project. Thus, the demand raised by the HPPTCL is to be borne by the Petitioner in the first instance, as being done by many other IPPs, who are paying 100% bay cost where their own share is less than 50%. Further, connection agreement dated 02.07.2021 (Annexure P-27) was executed by the Petitioner with HPPTCL being the lead

partner, wherein the Petitioner has agreed to pay charges and costs including but not limited to bay charges on mutually agreed terms with the Respondent No.1.

24. It is averred that the construction of Project of the Respondent No.4 is likely to be completed in next 3 years and that the Respondent No.4 has agreed to pay its share at the time of commissioning of its Project with interest and since the generating capacity of the Project of Respondent No.4 is nil, no payment of the demanded amount is required to be paid by Respondent No.4 and it is the Petitioner who is responsible to pay the same. Also averred that the HPPTCL has made the request only from the Petitioner and Respondents No.3, because answering Respondent was not in position to evacuate the power. Further, as per the Para 6 of tripartite agreement (Annexure P-24), there is penalty for default and since the occasion for payment of the share of Respondent No. 4 not arisen, the Petition is pre-mature, ill advised and ill conceived.

25. No separate reply has been filed by the Respondent No.2 and reply filed by the HPPTCL has been adopted by it.

26. In rejoinders to the replies, filed by Respondents No. 1, 3 and 4, the contents of said replies have been denied and those of the Petition have been reaffirmed.

27. We have heard Sh. Vinay Mehta, Ld. Counsel for the Petitioner, Sh. Vikas Chauhan, Ld. Counsel for the Respondent No.1, Sh. Shanti Swaroop, Ld. Legal Consultant for the Respondent No.2, Sh. Deepak Bhandari, Senior

Manager for Respondent No.3 and Sh. Abhishek Sethi, Ld. Counsel for the Respondent No.4.

28. Sh. Vinay Mehta, Ld. Counsel for the Petitioner has submitted that the Petitioner and the Respondents No. 3 and 4 are liable and required to deposit the bay cost in proportion to the installed capacities of their Projects but the Respondent No. 1 has claimed the entire bay cost from the Petitioner without any basis merely on the basis of agreements dated 27.12.2019 and 02.07.2021 (Annexures P-24 and P-27) that the Petitioner has agreed to act on behalf of the Respondents No. 3 and 4. He has also submitted that the HPPTCL has not acted on the letter dated 25.04.2022 of the Respondent No. 4 for the reasons best known to the HPPTCL wherein it is mentioned that it shall not be possible for the Respondent No. 4 to remit the share of the bay charges as the loan disbursement cannot be operated till the work of the Project starts but the Respondent No. 4 agreed to deposit its share of bay charges alongwith interest on commissioning of the Project, which arrangement was allowed in the past by the HPPTCL in similarly situated cases. As per him, the Respondent No. 1 is obligated under the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long-term and Medium-term Intra-state Open Access and Related Matters) Regulations, 2010 and the Electricity Act, 2003 to build, maintain and operate an efficient coordinated, economical Inter-state/ Intra-state Transmission system and to provide non-discriminatory open access to its transmission system for the use of any licensee or generating company, hence, the imposition of entire charges/

construction cost of the bay upon the Petitioner is arbitrary, discriminatory and illegal. He has also submitted that the HPPTCL is required to ask the Respondents No. 3 and 4 to sign the O&M Agreement alongwith the Petitioner with the HPPTCL so that the charges are shared proportionately.

