

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

Petition No: 44 of 2023
Date of Institution: 15.07.2023
Arguments Heard on: 19.08.2023
Decided on: 27.09.2023

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

....**Joint Petitioner No. 1**

AND

M/s Sumurja Shakti Pvt. Ltd.,
Village Gondpur, Tehsil Paonta Sahib,
Distt. Sirmaur, H.P. through its,
Authorised Signatory, Sh. Joginder Singh,

....**Joint Petitioner No. 2**

Joint Petition under the provisions of Section 86 (1) (b) of the Electricity Act, 2003, read with Regulations 50 and 50-A of the HPERC (Conduct of Business) Regulations, 2005, as amended from time to time, for the approval of Power Purchase Agreement (Solar) in respect of Sumurja Shakti Solar PV Project (2.00 MW).

CORAM

DEVENDRA KUMAR SHARMA
CHAIRMAN

YASHWANT SINGH CHOGAL
MEMBER (Law)

SHASHI KANT JOSHI
MEMBER

Present:-

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

Sh. Joginder Singh, Authorised Signatory for the Joint Petitioner
No. 2.

ORDER

The present Joint Petition has been filed by the Himachal Pradesh State Electricity Board Ltd. (the Joint Petitioner No.1 or the HPSEBL for the short) and M/s Sumurja Shakti Pvt. Ltd. (the Joint

Petitioner No. 2 for the short) for the approval of the Power Purchase Agreement (PPA for short) under Section 86 (1) (b) of the Electricity Act, 2003 (Act for short) read with Regulations 50 & 50-A of the HPERC (Conduct of Business) Regulations, 2005, as amended from time to time, (CBR, 2005 for short) in respect of the Sumurja Shakti Solar PV Project (2.00 MW).

2. The case of the Petitioners is that a Solar PV Project (2.00 MW) known as M/s Sumurja Shakti Pvt. Ltd., situated at Village Gondpur, Paonta Sahib, Distt. Sirmaur, H.P (Project for short) is being setup pursuant to the registration accorded by the HIMURJA (HP Govt. Energy Development Agency) vide letter No. HIMURJA/reg./solar projects/13-12751 dated 16th March, 2021 which was further extended for one (1) year by the HIMURJA vide letter No. Himurja/reg./Solar project/13- 3588 dated 27th June, 2023. As per the Joint Petition, the date of Completion/ Commissioning Schedule of the Project is 16th March, 2024 as evident from Form-A, annexed to the Petition.

3. As per the Joint Petition, the Commission vide Order dated 29.02.2016 passed in Suo Moto Petition No. 104/2015 has finalized the Model Power Purchase Agreement for Solar PV Projects and the draft PPA has been prepared on the lines of the aforesaid model PPA. Further, averred that as per the Swaran Jayanti Energy Policy, 2021, the payment/ billing to the Solar Power Project developers will be

made after the date of operation of the Project declared by the Directorate of Energy, the Government of Himachal Pradesh (the GoHP for short) and the said provision has been incorporated in the draft PPA at Clause 8.1.

4. It is averred that parties have signed a connection agreement on 02.06.2023 providing that the interconnection point shall be at 11 KV - Gondpur-Pharma Force Lab Unit-II feeder (Pole location/number will be intimated by field units) emanating from 132/33/11KV Gondpur Sub-Station with appropriate Protection arrangement (through solid tap). It is averred that the Joint Petitioner No. 2 shall apply for the subsidy as may be applicable for the Solar Projects from the State Govt./Central Govt. or any other designated agency and will intimate the Joint Petitioner No. 1 accordingly.

5. The Commission vide Order dated 22.07.2021 (Suo Moto Petition No. 22/2021) has determined the generic levellised tariff in respect of Solar PV Projects for FY 2021-22 under the HPERC (Promotion of Generation from Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 (RE Regulations, 2017 for short). The Joint Petitioner No. 2 has submitted an undertaking (Annexure-VI to the draft PPA) wherein it has been declared that the project is situated in a rural area.

