

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

Petition No: 43 of 2023
Date of Institution: 05.04.2023
Arguments Heard on: 19.08.2023
Decided on: 06.09.2023

CORAM

**DEVENDRA KUMAR SHARMA
CHAIRMAN**

**YASHWANT SINGH CHOGAL
MEMBER (Law)**

**SHASHI KANT JOSHI
MEMBER**

In the matter of:

**The HP State Electricity Board Ltd. through,
The Chief Engineer (System Operation)
Vidyut Bhawan, Shimla-171004.Joint Petitioner No. 1**

AND

**M/s V.B. Hydro Projects Ltd. through,
Sh. Narinder Kumar (Authorised Signatory),
Shahil Plaza, Dalhousie Road, Pathankot,
Punjab, India-145001.Joint Petitioner No. 2**

Versus

**The HP Power Transmission Corporation Ltd. through,
The General Manager (C&D),
Himfed Bhawan, Panjari,
Shimla-171005.Proforma Respondent**

Joint Petition under Section 86 (1) (b) of the Electricity Act, 2003 read with Regulation 50-A of the Conduct of Business Regulations, 2005, as amended from time to time, for approval of the Power Purchase Agreement under Generic Levellised Tariff to be executed by the HPSEBL with M/s V.B. Hydro Projects Ltd. in respect of the Kuwarsi HEP (9.90 MW).

Present:-

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

Sh. Ashok Kumar Verma, Ld. Counsel for the Joint Petitioner No. 2.

Sh. Vikas Chauhan, Ld. Counsel for the Proforma Respondent.

ORDER

This Joint Petition has been filed under Section 86 (1) (b) of the Electricity Act, 2003 (Act for short) read with Regulations 50 and 50-A of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, as amended from time to time, (CBR for short) by the Himachal Pradesh State Electricity Board Limited (HPSEBL or Joint Petitioner No. 1 for short) and M/s V.B. Hydro Projects Limited (Joint Petitioner No. 2 for short) for the approval of Long Term Power Purchase Agreement at Generic Levellised Tariff in respect of Kuwarsi HEP (9.90 MW) situated at Salun Nallah, a tributary of the Ravi river, Distt. Chamba, Himachal Pradesh (Project for short).

2. The Joint Petitioner No. 2 has signed the Implementation Agreement (IA for short) on 26.07.2022 (Annexure P-1) for the implementation of the Project of 9.90 MW with the Government of Himachal Pradesh (GoHP for short). The revised Techno Economic Clearance (TEC) has been accorded to the Project by the Deptt. of Energy vide Order No. DoE/CE(Energy)/TC-Kuwarsi(R)/2022-4714-23 dated 05.08.2022 (Annexure P-2). As per the Petition, the Scheduled

Commercial Operation Date (SCOD for short) of the Project is 22.07.2025, as per the certificate issued by the Directorate of Energy (DoE for short) vide letter No. HPDoE/CE (Energy) Kuwarsi/2022-9010 dated 28.01.2023 (Annexure P-3) for the purpose of the tariff and other terms and conditions.

3. It is averred that the SCOD of the Project falls beyond the current control period but the Joint Petitioner No. 2 requires the Power Purchase Agreement (PPA for short) in order to achieve the financial closure. It is averred that earlier the installed capacity of the Project was 5 MW for which the term loan had been arranged but subsequently, the installed capacity of the Project was enhanced to 9.90 MW for which additional loan requirement has been made by the Joint Petitioner No. 2 with the Indian Renewable Energy Development Agency (IREDA for short) which is evident from letter dated 15.03.2023 of the IREDA (Annexure P-4). It is averred that as per the terms and conditions of loan as contained in letter dated 15.03.2023, it is one of the conditions mentioned by the IREDA at Clause IX that tariff of Rs. 4.49 per unit be considered for financial appraisal based on generic levelized tariff, as per the Order of the HPERC dated 22.12.2020 for the 3rd Control Period (01.04.2020 to 30.09.2023) and may be considered in the PPA subject to other terms and conditions as applicable, such as adjustment of

subsidies etc, for smooth disbursement of term loan. Also averred that the Joint Petitioner No. 2 has made substantial progress in the execution of the Project and all material details have been submitted to the DoE, on 09.05.2023 which is evident from Annexure P-5. It is also averred that the Commission in Petition No. 72 of 2022 has accorded approval of the PPA in respect of Chirchind-II HEP after taking into consideration the tariff in the 3rd Control Period, where the SCOD of the project was 25.11.2025 i.e. beyond the 3rd Control Period, subject to terms and conditions and the PPA in respect of Chirchind-II HEP has been annexed as Annexure P-6.

