

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

Petition No.	52 of 2025
Date of Institution:	10.03.2025
Arguments Heard on:	24.03.2025
Decided on:	10.04.2025

CORAM

DEVENDRA KUMAR SHARMA
CHAIRMAN

YASHWANT SINGH CHOGAL
MEMBER (Law)

SHASHI KANT JOSHI
MEMBER

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

....Joint Petitioner No. 1.

AND

The HP Power Corporation Limited, through
Dy. General Manager (SoP),
Himfed Building, BCS, New Shimla,
Distt. Shimla, H.P.-171009.

....Joint Petitioner No. 2.

Joint Petition under the provisions of Section 86(1)(b) of the Electricity Act 2003 read with Regulations 56 and 57 of the HPERC (Conduct of Business) Regulations, 2024, for approval of the Power Purchase Agreement (Solar) to be executed by the HPSEBL with the HPPCL in respect of Aghlor Solar Power Project (10 MW).

Present:-

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

Sh. Vikas Chauhan, Ld. Counsel for the Joint Petitioner
No. 2.

ORDER

This Joint Petition has been filed by the Himachal Pradesh State Electricity Board Ltd. (the Joint Petitioner No.1 or the HPSEBL/ Distribution Licensee for short) and the Himachal Pradesh Power Corporation Limited (the Joint Petitioner No. 2 or the HPPCL for 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 56 and 57 of the HPERC (Conduct of Business) Regulations, 2024, (CBR, 2024 for short) in respect of Aghlor Solar Power Project (10 MW).

2. The case of the Petitioners is that a Solar PV Project (17 MW) known as Aghlor Solar Power Project, situated at Village Aglohar, Distt. Una, H.P (Project for short) was initially allotted to the Joint Petitioner No. 2 by the HIMURJA (HP Govt. Energy Development Agency) vide letter No. HIMURJA (F-7)/SPV Projects/2022-10233 dated 17.02.2022. Subsequently, the Joint Petitioner No. 2 vide letter dated 27.02.2025 requested for revision of the capacity of the Project from 17 MW to 10 MW which was granted by the HIMURJA vide letter No. HIMURJA (F-7)/SPV Projects/2022-10584 dated 05.03.2025 (Annexure-IV). The inventory was also approved vide letter No. HIMURJA (F-7)/SPV Projects/2022-957 dated 15.05.2023 By the

HIMURJA, in view of the guidelines issued by the Government of Himachal Pradesh (GoHP for short) (Annexure-VIII).

3. It is averred that parties have signed the connection agreement on 27.01.2024 for connectivity of the Project at 33 kV Switching Station/ LILO arrangement (at Jogipanga) on 33 kV Bangana-Rakkar (Una) line and interconnection point at 132/66/33/11 kV Rakkar (Una) Sub-station, using the Distribution and Communication System of the Distribution Licensee/ SLDC.

4. According to the Petition, the construction work of the Project has been completed and commissioning will be achieved shortly and, therefore, till the completion of the Switching Station at Jogipanga, the following interim evacuation arrangement is proposed for the approval of the Commission:

- a) Through LILO of 33 kV Una-Bangana line in the switchyard of Aglor SPP, however the reservation to LILO of 33 kV Una-Bangana line in the switchyard of Aghlor SPPA as under:
 - (i) There shall be increase in the line length of 33 kV Una Bangana line of approx. 16 km which shall increase the T&D losses of the line.
 - (ii) Increased length of line shall also increase the possibility of occurrence of fault and the reliability shall be affected;
 - (iii) This line serves nearly 24000 consumers of Thanakallan and Bangana area and by LILoing the 33 kV Una-Bangana

line at the switchyard of the Aghlor SPPP shall shift the control of line from HPSEBL to HPPCL.

or

- b) Through solid tap on 33 kV Una-Bangana line. In this arrangement, the control of the line shall remain with the HPSEBL and there shall be no increase in the line losses as compared to LILO arrangement. **However, this arrangement is in contravention with the inter-connection guidelines issued by the Commission.** (Emphasis added)

5. It is averred that the HPSEBL/ Joint Petitioner No. 1 has financially concurred the power procurement proposal subject to the fulfilment of the following conditions:

- (i) *Connection Agreement clauses should be implemented before commissioning of the Project.*
- (ii) *If there is any relaxation/ amendment in the connectivity for some interim period, the same should be approved from the HPERC before commissioning of the Project.*
- (iii) *The switching station was part of the connectivity agreement for which amount has been deposited by the HPPCL in March, 2025 which is the major reason for possible delay in the project connectivity.*
- (iv) *Further, the land/ purchase of land for switching station has not identified/ acquired yet. This interim arrangement may continue indefinitely. In addition to above, the site layout/ location plan, SLD and General Arrangement (GA) Drawings are yet to be provided by the HPPCL.*

6. With regard to the above financial concurrence of the HPSEBL power procurement proposal, the Joint Petitioner No. 2/ HPPCL has submitted the following:

- (i) As per the connection agreement, the estimate for the LILO (Line-In Line-Out) portion was submitted by the HPSEBL in June, 2023, and the required amount was deposited accordingly.*
- (ii) The estimate for the switching station was submitted in November, 2024, and the corresponding amount was subsequently deposited with the HPSEBL.*
- (iii) The estimate amount for the switching station was deposited on 27.02.2025. Considering the planned execution of future solar power projects in the vicinity, the evacuation system for the LILO is already in place. Additionally, other HPPCL projects are also in progress.*
- (iv) Since HPPCL has already deposited the cost of the switching station, and the connection agreement does not require HPPCL to provide land for it, no additional land shall be provided. However, if any further payments are required under regulatory provisions, HPPCL will comply accordingly. The construction of the switching station is being carried out by the HPSEBL on a deposit work basis. Therefore, HPPCL is not required to submit any drawings to HPSEBL. Furthermore, as Aghlor SPP is ready for synchronization, HPERC may allow its immediate connection to the grid to prevent generation loss.*