29. Sh. Vikas Chauhan, Ld. Counsel for the Respondent No. 1 has submitted that on the strength of a mutual agreement executed by the Petitioner with Respondents No. 3 and 4 on 27.12.2019 (Annexure P-24), the Petitioner approached the HPPTCL for the connection of Brua (9.00MW), Shuang (3.00 MW) and Raura-II (20.00 MW) SHPs to the STU Transmission system and to use the STUs Transmission system to transmit the electricity through Intra-state Transmission system and accordingly, the HPPTCL has provided the connection to the Petitioner and the Respondents No. 3 and 4 to the Switching Station, Urni through 66 kV to the STUs system at the connection point i.e. 66 kV feeder bay at 66 kV single circuit line in Joint mode and the Petitioner has signed connection agreement dated 02.07.2021 (Annexure P-27) for self and on behalf of the Respondents No. 3 and 4 in this regard. He has also submitted that the Petitioner being the lead member of the consortium of the Petitioner and the Respondents No. 3 and 4 has agreed to pay the bay charges and cost for construction of bays etc. which have been calculated as per the established procedure. Also submitted that the Respondent No. 1 i.e. the HPPTCL has erected/constructed bay for the connectivity of the Petitioner and the Respondents No. 3 and 4 in joint mode out of its own cost, which is required to be paid/ reimbursed by the Petitioner being

the lead member of the consortium, which in turn may be claimed by the Petitioner from other Project developers i.e. Respondents No. 3 and 4 in proportion to their installed capacities as per agreement dated 27.12.2019 (Annexure P-24). He has also submitted that the Petitioner has agreed to sign an agreement for O&M charges which is necessary for the maintenance of the interconnection facilities, failing which it would be difficult for the HPPTCL to ensure smooth evacuation of power.

30. Sh. Abhishek Sethi, Ld. Counsel of the Respondent No. 4 has submitted that on the basis of tripartite agreement dated 27.12.2019 (Annexure P-24), the Petitioner had been authorized/ nominated to deal with the HPPTCL and all of three members of the consortium have agreed to share the cost of construction of Bay and O&M charges in proportion to the installed capacities of their respective Projects and that Project of the Respondent No. 4 will take time for completion. He has submitted that the Respondent No. 4 has not refused to deposit the charges but will be in position to pay the charges only on commissioning of the Project. He has also submitted that there is no refusal either on the part of the Respondent No. 4 or the Respondent No. 3 and, therefore, the Petition is neither competent nor maintainable.

31. We have carefully gone through the submissions and have perused the entire record minutely. The following points arise for determination in the present Petition:-

Point No. 1:

Whether the HPPTCL 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/ invoice dated 14.03.2022 and 30.05.2022 (Annexure P-35 and P-39) are arbitrary, discriminatory and illegal?

Point No. 2:

Whether the O&M Agreement for the use of the interconnection facilities of the HPPTCL grid is also required to be signed together by all the three Project Developers i.e. the Petitioner and the Respondents No. 3 and 4 with the HPPTCL?

Point No. 3 : (Final Order)

32. For the reasons to be recorded hereinafter in writing while discussing the aforesaid points, 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

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

34. It is none of the case of the Petitioner that it has incurred any expenditure in the construction/erection of the bay or the Respondents No. 3 and 4 have also

incurred any expenditure on the same. On the contrary, it is evident from the reply of the Respondent No. 1 that the bay stands erected by the HPPTCL for the Projects of the Petitioner and Respondents No. 3 and 4, at its own cost, which is now required to be paid/reimbursed by the Petitioner as agreed per agreement dated 02.07.2021 (Annexure P-27) as also tripartite agreement dated 27.12.2019 (Annexure P-24).

35. It is not in dispute that the bay has been erected/ constructed for the evacuation of power from the Projects of the Petitioner and Respondents No. 3 and 4 in a joint mode. It is evident from the record that the Projects of the Petitioner and the Respondent No. 3 have been commissioned, whereas, the Project of the Respondent No. 4 is yet to be commissioned. All the three project developers i.e. the Petitioner and the Respondents No. 3 and 4 have entered into an internal agreement dated 27.12.2019 (Annexure P-24) mutually agreeing to pool their power to be generated from their respective Projects jointly through a common 66 kV terminal Bay at Urni. Clause 2 of said agreement provides that the entire cost of the common 66 kV terminal Bay including metering arrangement required to be in place for metering purpose shall be shared in proportion to their individual generating capacities. Not only this, all the three project developers have agreed to bear and share the cost of operation and maintenance of interconnection facilities at the HPPTCL grid as per the claim to be raised by the HPPTCL and the Respondents No. 3 and 4 have agreed to reimburse the proportionate O&M charges to the Petitioner within 15 days from

raising the bill (by the HPPTCL) as per Clause 4 of the agreement (Annexure P-24).

