

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

Petition No: 69 of 2022
Instituted on: 19.10.2022
Heard on: 27.10.2022
Decided on: **15.11.2022**

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

....Joint Petitioner No.1

AND

M/s Wil Power Projects Ltd. through,
Sh. Kuldeep Thakur, Authorized Signatory,
House No. 24, Behind HPSEB Bhuntar Sub Station,
Bhuntar, Distt. Kullu, HP-175125.

.....Joint Petitioner No.2

Petition under Section 86(1) (b) of the Electricity Act, 2003, read with Regulations 50 and 50-A of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, for the approval of the Long-term Power Purchase Agreement under Generic Levellised Tariff in respect of Jari HEP (12 MW).

CORAM

**DEVENDRA KUMAR SHARMA
CHAIRMAN**

**YASHWANT SINGH CHOGAL
MEMBER (Law)**

**SHASHI KANT JOSHI
MEMBER**

Present:-

Sh. Kamlesh Saklani, Authorised Representative for Joint Petitioner No.1.
Sh. L.S. Mehta, Ld. Counsel for Joint Petitioner No.2.

ORDER

This Petition has been filed under Section 86 (1) (b) of the Electricity Act, 2003 (Act for short) for approval of the Long Term Power Purchase

Agreement on Generic Levellised Tariff by the Himachal Pradesh State Electricity Board Ltd. (HPSEBL/Joint Petitioner No. 1 for short) and M/s Wil Power Projects Ltd. (Joint Petitioner No. 2 for short) in respect of Jari Hydro Electric Project (12 MW) situated at Parvati river, a tributary of River Beas, Distt. Kullu, H.P. (Project for short).

2. The case of the Joint Petitioners is that the Joint Petitioner No. 2 had signed an Implementation Agreement (IA for short) with the Government of HP (GoHP for short) on 17.09.2010 for Implementation of Jari Hydro Electric Project (5.00) on Parvati River. Later on, the Project developer after carrying out the detailed investigation submitted Detailed Project Report for enhanced capacity of 12 MW and revised Techno Economic Clearance (TEC for short) was accorded by the Department of Energy (the DoE for short), GoHP on 26.12.2013. Accordingly the Joint Petitioner No. 2 signed the fresh IA with the GoHP on 13.07.2016 for enhanced capacity of 12 MW.

3. It is averred that the supply in the shape of free Power (Energy) deliverable free of cost at the interconnection point, by the Joint Petitioner No. 2 will be as per the Clause 5.3 of the IA dated 13.07.2016. It is also averred that the DoE, vide letter No. HPDOE/CE(Energy)/Jari (OTA)/2021-1888 dated 30.06.2021 has issued the SCOD certificate on the prescribed format (Annexure-VII) in respect of the Project and as per said certificate, the SCOD of the Project is 20.01.2025, which is to be considered for the purpose of applicability of tariff as specified under the HPERC (Promotion of

Generation from Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 (hereinafter to be referred as RE Regulations, 2017) or prevalent Tariff Determination Regulations as may be framed by the Commission at any later stage. Therefore, the Tariff which would be applicable in respect of the Project will be of the period where SCOD of the Project falls, which is yet to be determined by the Commission as the current Tariff control period is up till 30.09.2023.

4. It is averred that the Joint Petitioner No. 2 requires the Power Purchase Agreement (PPA for short) for the purpose of achieving the financial closure and is also required to execute the PPA in accordance with the timelines specified in the Supplementary Implementation Agreement (SIA for short) dated 20.01.2021 signed with the GoHP under One Time Amnesty Scheme. Also averred that the GoHP vide notification dated 15.05.2018, further amended vide Order dated 10.10.2018, has made it mandatory for the HPSEBL to purchase entire Power generated from the Projects having capacity upto 25 MW on Generic Levellised Tariff as determined by the Commission. Also averred that the Commission had directed the parties (Joint Petition No. 1 and Joint Petitioner No. 2) to file Joint Petition for approval of PPA (Earlier the Petition had been filed individually by Joint Petitioner No. 2 being Petition No. 56 of 2022).