6. It is also averred that the tariff for the Projects to be set up in areas other than Industrial and Urban areas upto 2 MW is Rs. 3.72 per KWh as determined by the Commission vide Order dated 31.03.2023 which shall be applicable to the Project which has been incorporated in Clause 6.2 of the draft PPA.

7. We have heard Sh. Kamlesh Saklani, Authorised Representative for the Joint Petitioner No. 1 and Sh. Joginder Singh, Authorised Signatory for the Joint Petitioner No. 2 and have perused the entire record carefully.

8. It is evident from the record that the connection agreement in respect of the Project has been signed by the Joint Petitioners on 2nd June, 2023, a copy whereof is annexed to the Petition as Annexure-III. As per the connection agreement, the Interconnection Point of the project has been provided at existing 11 kV Gondpur-Pharma Force Lab Unit-II Feeder of M/s Pharma Force Lab Unit-II Company (through solid tap). The Joint Petitioner No. 2 has also produced an undertaking dated 11.08.2023 from M/s Pharma Force Lab Unit II regarding allowing solid tapping to M/s Sumurja Shakti Pvt. Ltd. from their dedicated feeder which is reproduced as under:-

“we do hereby undertake that we have got no objection to allow solid tapping to M/s Sumurja Shakti Pvt. Ltd., Gondpur for their Solar Power on out 11kV dedicated feeder, emanating from 132/33/11kV Sub-station Gondpur for out factory i.e. Pharma Force Lab Unit-II. It is also submitted that

in the event of any power disturbance caused by this IPP, we shall not claim any production loss sustained from the HPSEBL/ Sumurja Shakti.”

9. As per Para 7 (ii) of H.P. Solar Power Policy, 2016, the HPSEBL shall purchase power from all the producers under the Scheme for farmers and unemployed youth subject to location criteria. In addition, power from smaller Projects as distributed generation and larger Projects upto 5MW will also be purchased by HPSEBL to meet its RPPO and 24x7 supplies obligations in remote areas. Even the Swaran Jayanti Policy, 2021 notified by the Govt. of HP on 20.01.2020 also provides for purchase of Power by HPSEBL on the tariff fixed by the Commission.

10. The Joint Petitioner No. 2 has claimed that the Project is entitled to the tariff of Rs. 3.72 per kWh. It is evident from the letter of the HIMURJA dated 27.06.2023 that the tariff in respect of the Project shall be as per the rates applicable during the time of commissioning of Project prescribed by the HPSEBL and as per Schedule-I attached to the draft PPA, the SCOD of the Project is 16.03.2024, which is also mentioned in “Form-A” annexed to the Petition. Though said Schedule-I is duly signed and stamped by the HPSEBL, yet the tariff of Rs. 3.72 per kWh is not applicable to the Project for the reasons that the Project was allotted to the Joint Petitioner No. 2 vide letter dated 16.03.2021 of HIMURJA and as per said letter, the Project was to be completed

within a period of two years. No doubt, the Joint Petitioner No. 2 was granted extension of one year for completion of the Project vide letter dated 27.06.2023 by HIMURJA and perhaps on the basis of said letter, the Joint Petitioners have mutually fixed SCOD as 16.03.2024 but as a matter of fact the PPA is required to be signed as early as possible so as to achieve the financial closure for which PPA is required with HPSEBL. In this regard, reliance may be placed in HP Solar Power Policy, 2016 which was valid upto 31.03.2022. The Para 13 (i) of the Policy reads as under:

“13. Time lines or Project development:-

(i) It should ordinarily take about 18 months to 24 months to commission the project after obtaining land, statutory clearances and financial closure, depending upon the size of the project. Therefore, three years for project completion after provisional Registration should be reasonable. There are no Environment clearances, survey and investigations, TECs etc. required for solar projects.”

Further Para 14 (i) (ii) of the above Policy reads as under:

“14. Delays in Commissioning of the Projects:-

(i) Solar projects are commercial investment projects and therefore efficiency gains and inefficiencies are to the account of the developer. The developer should insulate and secure himself from all risks at construction as well operation stages and be prudent and efficient in management of project.