36. It is also apparent from the aforesaid agreement dated 27.12.2019 (Annexure P-24) that the Respondents No. 3 and 4 jointly nominated the Petitioner to settle the case, if any, of the deemed generation of the Projects with the HPSEBL in proportion to the installed capacities of the respective Projects. Therefore, vide aforesaid internal agreement dated 27.12.2019 (Annexure P-24), not only the Petitioner and the Respondents No. 3 and 4 agreed to pool the power in a joint mode, all the three also agreed to bear the entire cost of common 66 kV terminal bay erected by the Respondent No. 1 i.e. the HPPTCL including metering arrangements and O&M charges of the interconnection facilities at HPPTCL grid and jointly nominated/ authorised the Petitioner to settle the claims, if any, of the deemed generation of the Project with the HPSEBL on behalf of the Respondents No. 3 and 4.

37. On the strength of the aforesaid agreement dated 27.12.2019 (Annexure P-24), the Petitioner applied for the connection of its Project (Brua 9.00 MW), (Shuang 3.00 MW and Raura-II 20.00 MW) and also for the Projects of the Respondents No. 3 and 4 for connection of the Projects to the STU Transmission system and the use of STUs Transmission System to transmit electricity to and from the facility through Intra-state Transmission System and signed connection agreement dated 02.07.2021 (Annexure P-27) for self and on behalf of Respondents No. 3 and 4 with the HPPTCL. Clause (C) and Clauses, 2.2 and 2.4

and 2.5 of said agreement are quite relevant for the controversy which are reproduced as under:-

“(C) The Parties shall enter into this Connection Agreement to record the terms and condition upon which the parties will carry and their respective Connection Works, in addition to the estimated cost required to be carried out by the STU for works related to the interconnection, in accordance with the Connection Agreement. In the case of a generating plant seeking connection to the Electrical system not owned by the STU, a tripartite Connection Agreement is signed between the STU, the Distribution licensee and the applicant, since the planning of the Intra-State transmission system, insulation coordination, system studies, etc. are the responsibility of the STU. The responsibilities of the three parties would be defined accordingly in the tripartite Agreement.

2. Agreement to pay Charges and Costs

2.2 Agreement to additional costs:

The Applicant declares that it shall pay the cost towards modification/ alteration to the infrastructure of STU or Intra-State transmission licensee/ Distribution Licensee other than the STU, as the case may be, for accommodating the proposed

connection as specified in the letter of STU furnishing connection details.

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 substation premises of the STU for the construction of bays, if required. For the 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 sub-station. These O&M charges will be governed time to time as per the mutually agreed terms.”

38. Apparently, the Bay has been constructed for use of the Projects of the Petitioner and Respondents No. 3 and 4. It is clear from the aforesaid agreement dated 02.07.2021 (Annexure P-27) that the Petitioner, while acting as a lead partner of the consortium, has agreed to pay the cost of construction of Bay/ Bay charges, additional costs and O&M charges. As discussed above, all the three project developers have agreed to reimburse the Bay charges including O&M charges of the interconnection facilities being operated and maintained by the

HPPTCL in the Sub-station as also all the cost towards modification/ alteration/ construction of Bays.

39. Therefore, said connection agreement dated 02.07.2021 (Annexure P-27) leaves no matter of doubt that the Petitioner on the strength of internal agreement dated 27.12.2019 (Annexure P-24) applied for the connection agreement for all three Projects and accordingly, the connectivity was accorded to the Projects of the Petitioner and Respondents No. 3 and 4 by the Respondent No. 1, however, subject to payment of construction cost of the Bay, additional charges of modification and alteration etc. and O&M charges for the use of the interconnection facilities.

40. Significantly, the Respondents No. 3 and 4 have not disputed the connection agreement dated 02.07.2021 (Annexure P-27) as also the internal agreement dated 27.12.2019 (Annexure P-24). The Respondents No. 3 and 4 have also not disputed their liability to pay charges as discussed above to the extent and in proportion to their capacity of the Projects. Rather, the Respondent No. 3 has very categorically mentioned in its reply that the Respondent No. 3 is ready and willing to pay its share amounting to Rs. 28,57,121/-. Similarly, the Respondent No. 4, in its reply, has also stated that it is ready and willing to pay the charges but its Project is yet to be commissioned and for want of loan disbursement, the Respondent No. 4 is not in a position to bear its proportional charges of Bay and other charges.