5. It is averred that the Project is not eligible for claiming the subsidy notified by the Ministry of Commerce and Industry vide notification No.

2(2)/2018-SPS dated 23.04.2018 as the capacity of the Project is 12 MW whereas said subsidy is applicable for the Projects having capacity less than 10 MW. Also averred that a considerable time was consumed for obtaining the requisite clearances from the concerned Authorities/Departments including the Forest Clearance as there was no land suitable for Compensatory Afforestation. Therefore, the Joint Petitioner No. 2 was not in a position to apply for the subsidy of Ministry of New and Renewable Energy (MNRE for short). Also averred that the Joint Petitioner No. 2 has signed the Connection Agreement with Joint Petitioner No. 1 and the Himachal Pradesh Power Transmission Corporation Ltd. (HPPTCL) on 31.12.2019 (Annexure-VI) of the draft PPA.

6. Also averred that the draft Power Purchase Agreement is based on the model PPA approved by the Commission vide Order dated 19.03.2012 and also in accordance with the PPA approved by the Commission in respect of the Soiel Dashal HEP (4.50 MW) and Banu HEP (5 MW) where the SCOD of the Projects was also beyond the current control period i.e. 30.09.2023. Hence the Petition.

7. We have heard Sh. Kamlesh Saklani, Authorised Representative for Joint Petitioner No. 1 and Sh. L.S. Mehta, Ld. Counsel for Joint Petitioner No. 2 and have perused the record carefully.

8. This is a case where the SCOD of the Project is 20.01.2025, which is beyond the 3rd Control Period ending on 30.09.2023. Sh. L.S. Mehta, Ld.

Counsel has submitted that the PPA is required for two reasons; firstly, as per the SIA dated 20.01.2021, the Project developer has to execute the PPA within six months and secondly, the financiers of the Joint Petitioner No. 2/ Project Developer are insisting for signing of the PPA for financial arrangement failing which the Joint Petitioner No. 2 shall not be in a position to arrange the finances and to complete the construction of the Project. Sh. L.S. Mehta, Ld. Counsel for Joint Petitioner No. 2 further submits that, no doubt, the IA was signed on 13.07.2016 but the construction could not be commenced for want of mandatory clearances from various authorities including Ministry of Forest, Environment and Climate Change, which was granted only on 29.01.2020 vide letter No. 8B/HPB/02/60/ 2014/2368 dated 29.01.2020, which is in the connected file of Petition No. 56 of 2022, therefore, the Joint Petitioner No. 2 was not in a position to commence the construction. He has also submitted that meanwhile, the GoHP vide notification No MPP-F(1)-2/2005-XIII-L dated 07.11.2020 notified "One Time Amnesty Scheme" for all Hydro Electric Projects where Implementation Agreements have been signed by redefining the Zero Date for those projects under clearance stage and by redefining Scheduled Commercial Operation Date (SCOD for short) for those under construction and such Amnesty was accorded to Joint Petitioner No. 2 on application dated 18.11.2020 and accordingly, the Supplementary Implementation Agreement dated 20.01.2021 was signed between the GoHP and Joint Petitioner No. 2.

According to him, the Joint Petitioner No. 2 had furnished all the documents with Petition No. 56/2022, which was filed individually against the HPSEBL, but on the direction of the Commission vide Order dated 30.08.2022, the present Joint Petition had been filed by both the parties and previous Petition No. 56/2022 has been allowed to be withdrawn by the Commission vide Order dated 27.10.2022 and the fee of said Petition has been ordered to be treated as fee for the present Petition. He has submitted that all the documents filed along with Petition No. 56/2022 may kindly be read as part and parcel of the present Petition.

9. It is apparent from the perusal of letter dated 29.01.2020, which is at page No. 108 of Petition No. 56 of 2022 that the Ministry of Forest and Environment and Climate Change, Government of India, has allowed diversion of the forest land in favour of the Project only on 29.01.2020 meaning thereby that till 29.01.2020, the forest land had not been diverted.