7. Also averred that Regulation 5 (1) of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from Renewable Energy Sources and Terms & Conditions for Tariff Determination) Regulations, 2017, as amended, (RE Regulations, 2017 for short) provides that any renewable energy generator who

does not have an arrangement for disposal/ use of energy from his project may, with prior consent of the Distribution Licensee and approval of the Commission enter into a PPA on long term basis or under REC Mechanism with the Distribution Licensee as per the provisions of the above Regulations at the tariff options given under Regulation 13.

8. Also averred that in a meeting held on 29.06.2022, both parties have agreed to tie up upcoming Hydro and Solar Power Projects of the HPPCL with the HPSEBL depending upon their Commercial Operation Date (CoD). Further, the HSPEBL is in deficit of power as per the Anticipated Power Supply Position (APSP), hence in order to bridge the gap, the HPSEBL has agreed to tie up the said project.

9. Further, the HPPCL has opted to sell the entire net saleable energy from the Project to the HPSEBL at project specific tariff in accordance with Regulation 13 of the RE Regulations, 2017 to be determined by the Commission under Section 62 of the Act and Regulations 15 and 19 of the RE Regulations, 2017.

10. It has been prayed that the Commission may provide provisional tariff for sale/ purchase of power till the determination of project specific tariff for the Project by the Commission on the Petition

to be filed by the HPPCL shortly under Regulation 19 of the RE Regulations, 2017.

11. According to the Petition, the Commission vide Order dated 29.02.2016 passed in Suo Moto Petition No. 104 of 2015, amended vide order dated 28.10.2024 in Suo Moto Petition No. 02 of 2024, has approved the Model Power Purchase Agreement for Solar PV Projects. Though, the Model PPA is upto the capacity of 5.0 MW but both the parties have opted the said Model PPA for preparation of draft PPA in respect of the Project.

12. It is averred that the parties are at difference of opinion on the interim connectivity, deemed generation and interconnection point as under:-

A. Interim Connectivity:

HPPCL's Viewpoint: The 33kV proposed switching station shall also cater the power evacuation arrangement for other upcoming solar project in the vicinity and the development/ construction of Aghlor SPP has also been completed. However, HPPCL shall bear the incremental transmission losses of the solar power in the LILO portion. Moreover, as per GNA Regulation-2023, all losses are borne by the drawee of power.

HPSEBL's Viewpoint: In case of interim LILO arrangement of 33 KV Una-Bangana line* at switchyard of Aghlor SPP is allowed, there shall be increase in the length of 33 kV Una- Bangana line of approx. 16 km, consequently increases T&D losses of said line. Therefore, in the interest of fairness, HPPCL shall bear the losses for all the power to be wheeled through proposed interim LILO arrangement of 33 kV Una- Bangana line.

B. Deemed Generation

HPPCL's Viewpoint: The provisions of deemed generation shall be allowed to Aghlor Solar Power Project, similar to Pekhubella SPP approved by the HPERC. This will provide necessary safeguards to the HPPCL in case of power evacuation constraints or grid unavailability beyond the control of the HPPCL.

HPSEBL's Viewpoint: It is submitted that this Hon'ble Commission has provided an explanation of applicability of deemed generation at Section 6.4 of the Model PPA which inter alia provides that the provision of Section 6.4 'Deemed Generation' shall only be applicable for the Solar PV Projects having connectivity with the HPSEBL system at manned 33 kV & above level sub-station. In the present case, the HPPCL has connectivity of the project at 33 kV Bangana- Rakkar (Una) line through proposed 33 kV switching station/ LILO arrangement at Jogipanga, which is interface point. Hence, the applicability clause of deemed generation shall not apply in the present case and consequently the provisions of deemed generation shall not be applicable for the Aghlor SPP of HPPCL.

C. Inter-connection Point:

HPPCL's Viewpoint: The inter-connection point for the project should be considered at the ex-bus of the Project, similar to the arrangement of Pekhubella SPP. This will ensure consistency in defining the interconnection point and avoid any ambiguity in power evacuation and metering. Furthermore, as the joint petition is project specific power under section 62 of Electricity Act, 2003, accordingly energy accounting may be considered at the ex-bus of Aghlor SPP.

HPSEBL's Viewpoint: In the Connection Agreement dated 27th January, 2024 executed and agreed between HPSEBL and HPPCL, the inter-connection point of the project has been defined at 132/66/33/11 kV Rakkar (Una) sub-station of HPSEBL with interface point at 33 kV Bangana- Rakkar (Una) line through proposed 33 kV switching station/ LILO arrangement at Jogipanga. Therefore, any change of inter-connection point in the PPA shall be contrary to the aforesaid Connection Agreement already executed between the parties and hence cannot be modified/ changed while executing PPA.”

13. In view of difference of opinion on above issues, both parties have different viewpoints on aforementioned points, the Petitioners have requested that the Commission may pass appropriate order in the present case keeping in view the applicable guidelines, policy provisions and regulations relevant to the instant case.