4. It is averred that the provisions regarding free power/ royalty have been made in Clause 5.26, 5.26.1 to 5.26.3 in the IA.

5. As per the Petition, the GoHP vide notification dated 15.05.2018 read with amended notification dated 10.10.2018 has mandated that the entire power generated from the Projects having capacity upto 25MW will be purchased by the HPSEBL on the tariff as determined by the Commission. It is also averred that both the parties have agreed for sale and purchase of the power from the Project at generic levellised tariff, to be determined by the Commission for the control period, where SCOD of the project falls, in accordance with the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from

Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 (RE Regulations, 2017 for short) or the prevalent tariff Regulations at any later stage.

6. As per the Joint Petition, the Ministry of Commerce and Industry vide notification No. 2 (2)/ 2018-SPS dated 23.04.2018 has notified the 'Industrial Development Scheme for the States of Himachal Pradesh and Uttarakhand' whereby the Central Capital Investments Incentive is being given for access to credit @ 30% of the investment in plant & machinery with an upper limit of Rs. 5 crores. Accordingly, the Joint Petitioner No. 2 has applied online on the web portal of the Industry Department vide application No. IDS/HP/3040 on 31.03.2022 for availing the Central Capital Investments Incentive and the amount of subsidy to be released under this Scheme shall be adjusted in accordance with the provisions of the SHP tariff order, as may be notified by the Commission, for the Control Period in which SCOD of the Project falls.

7. As per the Joint Petition, M/s Jagdambey Hydro Projects LLP has signed an agreement with the HPPTCL on 29.05.2023 for the connection of the Kuwarsi-II HEP (15.00 MW) in Joint Mode with Salun HEP (9.00 MW), Chate ka Nalla HEP (9.00 MW), Toral Kundil HEP (18.00 MW) and Kuwarsi HEP (9.90 MW) and as per the agreement,

the Interconnection Point for the Project i.e. Kuwarsi HEP (9.90 MW) shall be at 66/220 kV Switching Sub-station of the HPPTCL at Heiling (Annexure P-7) and the Joint Petitioner No. 2 has made arrangement for the joint evacuation of power alongwith aforesaid SHPs upto Interconnection Point. M/s Jagdambey Hydro Projects LLP, M/s Swadeshi Distributors LLP and V.B. Hydro Projects Ltd. have also signed the agreement and supplementary agreement dated 24.02.2023 and 15.03.2023 respectively (Annexure P-8), for pooling the Power from their Projects through Common 66 kV terminal bay to the proposed 220/66 kV Heiling Sub-station (Dalli) of the HPPTCL in 66 kV voltage level. Hence, the Petition.

8. No reply to the Petition has been filed by the Respondent.

9. We have heard Sh. Kamlesh Saklani, Authorised Representative for Joint Petitioner No. 1, Sh. Ashok Kumar Verma, Ld. Counsel for Joint Petitioner No. 2 and Sh. Ashish Rana, Law Officer for the HPPTCL and have perused the record carefully.

10. It is apparent from the IA dated 26.07.2022 (Annexure-III and P-1) that the predecessor in interest of the Joint Petitioner No. 2 was initially allotted a Project of 3.00 MW on 27.08.1996 but the capacity of the Project was subsequently enhanced to 5.00 MW on 05.11.2007 and an IA to this effect was signed on 14.11.2008. It is also evident from IA

dated 26.07.2022 that on coming into force of the one time amnesty Scheme, the benefit thereof was accorded in favor of the Project and pursuant thereto SIA dated 01.02.2021 redefining the SCOD was signed between the HIMURJA and the Joint Petitioner No. 2 on 01.02.2021. It is also apparent from IA dated 26.07.2022 that on further detailed investigation of the Project, the capacity of the Project was enhanced to 9.90 MW and accordingly, IA dated 26.07.2022 was signed.