(ii) Where ever HPSEBL has PPA with the projects, it shall be the responsibility of HPSEBL to make provisions in the PPA to regulate delays, which is fair and just to both the parties, if no provisions are made in model PPA approved by HPERC.”

Thus, the Joint Petitioner No. 2 was required to sign the PPA as early as possible from the date of allotment of the Project so as to contain a clause regulating delay, if any in the PPA, however, the joint

Petitioner No.2 has miserably failed. Otherwise also the extension granted vide letter dated 27.06.2023 is only for the completion of the Project and not in any way provide any concession to the Joint Petitioner No. 2 for not signing the PPA. Though, no time line has been provided in the letter dated 16.03.2021 for signing the PPA, yet the Joint Petitioner No. 2 cannot walk in any time to sign the PPA in order to claim suitable higher tariff. Also the extension letter is only for avoiding the cancellation of the Project and has nothing to do with the delay of signing of PPA. Even the extension letter dated 27.06.2023 containing that tariff as per the rates applicable during the time of commissioning of the Project prescribed by the HPSEBL will be applicable is of no help to the joint Petitioner No.2 because the PPA was required for achieving the financial closure. There is nothing in the Petition or any explanation from Joint Petitioner No. 2 as to when the financial closure was achieved. Similarly, there is no explanation for the delay in signing the PPA.

11. Significantly, the Swaran Jayanti Energy Policy, 2021 and other prior Solar policies provide time line for signing PPAs ranging from one month to three months from the date of connectivity or allotment of the Project but no efforts were taken by the joint Petitioner No.1 even for obtaining the connectivity forthwith which was obtained only 02.06.2023 simply for claiming the higher tariff. Hence, tariff of Rs.

3.72 per kWh as claimed is not applicable to the project of the joint Petitioner No.2.

12. Though, a reliance has been placed in Para 12 E (i) of the Order dated 31.03.2023 in Suo Moto Petition No. 11/2023 determining the generic levellised tariff w.e.f. 01.04.2023 to 30.09.2023 under the RE Tariff Regulations, 2017 that the Petition has been filed in between 01.04.2023 to 30.09.2023 i.e. 15.07.2023 and, therefore, as per Para 12 E (i), the tariff determined on 31.03.2023 i.e. Rs. 3.72 Per kWh is applicable as the SCOD of the Project is 16.03.2024. Said submission though appears to be very attractive but has no merits and liable to be rejected for the reasons as mentioned above, that the PPA was required to signed immediately after allotment of the Project which was necessary for obtaining the financial closure and that no explanation for delay, even remotely, has come from the Joint Petitioner No. 2 for signing the PPA and obtaining the connectivity. Infact, the generic levellised tariff is determined by the Commission for the relevant control period, taking into consideration the capital cost, interest on loan, operation and maintenance charges and RoE etc.. Since not even a remote explanation of delay has been offered for not signing the PPA soon after the allotment of the Project, it can safely be presumed that the Joint Petitioner No. 2 had arranged everything soon after the allotment but purposely delayed the signing of PPA in order to

claim higher tariff. Hence, the inefficiency of the Joint Petitioner can't be rewarded by granting tariff as per Order dated 31.03.2023 passed by the Commission in Suo Moto Petition No. 11 of 2023.

13. The Commission has determined the tariff of Rs. 3.34 per unit for the project above 1 MW upto 5 MW vide Order dated 22.07.2021 in Petition No. 22 of 2021 for the period from 01.04.2021 to 31.03.2022. The Project was provisionally registered by the HIMURJA vide letter dated 16.03.2021 and, therefore, the tariff as determined by the Commission vide Order dated 22.07.2021 only is applicable for the project of the joint Petitioner No.2, which is Rs. 3.34 per kWh.