14. It has been prayed as under:-

- a) Take the accompanying filing of PPA (Solar Power) on record;
- b) Consider and approve the PPA (Solar Power) at project specific tariff;

- c) Provide a provisional tariff for sale/ purchase of power from Aghlor Solar PV Project, till determination of project specific tariff for Aghlor SPP (10 MWac) by the Commission on the Petition to be filed by the HPPCL;
- d) Consider and approve any of the following interim arrangement to evacuate the power from Aghlor SPP till completion of switching station at Jogipanga:-
 - (i) Through LILO of 33 kV Una-Bangana line in the switchyard of Aghlor SPP;
 - or
 - (ii) Through solid tap on 33 kV Una-Bangana line.
- e) Accord approval through interim order for scheduling from the date of synchronization, as the project is ready for synchronization shortly;
- f) Pass an appropriate order in respect of the difference of opinion on interim connectivity, deemed generation and inter-connection point;
- g) Pass such order as Commission may deem fit, just and proper in the facts and circumstances of the case.

15. We have heard Sh. Kamlesh Saklani, Authorised Representative for the Joint Petitioner No. 1 and Sh. Vikas Chauhan, Ld. Counsel for the Joint Petitioner No. 2 and have perused the entire record carefully.

16. The following points arise for determinations in the Petition:-

Point No. 1: Whether Project specific tariff may be allowed to the Project under the provisions of Section 62 of the Electricity Act, 2003 read with Regulations 13, 15 and 19 of the RE Regulations, 2017 as claimed?

Point No. 2: If Point No. 1 is answered in negative, whether Power Purchase may be allowed and on what rate ?

Point No. 3: Whether the evacuation arrangement of power from the Project is required to be made?

Point No. 4: **Final Order**

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

Point No. 1: No.

Point No. 2: Yes @ Rs.3.10 per kWh.

Point No. 3: Yes

Point No. 4: The Petition partly allowed per operative part of the Order.

REASONS FOR FINDINGS

Point No. 1:

18. It has been mentioned in paras 11 and 13 of the Joint Petition that the Joint Petitioner No. 2 has opted to sell the entire saleable energy from the Project to the Joint Petitioner No. 1 at project specific tariff and a Petition in this regard will be filed shortly under Regulation 19 of the RE Regulations, 2017.

19. At the very outset, it may be stated that the HPSEBL/ Joint Petitioner No. 1 is mandated to supply power to the consumers of the

State at reasonable rates and, therefore, the HPSEBL/ Joint Petitioner No. 1 must procure the power at affordable rates. Further, as per the mandate given under the Electricity Act, 2003 (Act for short), the Commission has to watch the interest of the consumers and cannot allow costly power to be procured by the Distribution Licensee/ HPSEBL in case such power is not aligned to the prevailing market rates.

20. The Government of India (GoI) vide notification dated 19.01.2005 has notified the competitive bidding guidelines under Section 63 of the Electricity Act, 2003 for procurement of solar power which have been modified from time to time. The GoI on 03.08.2017 also notified Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects vide notification No. 23/27/2017-R&R.-1. Clause 2.1 of these guidelines dated 03.08.2017 provides that procurement of electricity from grid connected Solar PV Power Projects having size of 5 MW and above shall be made through competitive bidding. Clause 2.1.1 reads as under:-

“2.1.1. These Guidelines are being issued under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity by the ‘Procurers’ from grid-connected Solar PV Power Projects (‘Projects’) having size of 5 MW and above, through competitive bidding.”

21. The Bidding Guidelines notified by the Central Government are to facilitate transparency and fairness in the procurement process and protecting consumer interests. These Bidding Guidelines empower the Commission to reject any price bids if found not aligned to market prices.

22. The Hon'ble Supreme Court in **Civil Appeal No. 6503 of 2022 in Jaipur Vidyut Vitran Nigam Ltd. & Ors. v. MB Power (Madhya Pradesh) Ltd. and Ors.** decided on **08.01.2024** has held that the State Commission is bound to take into consideration the bidding guidelines issued by the Gol. Para 83 of the aforesaid judgment is reproduced as under:-

“83. We further find that it cannot be read from the orders of this Court that the State Commission was bound to accept the bids as quoted by the bidders till the bucket was filled. Firstly, no such direction can be issued by this Court de hors the provisions of Section 63 and 86(1) (b) of the Electricity Act and the Bidding Guidelines. In any event, vide order dated 19th November 2018, this Court had specifically directed the State Commission to decide the tariff under Section 63 of the Electricity Act having regard to the law laid down both statutorily and by this Court. As such, the State Commission was bound to take into consideration the Bidding Guidelines and specifically clause 5.15 thereof.”

23. Similarly, it is also held in *Energy Watchdog v. CERC*, (2017) 14 SCC 80 by the Hon'ble Apex Court that the State Commission was not a mere post office under Section 63, but was bound by the guidelines issued by the Gol and must exercise its regulatory

functions albeit under Section 79(1)(b) only in accordance with those guidelines. Further, Section 86(1)(b) gives ample power to the State Commissions to regulate matters relating to the procurement process of Distribution Licensees including the price of procurement.

24. This Commission in exercise of the powers vested in it under Section 181 of the Act has framed HPERC RE Regulations, 2017, which have been amended subsequently from time to time. Regulation 3 of the above Regulations provides for scope and extent of application of the Regulations. Sub-regulation (2) of Regulation 3 of the RE Regulations, 2017 reads as under:-

“(2) Save as provided in Regulation 16, these Regulations shall not apply in the following cases:-

(i) where long term agreements for disposal/use of energy have either already been signed by the renewable energy generators or have been approved by the Commission, or the joint petitions for the approval of the Power Purchase Agreements have been filed before the Commission, prior to the date of commencement of these Regulations:

Provided that in case the capacity has been enhanced subsequent to signing/approval of such agreement(s), the applicability of these regulations shall be ascertained, based on such criteria, separately for the original capacity and the additional capacity;

(ii) Omitted.