11. Alongwith the Petition, the parties had placed on record Connection Agreement dated 29.05.2023 signed between the HPPTCL (Respondent) and M/s Jagdambey Hydro Projects LLP agreeing to connect the Project to the STUs Transmission and Connection System at Interconnection Point 66/220 kV Heiling Sub-station and to transmit the power through the Intra-state Transmission system. However, there was no mention in the Connection Agreement dated 29.05.2023 of signing any Connection agreement by the HPPTCL with the Joint Petitioner No. 2. Similarly, the agreement dated 24.02.2023 and supplementary agreement dated 15.03.2023 are also silent that the HPPTCL is signatory to the same. As such, the Commission vide order dated 19.07.2023 directed the Respondent/ HPPTCL to make proper documentation and sign the agreement with all the Project developers

in respect of joint evacuation of the power of the Project i.e. Kuwarsi HEP (9.90 MW) and pursuant thereto, a Connection Agreement dated 16.08.2023 has been signed between the HPPTCL and M/s V.B. Hydro Projects Ltd. (Joint Petitioner No. 2), M/s Jagdambey Hydro Projects LLP and M/s Swadeshi Distributors LLP and it is evident from the said agreement that the HPPTCL has agreed to the connection of Kuwarsi HEP (9.90MW) in joint mode with Kuwarsi-II HEP (15.00MW), Salun HEP (9.00MW), Chate ka Nalla (9.00 MW) and Toral Kundil (18.00 MW) and that all the five projects shall come through 66 kV D/C dedicated line upto the Interconnection Point.

12. The DoE, GoHP vide letter dated 28.01.2023 has issued a certificate that the SCOD of the Project is 22.07.2025, meaning thereby that the generation will commence on or after 25.07.2025 and, therefore, the Project shall be entitled to the tariff prevalent at the relevant control period as the 3rd control period shall come to an end on 30.09.2023.

13. As per the Petition, though the SCOD of the Project is 22.07.2025 but the Joint Petitioner No. 2 requires the PPA for achieving the financial closure and for achieving more finance for implementation of the Project. The Petitioners have annexed copy of letter dated 15.03.2023 of the IREDA (Annexure P-4) which shows that the request

of the Joint Petitioner No. 2 for the term loan of Rs. 31.19 Crore has been considered subject to the terms and conditions and it is mentioned in condition IX of Annexure-I to letter dated 15.03.2023 (Annexure P-4) that the tariff of Rs. 4.49 per kWh has been considered for financial appraisal, based on HPERC tariff order dated 22.12.2020 for the 3rd Control Period (01.04.2020 to 30.09.2023). It has been mentioned in the Petition that this tariff be incorporated in the PPA so as to facilitate the sanctioning of loan. No doubt, as per the 3rd Control Period, generic levelized tariff of the Hydro Projects of 5.00 MW to 25.00 MW is Rs. 4.49 per kWh but said tariff is subject to adjustment of subsidy/ financial assistance, if any, as per Regulations prevalent for 3rd Control Period and the Joint Petitioner No. 2/ Project shall be entitled to the tariff after adjustment of the admissible subsidy. The SCOD of the Project is beyond 3rd Control Period which is only upto 30.09.2023 and, therefore, the Joint Petitioner No. 2 shall be entitled to the tariff which shall be prevalent at the time of the SCOD, which may be less or more and in case the tariff is less, the Joint Petitioner No. 2 will have to supply the power to the HPSEBL on the said tariff only and if the tariff is more, the Joint Petitioner No. 2 shall be entitled to the same. Therefore, what is incorporated in the PPA of Chirchind-II HEP (12.90 MW) (Annexure P-

6), can't be *ipso-facto* made applicable to the Project of the Joint Petitioner No. 2.

14. It is apparent from the Petition that the Joint Petitioner No. 2 has applied online on the web portal of the Industrial Department vide application No. IDS/HP/3040 on 31.03.2022 for availing the Central Capital Investments Incentive and the amount of subsidy to be released under this Scheme shall be adjusted in accordance with the provisions of the SHP tariff orders as may be notified by the Commission for the Control Period in which SCOD of the Project falls and the tariff of said period is yet to be determined by the Commission but the Joint Petition is necessitated as the Joint Petitioner No. 2 requires PPA for achieving the financial closure failing which it would not be possible to complete the Project within stipulated period as mentioned in the SCOD. As per the GoHP notification dated 15.05.2018 read with amended notification dated 10.10.2018, it has been mandated that the entire power generated from the Hydro Projects having capacity upto 25MW shall be purchased by the HPSEBL on the tariff as determined by the Commission.

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

16. Taking into consideration the aforesaid facts and circumstances and in exercise of the powers vested in the Commission under Section

86 (1) (b) of the Electricity Act, 2003 and Regulations 50 & 50-A of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, as amended from time to time, and also taking into consideration the notifications dated 15.05.2018 and 10.10.2018 of the GoHP, Swaran Jayanti Policy, 2021, 'One Time Amnesty Scheme dated 07.11.2020, the Agreement dated 24.02.2023, Supplementary Agreement dated 15.03.2023, Connection Agreements dated 29.05.2023 and 16.08.2023, the Implementation Agreement dated 26.07.2022, the SCOD Certificate dated 28.01.2023 (Annexure-I), and the letter dated 15.03.2023 of the IREDA (Annexure P-4), the Joint Petitioners have made out a case for the approval of the Long Term PPA under the Generic Levellised Tariff.