14. The Petition is supported by the affidavits of the respective parties.

15. Therefore, in view of the powers vested in the Commission under Section 86 (1) (b) of the Act, read with Regulations 50 and 50-A of the CBR, 2005, as amended from time to time, the Joint Petitioners have made out a case for approval of the Power Purchase Agreement (Solar) in respect of the Project. Hence, the Petition succeeds and allowed. The draft PPA is ordered to be approved subject to the following conditions:-

- (i) The tariff as determined vide order dated 22.07.2021 (Suo-Moto Petition No. 22/2021) shall be applicable to the Project of the Joint Petitioner No. 2 which is Rs. 3.34 per unit.

However, this tariff of Rs. 3.34 per unit shall be provisional and subject to adjustment of subsidy, if any. Thus, the provisional tariff is allowed for a period of two years only.

- (ii) The undertaking of the Joint Petitioner No. 2 that the Project is at rural area shall form a part of the PPA. Similarly, the undertaking of M/s Pharma Force Lab Unit-II shall also form a part of the PPA.
- (iii) The Joint Petitioner No.2 shall apply to the State/Central Government or its designated department(s)/agency(ies), for grant of applicable subsidy/financial assistance to the Solar Power Project immediately on receipt of this Order if not already applied, and shall intimate the Joint Petitioner No.1 i.e. HPSEBL of the receipt of financial assistance /subsidy released to the Project by the State/ Central Government or its designated Department(s)/ agency(ies), within 15 days of receipt of the same and an affidavit to this effect shall be furnished by the Joint Petitioner No. 2 which shall form part of the PPA.
- (iv) The Joint Petitioner No. 2 shall make an endeavor to avail the admissible subsidy/financial assistance (if any). In case the subsidy/financial assistance is not availed or Joint Petitioner No. 2 fails to approach the State/Central Government or its designated Department(s)/agency(ies), the shall be deemed to have been availed by the Joint Petitioner No. 2 and the Joint Petitioner No. 1 shall carry out the adjustment of such benefit, if any, admissible to the project after a period of 2 years from the date of the Order.
- (v) In case the meter is installed in the premises of the Joint Petitioner No. 2, the notional line losses upto the injection

point shall be borne by the Joint Petitioner No. 2/ Sumurja Shakti Solar PV Project.

In case the metering point is in the facilities of the HPSEBL, the notional line losses from injection point to the metering location have to be borne by the HPSEBL and credit for the losses from the injection point to the metering location shall be given to the Joint Petitioner No. 2/ Sumurja Shakti Solar PV Project by the HPSEBL.

- (vi) The Scheduled Date of Synchronisation and Scheduled Commercial Operation Date (SCOD) of the project is 16.03.2024 which has been specified in Schedule-I which shall form a part of the PPA.
- (vii) The additions and alterations qua 'Base Rate of Late Payment Surcharge', 'Default Trigger Date', 'Due Date', 'Outstanding Dues', 'Payment Security Mechanism' and Regulations 31-B, and Regulation 31-BB, as per Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Sixth Amendment) Regulations, 2023 shall be carried out at appropriate places in the draft PPA before draft approved PPA is sent to the parties. Similarly, any other necessary addition and alteration, if any, required to be carried out as per Connection Agreement dated 02.06.2023 or the prevailing Regulations, etc. be also carried out before approved draft PPA is sent to the parties.

16. Other terms and conditions of the PPA shall subject to provisions of the Himachal Pradesh Electricity Regulatory Commission

(Promotion of Generation from the Renewable Energy Sources Terms & Conditions for the Tariff Determination) Regulations, 2017 and Order dated 29.02.2016 in Suo-Moto Petition No. 104/2015 whereby Model PPA for Solar PV Projects has been finalized and the Order of Commission dated 22.07.2021 in Suo-Motu Petition No. 22 of 2021 issued under the aforesaid Regulations.

17. Necessary additions and alterations as per the above and the prevailing Regulations be carried out in the draft PPA. The Petitioners are directed to execute the Power Purchase Agreement (Solar) 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 records.

Announced
27.09.2023

Sd/-
(Shashi Kant Joshi)
Member

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

Sd/-
(Devendra Kumar Sharma)
Chairman