(iii) where the tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.” *(emphasis added)*

25. Not only this, the third proviso to Regulation 18 (2) of the RE Regulations, 2017, provides that the Commission may in order to

promote such technologies for smaller capacities, follow, mutatis mutandis, upto the limits as it may consider necessary separately for each such technology but not exceeding 5 MW for any such technology, any or all of the technological specific parameters, including capital cost, and other terms and conditions or the tariff, in respect of the relevant part of the control period. Third proviso to Regulation 18 (2) is reproduced as under:-

“Provided further that the Commission may, in order to promote such technologies for smaller capacities, follow, mutatis mutandis, upto the limits as it may consider necessary separately for each such technology but not exceeding 5 MW for any such technology, any or all of the technological specific parameters, including capital cost, and other terms and conditions or the tariff, in respect of the relevant part of the control period for the relevant renewable energy technology, as it may deem fit –

(a) as specified or adopted by the Central Commission for determining project specific tariff for any project(s) or generic levellised tariff for any category of project(s); or

(b) the rate discovered through competitive bidding undertaken by any Government agency; or

(c) the inputs available from any other sources, as the Commission may find appropriate.”

26. Accordingly, the Commission has been determining the generic levellized tariff for the Solar Projects upto the capacities of 5 MW, whereas, the tariff for the Projects above 5 MW capacities is to be discovered by the Distribution Licensee through the competitive bidding process as per the guidelines issued by the GoI.

27. The Project is standalone Solar PV Project having capacity of 10 MW and is covered by the competitive bidding guidelines issued

by the GoI as mentioned above. It is, thus, clear from the Sub-regulation (2) of Regulation 3 of the RE Regulations, 2017 that these Regulations have no applicability for the Solar PV Projects exceeding 5 MW where the tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the GoI.

28. It is also relevant to mention here that the Government of Himachal Pradesh (GoHP) launched the H.P. Solar Power Policy, 2016 and virtue of said policy, tariff for purchase of sole power upto 5 MW capacities was made to be determined by the Commission under the prevailing Regulations but tariff above 5 MW capacities was made to be discovered through competitive bidding. The GoHP further introduced the Swaran Jayanti Policy, 2021, vide which it was made mandatory for the HPSEBL to purchase the Solar power from Solar Power Projects upto 5.0 MW capacity on the tariff determined by the HPERC (Commission) from time to time and the tariff for the Projects above 5 MW capacities was made to be discovered by the HPSEBL through competitive bidding mode.

29. No doubt, the Swaran Jayanti Policy, 2021 was amended by the GoHP vide notification No. MPP-F(1)-2/2005-XV-1 dated 18.05.2023 and by virtue of said amendment, it was made mandatory for the

HPSEBL to purchase solar power generated by the solar projects of the H.P. Govt. entities i.e. the HPPCL and the HIMURJA at the tariff determined by the Commission but the said amendment has no precedence over the competitive bidding guidelines dated 19.01.2005 and 03.08.2017 notified by the Gol, as the competitive bidding guidelines have been issued by the Gol in exercise of the powers vested in it under Section 63 of the Electricity Act, whereas, the Swaran Jayanti Policy, 2021 has been issued administratively. As such, the bidding guidelines issued under Section 63 of the Act by the Gol have precedence over the Swaran Jayanti Policy, 2021, as amended in the year 2023, and thus, the Commission is bound to adhere to the competitive bidding guidelines dated 19.01.2005 and 03.08.2017 issued by the Gol under Section 63 of the Act and the Commission cannot allow any procurement of the solar power from the Project de hors the guidelines. Further, since the aforesaid Regulations have no application to the Project, the assertion in the Petition that the project specific tariff may be determined by the Commission for the Project under Section 62 of the Act and Regulations 13, 15 and 19 of the RE Regulations, 2017 is of no consequence.

30. It is also asserted in the Petition that the parties have agreed to exercise their right to opt for a project specific tariff determination under Section 62 of the Electricity Act, 2003 and therefore, pending filing of Petition in this regard, the provisional tariff be granted, this assertion is not tenable. The interpretation of Sections 62 and 63 of the Electricity Act recently came up for consideration before the Hon'ble APTEL in Appeal No. 518 of 2023 & IA No. 215 of 2024 decided on 13.02.2025 in the case of Kerela State Electricity Board Limited v. Kerela State Electricity Regulatory Commission and Ors. wherein it is held that the Appropriate Commission does not act as a mere post office under Section 63 of the Electricity Act and that unlike Section 62 read with Section 61 and 64 of the Act, the Commission under Section 63 of the Act only adopts the tariff already determined, if the same has been discovered through competitive bidding guidelines. The relevant paras of the above judgment as appeared in Pages 47, 48, 49 and 50 are reproduced as under:-

“Section 63 of the Electricity Act obligates the Appropriate Commission to adopt only such tariff as has been determined through a transparent process of bidding and in accordance with the guidelines issued by the Central Government. Section 63 begins with a non obstante clause, but it is a non obstante clause covering only Section 62. Unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not “determine” tariff but only “adopts” the tariff, already determined, under Section 63. Such “adoption” is only if such tariff has been determined through a transparent process of bidding, and this transparent process of bidding must be in

accordance with the guidelines issued by the Central Government. The appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government.