41. Once the Petitioner and Respondents No. 3 and 4 have formed a consortium and signed an agreement dated 27.12.2019 (Annexure P-24) and agreed to pay all the charges of construction of bays and other incidental and O&M charges pertaining to the interconnection facilities and also authorized the Petitioner to deal with the HPPTCL and the Petitioner accordingly, applied for the connection for its project and projects of the Respondent No. 3 and 4 and signed the connection agreement dated 02.07.2021 (Annexure P-27), the Respondent No. 1 is not obligated and required to issue separate and individual bills to the Respondents No. 3 and 4. It is for the Petitioner to first pay the charges to the HPPTCL and then recover the same from the Respondents No. 3 and 4 to the extent and in proportion to their installed capacities. Certainly, if the parties to the agreement dated 27.12.2019 (Annexure P-24) have some issues with regard to the implementation of the said agreement, said issues have to be sorted out between the Petitioner and Respondents No. 3 and 4, inter-se, as per Clause 6 of the said agreement but on this count, the Petitioner cannot escape his obligation to pay the bay charges on the strength of the fact that the Respondent No. 4 has not been willing to pay the charges at this stage and the bill/ invoice should be limited to the installed capacity of the Petitioner. However, at the same time, we believe that the Respondent No. 4 shall honour the commitments made in the internal agreement dated 27.12.2019 (Annexure P-24) of payment of bay and O&M charges so that the burden of Petitioner and Respondent No. 3 is proportionately shared.

42. The Respondent No. 1 i.e. the HPPTCL is mandated to build, maintain and operate an efficient coordinated, economical Inter-state/ Intra-state Transmission system and to provide non-discriminatory open access to its transmission system for the use of any licensee or generating company 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 and Sections 39 and 40 of the Electricity Act, 2003. As per the said mandate, the bay has been constructed for the exclusive use of the Petitioner and the Respondents No. 3 and No. 4 and the transmission facilities have also been created for the Petitioner and the Respondents No. 3 and 4 by incurring huge cost of construction which has to be recovered from the Petitioner and the Respondents No. 3 and 4 being beneficiaries of the system. Since, the Petitioner has been nominated as the lead Partner vide agreement dated 27.12.2019 (Annexure P-24) and has signed Connection Agreement dated 02.07.2021 (Annexure P-27) with the Respondent No. 1 i.e. the HPPTCL for self and on behalf of the Respondents No. 3 and 4, the demand has rightly been made by the Respondent No. 1, HPPTCL from the Petitioner vide invoices/ bill (Annexure P-35 and P-39). It may be reiterated at the cost of repetition that the Respondent No. 1 is not concerned as to how and in what manner said amount is to be recovered by the Petitioner from the Respondents No. 3 and 4, which strictly will be as per the internal agreement dated 27.12.2019 (Annexure P-24). Similarly, once the Petitioner for self and on behalf of the Respondents No. 3 and 4 has

agreed to pay O&M charges for the use of transmission facilities, the Respondent HPPTCL is not obligated and required to sign the O&M agreement jointly with the Petitioner and the Respondents No. 3 and 4. Therefore, the Petitioner is bound to sign the O&M Agreement with the Respondent No. 1 for self and on behalf of the Respondents No. 3 and 4 with the HPPTCL. Point No. 1 and 2 are accordingly decided against the Petitioner and in favour of the Respondents.

Final Order

43. In view of our aforesaid discussions and findings, there are no merits in the Petition and accordingly, the Petition is dismissed. The CMAs, if any, are also disposed off. The file after needful be consigned to record.

Announced
27.12.2022

-Sd-

(Shashi Kant Joshi)
Member

-Sd-

(Yashwant Singh Chogal)
Member(Law)

-Sd-

(Devendra Kumar Sharma)
Chairman