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

- (i) The Provisional tariff which shall be applicable to the project of Petitioner shall be Rs. 4.49 (Rupee four and forty nine paise only) per unit, which is further subject to the adjustment on account of the financial assistance/subsidy, as per the provisions of Regulations (ibid). However, the SCOD of the project is 22.07.2025 i.e. beyond 3rd Control Period, from which date the generation of Power and sale & purchase will commence, the Joint Petitioner No. 2/ Project shall be entitled to the tariff which shall be prevalent at the time of the SCOD, which may be less or more and in case the tariff is less, the Joint Petitioner No. 2/

Project will have to supply the power to the HPSEBL on the said tariff only and if the tariff is more, the Joint Petitioner No. 2 shall be entitled to the same and considering that the release/availability of financial assistance/subsidy under "Industrial Development Scheme for Himachal Pradesh & Uttarakhand" notified by the Ministry of Commerce & Industry is yet to be received, the tariff shall be subject to adjustment of subsidy as mentioned above.

- (ii) The Joint Petitioner No. 2 shall intimate the Joint Petitioner No.1 i.e. the HPSEBL of the receipt of financial assistance/subsidy released to the Project by the State/Central Government or its designated Department(s)/ agency(ies), within 15 days of receipt of the same and an affidavit to this effect shall be furnished by the Joint Petitioner No. 2.
- (iii) The petitioners shall approach the Commission immediately after the release of Financial assistance/subsidy as per item (ii) above or atleast one month before the SCOD of the Project so as to make appropriate order of tariff which shall be applicable to the Project after adjustment of admissible subsidy. However, the Joint Petitioner No. 2 shall also have the liberty to approach the Commission, individually for the appropriate tariff in respect of the Project after adjustment of subsidy.
- (iv) The clause 6.2 of PPA shall be modified to the extent that the levellised provisional tariff shall be subject to further adjustment as per the order(s) as may be passed by the Commission after receipt of Petition as per item (iii) of this para.
- (v) In case of delay of project beyond the SCOD i.e. 22.07.2025, the tariff of the Control Period in which the SCOD falls, subject to

further adjustment as per item (ii) of this para, shall be applicable and the same shall be firm and final.

- (vi) The Joint Petitioner No. 2 is directed to pursue the matter of Subsidy/Central Capital Investment Incentive with the Industries Department. However, in case no response is gathered from the Joint Petitioner No. 2 by the Joint Petitioner No. 1, till one month before the SCOD, the Joint Petitioner No. 1 shall also intimate the Commission in this regard.
- (vii) The Interconnection Point for the Project as per the connection agreement dated 16.08.2023 is at 66/220kV switching sub-station of HPPTCL at Heiling.
- (viii) The entire cost of common 66kV terminal bay and 66kV Transmission line from the Power house to HPPTCL Sub-station including metering arrangements shall be shared by the IPPs in proportionate to their individual generating capacities as per the agreement dated 16.08.2023 executed between the parties.
- (ix) The cost of O&M of the interconnection facilities at the HPPTCL grid shall be borne by the IPPs in proportionate to installed capacity of their respective Projects for which separate agreement shall be executed between HPPTCL and parties.
- (x) The water cess, as made applicable by the Govt. of H.P. for the Hydro Electric Projects, shall be dealt accordingly as per the notification of the Government.
- (xi) The additions and alterations qua 'Base Rate of Late Payment Surcharge', 'Default Trigger Date', 'Due Date', 'Outstanding Dues', 'Payment Security Mechanism' and Regulations 31-B, and Regulation 31-BB, as per Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable

Energy Sources and Terms and Conditions for Tariff Determination) (Sixth Amendment) Regulations, 2023 shall be carried out at appropriate places in the draft PPA before draft approved PPA is sent to the parties. Similarly, any other necessary addition and alteration, if any, required to be carried out as per Connection Agreements dated 29.05.2023 and 16.08.2023 or the prevailing Regulations be also carried out before approved draft PPA is sent to the parties.

18. The Joint Petitioners are directed to execute the Power Purchase Agreement accordingly within a period of 30 days from the date of this Order. Three copies of the executed Power Purchase Agreement be submitted to the Commission for record.

The file after needful be consigned to the record.

Announced
06.09.2023

-Sd-
(Shashi Kant Joshi)
Member

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

-Sd-
(Devendra Kumar Sharma)
Chairman