In *Tata Power Co. Ltd. Transmission v. Maharashtra Erc*, (2023) 11 SCC 1), the Supreme Court summarized the observations in *Energy Watchdog v. CERC*, (2017) 14 SCC 80, as under: (i) the appropriate Commission while “adopting” the tariff determined through bidding is not a mere “post office”; (ii) the Commission is mandated by Section 63 to adopt the tariff determined through bidding only if the bidding process was transparent, and such a process has been held in accordance with the guidelines issued by the Central Government under Section 63.

Section 63 of the Electricity Act has five significant features: (i) Section 63 begins with a non obstante clause. The non obstante provision overrides Section 62 alone and not all the provisions of the Act; (ii) as opposed to Section 62 where the Commission is granted the power to determine the tariff, under the Section 63 route, the bidding process determines the tariff; (iii) the Commission is mandated to adopt such tariff that is determined by the bidding process; (iv) the Commission has the discretion to not adopt the tariff determined through the bidding process only if the twin conditions as mentioned in the provision are not fulfilled; and (v) the twin conditions are that (a) the bidding process must have been transparent; (b) the bidding process must have complied with the guidelines issued by the Central Government.

Section 63 indicates that the provision would be invoked after the tariff has been determined by the bidding process. The non obstante clause in Section 63 must be read in the context of Sections 61 and 62. Section 62 bestows the Commission with wide discretion to determine tariff. Section 63 seeks to curtail this discretion where a bidding process for tariff determination has already been conducted. Section 63 contemplates that, in such situations where the tariff has been determined through the bidding process, the Commission cannot, by falling back on the discretion provided under Section 62, negate the tariff determined through bidding. This interpretation of Section 63 is fortified by the use of the phrase “such” in Section 63 — the Commission is bound to “adopt” “such” tariff determined through bidding. (***Tata Power Co. Ltd. Transmission v. Maharashtra Erc*, (2023) 11 SCC 1)**)

The appropriate Commission has the jurisdiction to look into whether the tariff determined through the process of bidding accords with the Central Govt Guidelines. (Energy Watchdog v. CERC, (2017) 14 SCC 80). The regulatory powers of the State Commission, so far as tariff is concerned, are specifically mentioned in Section 86(1). When the Commission adopts tariff under Section 63, it does not function de hors its general regulatory power under Section 86(1)(b). Such regulation takes place under the Central Government's guidelines. (Energy Watchdog v. CERC, (2017) 14 SCC 80; Jaipur Vidyut Vitran Nigam Ltd. v. MB Power (M.P.) Ltd., (2024) 8 SCC 513). The TBCB Guidelines issued by the Central Government under Section 63 of the Act prescribe the mechanism of the bidding process. (Tata Power Co. Ltd. Transmission v. Maharashtra Erc, (2023) 11 SCC 1). In a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 86(1)(b), only in accordance with those guidelines. (Energy Watchdog v. CERC, (2017) 14 SCC 80).”

31. Apparently, the HPSEBL/ Distribution Licensee/ Joint Petitioner No. 1 has not discovered the tariff under Section 63 of the Act as per the guidelines issued by the Gol. Therefore, it is incumbent upon the Commission to adopt the tariff, as discovered by the SECI, through competitive bidding process pursuant to the guidelines issued by the Gol under Section 63. Thus, the said assertion of determining of project specific tariff under Section 62 of the Act or allowing provisional tariff pending filing of the Petition for project specific tariff cannot be accepted.

32. Incidentally, the Commission vide order dated 20.05.2023 in Petition No. 17 of 2023 has made the following observations in para

22 in respect of the Solar power projects being set up by the Joint Petitioner No. 2/ the HPPCL:-

“22. With regard to the stand of the HPPCL regarding procurement of their Solar Power by the HPSEBL, we are of the opinion that the same can be procured by HPSEBL by the rate discovered through above competitive bidding process as mentioned above for the Solar Power Projects having capacity more than 5 MW. For the solar projects 5 MW and below, the Commission has already announced the generic levelled tariff. Therefore, the HPPCL can enter into PPA with the HPSEBL accordingly.”

33. The HPPCL/ Joint Petitioner No. 2 was Respondent No. 2 in said Petition No. 17 of 2023 but despite clear knowledge, the prayer for project specific determination of tariff has been made in the Petition which runs counter to the interest of the consumers.

34. In the circumstances, the Commission during the course of hearing on 19.03.2025 of the present Petition had observed that the RE Regulations, 2017 are not applicable as capacity of the Project is 10 MW and, the Commission is bound to follow the Competitive Bidding Guidelines issued by the Government of India for allowing the power procurement for the Distribution Licensee/ HPSEBL. Thus, the project specific tariff determination as prayed, is not permissible in respect of the Project. The daily order dated 19.03.2025 is reproduced as under:-

“The affidavit as directed vide order dated 12.03.2025 has come on record.

The parties stated that the meeting to discuss the feasibility of interim connection could not be held and that the issue may kindly be decided in way of affidavit submitted by the HPSEBL.

Heard. A perusal of the Petition shows that the Joint Petitioners have requested for the project specific tariff in respect of the Project with a provisional tariff till the determination of project specific tariff.

This Commission in Review Petition No. 110 of 2024 decided on 17.03.2024 has categorically held that the HPERC RE Tariff Regulations, 2017, as amended from time to time, are not applicable to the Solar PV Projects where the tariff has been determined through competitive bidding process as per the guidelines issued by the Govt. of India. Paras 54 and 55 of the said order are reproduced as under:-

54. It is thus, clear from the Sub-regulation (2) of Regulation 3 of the above Regulations that these Regulations have no applicability where the tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Govt.

55. The Gol vide notification dated 19.01.2005 notified the competitive bidding guidelines under Section 63 of the Electricity Act, 2003 for procurement of solar power which have been modified from time to time. The Gol on 03.08.2017 also notified Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects vide notification No. 23/27/2017-R&R.-1. Clause 2.1 of these guidelines dated 03.08.2017 shows that procurement of electricity from grid connected Solar PV Power Projects having size of 5 MW and above shall be made through competitive bidding. Clause 2.1.1 reads as under:-

“2.1.1. These Guidelines are being issued under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity by the ‘Procurers’ from grid-connected Solar PV Power Projects (‘Projects’) having size of 5 MW and above, through competitive bidding.”

The capacity of the Project is 10 MW. Therefore, this Commission is bound to follow the guidelines issued by the Govt. of India and therefore, the project specific tariff determination, as prayed for is not permissible.

However, the Project is likely to be synchronized soon and issue of the interim evacuation has also been raised in the Petition. In the circumstances, the Joint Petitioner No. 2 is directed to apprise the Commission on 24.03.2025 as to whether the tariff discovered by the SECI as per the competitive bidding guidelines issued by the Govt. of

India is acceptable to it, failing which the Joint Petitioner No. 2 has to dispose of the power from the Project by sale in the open market through power exchanges.

List on 24.03.2025 at 11:30 AM.”

35. In view of the aforesaid, the Joint Petitioners have not been able to establish that the project specific tariff may be determined/ allowed for the Project under the provisions of Section 62 of the Act read with Regulations 13, 15 and 19 of the RE Regulations, 2017 as prayed. Point No. 1 is accordingly decided against the Joint Petitioners.

Point No. 2

36. It is mentioned in the Petition that in a meeting held on 29.06.2022, both the parties have agreed for tying up of upcoming Hydro Power and Solar Power Projects of the HPPCL with the HPSEBL, depending upon their Commercial operation date(s). Further, mentioned in the Petition that the HPSEBL is in deficit of power as per Anticipated Power Supply Position (APSP) and in order to bridge the gap between the demand and supply of the HPSEBL, the sale and purchase of power has been agreed upon. It is also mentioned in the Petition that the HPSEBL has financially concurred the power purchase proposal from the Project, subject to certain conditions of connectivity.

37. It is already observed by the Commission that power procurement by the HPSEBL/ DISCOM has to be on affordable rates which are market aligned. This Commission while allowing procurement for the HPSEBL has made it clear in order dated 20.05.2023 in Petition No. 17 of 2023, in which HPPCL was also a party being Respondent No. 2 that the solar power can be procured by the HPSEBL at the rate discovered through competitive bidding process, as mentioned above, for the Solar Power Projects having capacity more than 5 MW. For the solar projects upto 5 MW and below, the Commission has been determining/ announcing the generic levelled tariff and that the HPPCL can enter into PPA with the HPSEBL accordingly. However, despite clear knowledge, the parties have approached the Commission for Project specific tariff determination which is not permissible.

38. Further, the Commission while allowing the power procurement of 250 MW Solar Power for the HPSEBL/ Distribution Licensee, has the made of following observations in Petition No. 17 of 2023:-

“24. In view of the above discussions, the Petition succeeds and allowed. Permission is accorded to the Petitioner for procurement of 250 MW Solar Power through Tariff Based Competitive Bidding process from Grid Connected Solar PV power projects located within the State of Himachal Pradesh under Section 63 of the Electricity Act, 2003. However, the installation of Solar Power Generating Stations in HP should be cost effective vis-à-vis the cost of the solar power generated elsewhere in the country and the Petitioner shall have to specify in the bidding document

that the tariff quoted by the bidders for grid-connected solar PV power plants shall not be more than the latest tariff of SECI plus 15% over and above said tariff keeping in view the peculiar geographical, topographical and climatic conditions of the State. Further in terms of the provisions of the Section 63 of the Act, the Commission shall have to examine whether the process of procurement of Solar Energy is as per the Guidelines of the GoI and Section 63 of the Electricity Act, 2003 so as to arrive the lowest tariff and for selection of the successful bidder and the Petitioner shall have to take the approval of the Commission under Section 63 of the Electricity Act, 2003 before according Letter of Award to the prospective successful bidders.”

39. Apparently, any procurement of power by the HPSEBL should be on market aligned prices. Therefore, whatever is agreed by the Joint Petitioners cannot be accepted and the Commission in the exercise of the powers under Section 86 (1) (b) of the Electricity Act is empowered to regulate the power procurement including the price at which the electricity shall be procured from the generating companies. In this regard, reliance may be place in the law laid down by the Hon'ble Supreme Court in Energy Watchdog v. CERC, (2017) 14 SCC 80 especially Paras 19 and 20, thereof which have been quoted with approval by the Hon'ble Supreme Court in Jaipur Vidyut Vitran Nigam Ltd. and Ors. v. MB Power (Madhya Pradesh) Ltd. and Ors. in Civil Appeal No. 6502 of 2022 and Civil Appeal No. 4612 of 2023 decided on 08.01.2024 by observing that the Section 86(1) (b) of the Electricity Act gives ample power to the State Commission to regulate electricity purchase and procurement process of distribution licensees. It also empowers the State Commission to regulate the

power procurement including the price at which electricity shall be procured from the generating companies. It is further held that Section 86 (1) (b) of the Act is analogous to Section 79 of the Act which determines the functions of the Central Commission. Paras 67, 68, 69, 70 and 71 are relevant and reproduced as under:-

“67. It could thus be seen that it has been held by this Court that unlike Section 62 read with Sections 61 and 64, under the provisions of Section 63 of the Electricity Act, the appropriate Commission does not “determine” tariff but only “adopts” tariff already determined under Section 63. It has further been held that, such “adoption” is only if such tariff has been determined through a transparent process of bidding, and that, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. It was sought to be contended before this Court in the said case that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. However, rejecting the said contention, this Court observed that the appropriate Commission does not act as a mere post office under Section 63. It has been observed that, Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.

68. This Court in the said case, in paragraph 20, further observed that the entire Act shall be read as a whole. It has been held that, all the discordant notes struck by the various sections must be harmonized. It has been held that, considering the fact that the non obstante clause advisedly restricts itself to Section 62, there is no reason to put Section 79 out of the way altogether. It has been held that, either under Section 62, or under Section 63, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. It has been held that, Sections 62 and 63 deal with “determination” of tariff, which is part of “regulating” tariff. It has further been held that, in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in

accordance with those guidelines. It has further been held that, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) can be used.

69. The aforesaid view of this Court in the case of Energy Watchdog (supra), which is a judgment delivered by two Judge Bench, has been approved by three Judge Bench of this Court in the case of Tata Power Company Limited Transmission (supra).

70. We have already referred to Section 86(1)(b) of the Electricity Act, which is analogous to Section 79 of the Electricity Act. Section 79 determines the functions of Central Commission, whereas Section 86 provides for the functions of the State Commission. Section 86 of the Electricity Act empowers the State Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

71. It can thus be seen that Section 86(1)(b) of the Electricity Act gives ample power on the State Commission to regulate electricity purchase and procurement process of distribution licensees. It also empowers the State Commission to regulate the matters including the price at which electricity shall be procured from the generating companies, etc.”

40. It is thus, apparent that Section 86 (1) (b) of the Act gives ample power to the State Commission to regulate electricity purchase and procurement process of Distribution Licensee and to regulate the matter including the price at which electricity shall be procured from the generating companies. The Commission, therefore, is empowered to reject the power procurement if the prices are exorbitant and not market aligned.

41. When the Petition was listed on 24.03.2025, the Ld. Counsel for the Joint Petitioner No. 2 stated that the meeting of the Board of

Directors could not take place. He also submitted that the Project is ready for synchronization and the Petition be decided as early as possible.

42. Now the question arises as to on what rate the power procurement may be allowed. Recently, the Commission in Petitions No. 151 of 2024 and 17 of 2025 decided on 17.12.2024 and 10.02.2025, respectively has allowed solar power procurement of approximately 1150 MW @ Rs. 2.56 per kWh, Rs. 3.04 per kWh, Rs. 3.05 per kWh and Rs 3.10 per kWh plus 7paise commission of the SECI for a period of 25 years for the Distribution Licensee/ HPSEBL which were SECI discovered tariff. As mentioned above, the HPSEBL has not discovered the tariff of the solar power through competitive bidding process. The HPSEBL is mandated to supply the power to the consumers of the State at affordable rates. Therefore, the tariff discovered by the SECI through competitive bidding process in terms of the guidelines issued by the Gol under Section 63 of the Act has to be adopted by the Commission so that the power is supplied to the consumers of the State at affordable rates.

43. The Joint Petitioner No. 1 is in dire need of power procurement. It has been mentioned in the Joint Petition that the procurement shall be on the rate approved by the Commission. Thus, taking into

consideration that the Project is ready for synchronization, it would be in the interest of Joint Petitioners and consumers of the state to allow the power procurement by the HPSEBL from the Project @ tariff of Rs. 3.10 per kWh. Hence, the Petitioners have made out a case for the approval of Power Purchase Agreement.

44. In case said rate is acceptable to the Joint Petitioner No. 2, the PPA may be signed on said rate within 30 days. In any case, said rate is not acceptable to the HPPCL/ Joint Petitioner No. 2, it shall be open for the HPPCL/ Joint Petitioner No. 2 to sell the same in the open market through power exchanges. The decision of signing the PPA be taken within 30 days, failing which, the permission shall be deemed to have been denied.

45. It is relevant to mention here that the Government of Himachal Pradesh vide notification No. MPP-F(10)-43/2023 dated 21st September, 2023 amending clause 4.3.11 of the Swaran Jayanti Energy Policy, 2021 has levied a tariff based royalty of 5 paise per unit on commissioning Solar Power Project having capacity of more than 1 MW. Since, this provision has come into being w.e.f 21.09.2023, the tariff based royalty has to be paid in the manner provided in the policy to the State Government. Accordingly, the royalty as provided i.e. 5 paise per unit shall be worked out by the

HPSEBL from the generation of the project and shall be payable @ 5 paise per unit to the Government of HP over and above the approved tariff of the project which shall be eligible for the pass through.

46. In view of the above, the power procurement from the Project is allowed at the tariff of Rs. 3.10 per kWh. Point No. 2 is accordingly answered in affirmative.

Point No. 3:

47. In so far as the evacuation arrangement is concerned the Project is ready for synchronization and in case the interim arrangement pending construction of the switching station is not made, the same would amount to the wastage of renewable energy which would neither be in the interest of the HPPCL nor in the interest of the consumers. Rather, the same shall be a national waste.

48. It is relevant to mention here that during the course of the hearing, the Commission observed that the arrangement of evacuation of power is yet to be made, as such, the Joint Petitioner No. 1 was directed vide order dated 12.03.2025 to submit an affidavit alongwith technical feasibility till the regular evacuation arrangement is completed. Pursuant to said direction given on 12.03.2025, the detailed affidavit has been filed by the Joint Petitioner No. 1 which has been taken on record. The Joint Petitioners during the hearing

also informed that LILO of 33 kV from Aghlor to Jogipanga has already been constructed by the HPSEBL.

49. The parties have signed a connection agreement on 27.01.2024 for connectivity of the Project at 33 kV Switching Station/ LILO arrangement (at Jogipanga) on 33 kV Bangana-Rakkar (Una) line and interconnection point at 132/66/33/11 kV Rakkar (Una) Sub-station, using the Distribution and Communication System of the Distribution Licensee/ SLDC to transmit electricity as well as real time data. The parties are at a disagreement over the issues of interim connectivity, deemed generation and interconnection point and have requested the Commission to pass an appropriate order resolving the same.

50. On careful perusal of the entire record, the Commission is of the considered opinion that there is lack of planning on part of the HPPCL of not taking any steps in time for evacuation of power from the Project. The initial allotment of the Project has been made by the HIMURJA on 10.02.2022, as evident from the Joint petition. The Connection agreement was signed way back on 27.01.2024, however, to the utter surprise and dismay, no planning for evacuation of power was made. Rather, the amount for construction of switching station has been deposited only in the month of March, 2025. It is highly surprising that the Project is ready for synchronization but there

is no arrangement for evacuation of power. After all, the HPSEBL/ Distribution Licensee too requires adequate time for the construction of the switching station and carrying out proper evacuation arrangement. In the circumstances, after taking into consideration the averments made in Petition and submissions made during the hearing, it is necessary to make the workable evacuation arrangement so that the solar power from the Project is evacuated. Hence, the following arrangement is made for evacuation of power from the Project:

- (i) The HPSEBL is directed to provide an interim arrangement at the cost of the HPPCL to synchronize the Project through LILO of Una-Bangana line with the grid by installing an Isolator of appropriate specifications at Jogipanga near LILO structure, so that LILO section is bypassed during non-solar hours to avoid additional line losses.
- (ii) Since, the line of LILO Section runs into 16 km (approximately) the total losses of the LILO Section shall be borne by the HPPCL/ Joint Petitioner No. 2
- (iii) Since, the power would flow in the intra-state system, the CERC GNA Regulations, 2023 are not applicable.
- (iv) The Commission has already provided an explanation of applicability of Deemed Generation under Clause 6.4 of the Model PPA which, *inter-alia*, provides that deemed generation shall only be applicable for Solar PV Projects having connectivity with the HPSEBL system at 33 kV and above level Sub-stations. Since, the connectivity of the Project is at 33 kV Una-Bangana line through 33 kV Switching station at Jogipanga and not by a 33 kV Sub-station or above level, the benefit of deemed generation shall not be applicable for the Project.

- (v) The HPSEBL is directed to construct the Switching station on priority on or before 31st March, 2026, positively.
- (vi) On completion of Switching Station the HPSEBL shall construct a control station at LILO point at Jogipanga on 33 kV Una-Bangana line with protection system for connectivity of Aghlor Solar PV Project (10 MW) with the distribution system of the HPSEBL which would be the permanent connectivity for the Project.

51. In view of the above, the Point No. 3 is answered accordingly in affirmative.

FINAL ORDER

52. In view of the aforesaid discussions and findings, the Petition partly succeeds and allowed accordingly. The PPA is ordered to be approved on the rate of Rs. 3.10 per kWh. In case said rate is acceptable to the Joint Petitioner No. 2, the PPA may be signed on said rate within 30 days with the Joint Petitioner No. 1. In any case, said rate is not acceptable, the Joint Petitioner No. 2 shall be open to sell the same in open market through power exchanges. The decision of signing the PPA be taken within 30 days, failing which, the permission shall be deemed to have been denied.

53. The evacuation arrangement shall be as discussed in para 50 above.

54. The Petition to the extent of determination of Project specific tariff is dismissed.

55. The Government of Himachal Pradesh vide notification No. MPP-F(10)-43/2023 dated 21st September, 2023 amending clause 4.3.11 of the Swaran Jayanti Energy Policy, 2021 has levied a tariff based royalty of 5 paise per unit on commissioning Solar Power Project having capacity of more than 1 MW. Since, this provision has come into being w.e.f 21.09.2023, the tariff based royalty has to be paid in the manner provided in the policy to the State Government. Accordingly, the royalty as provided i.e. 5 paise per unit shall be worked out by the HPSEBL from the generation of the project and shall be payable @ 5 paise per unit to the Government of HP over and above the approved tariff of the project which shall be eligible for the pass through.

56. The Joint Petitioners are directed to execute PPA as per the above order after carrying out the necessary additions/ alterations/ deletions within 30 days from the date of this order. Three copies of the executed Power Purchase Agreement be submitted to the Commission for record. In case the tariff of Rs. 3.10 per kWh is not acceptable to the Joint Petitioner No. 2/ HPPCL, the Joint Petitioner No. 2/ HPPCL shall be open to sell the same in the open market through power exchanges.