10. It is apparent from the Petition that the Joint Petitioner No. 2 is not eligible for the Industrial Subsidy of Ministry of Commerce and Industry as the capacity of the Project is more than 10 MW whereas the said scheme is applicable only for the Projects having capacity less than 10 MW. In so far as the subsidy of MNRE is concerned, the said Scheme was not available when the Joint Petitioner No. 2 got clearance from the Ministry of Forest, Environment and Climate Change, as evident from letter dated 29.01.2020 and "One Time Amnesty Scheme" as notified vide notification dated

07.11.2020 by the GoHP, the benefit of which has been accorded to the Joint Petitioner No. 2.

11. It is evident from letter No. HPSEBL/CE(SO)/PSP-174/Jari/2020-21-6073 dated 02.12.2021 (at Page No. 188 in Petition No. 56 of 2022) that the Petitioner had requested for filing the Petition for approval of the PPA but said request was turned down by the HPSEBL that the SCOD of the Project falls beyond 30.09.2023. In this regard, it is evident from copy of letter dated 20.07.2022 of L&T financial services (Page 196 in Petition No. 56 of 2022) that the long term Power Purchase Agreement shall be an important element required to proceed further, in addition to other aspects. The Joint Petitioner No. 2 has placed on record a certificate dated 30.06.2021 that the SCOD of the Project is 20.01.2025. Apparently, the present control period is only uptill 30.09.2023 and since the SCOD of the Project is 20.01.2025, on which date the Power from the Project will be supplied to the Joint Petitioner No. 1 and the financier of the Joint Petitioner No. 2 have insisted for signing of the long term PPA and also that the Joint Petitioner No. 2 has been allowed One Time Amnesty by the GoHP, certainly the Joint Petitioner No. 2 would be entitled for the tariff which would be prevalent in the control period where the SCOD of the Project falls, which may be higher or less and if, the tariff in the prevalent control period, when the SCOD of the Project falls is less, Joint Petitioner No. 2 will have to supply the Power to the Joint Petitioner No. 1 on the said tariff only.

12. The Connection Agreement, as produced by the parties, is subject to obtaining the consent of Malana Power Corporation Ltd. for using their 132 kV lines from Malana-Bajaura, which is to be obtained by the Project developer at his own level on bearing the transmission charges for the same. Thus, the consent has to be obtained by the Project developer i.e. Joint Petitioner No. 2 and in case said consent is not obtained, the Joint Petitioner No. 1 shall not be liable in any manner and for any reason, the Joint Petitioner No. 2 fails to obtain said consent and obtain such consents beyond 4th control period, the Joint Petitioner No. 2 shall not be entitled to the tariff prevalent beyond the 4th control period.

13. Therefore, 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 Act and Regulations 50 & 50-A of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 and also taking into the consideration the Notification dated 15.05.2018, 10.10.2018 of the GoHP, Swaran Jayanti Policy, 2021, One Time Amnesty Scheme dated 07.11.2020, SIA dated 20.01.2021, L&T letter dated 20.07.2022 the parties have made out a case for approval of the Long Term Power Purchase Agreement under Generic Levellised Tariff. Since the present tariff framed as per Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017, is

only up to 30.09.2023 i.e. the 3rd control period and the SCOD Project is 20.01.2025 and the generation of the Power and supply will commence only after 20.01.2025, the Joint Petitioner No. 2 shall be entitled for the tariff which would be prevalent at the relevant control period where SCOD of the Project falls.

14. The necessary additions and alterations in the draft PPA be carried out as per the aforesaid discussion and the connection agreement including the conditions precedent of obtaining consent of M/s Malana Power Corporation Ltd. and any other relevant conditions, as per Regulations and 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 Petition disposed off accordingly and be consigned to the records on completion.

Announced
15.11.2022

-Sd-
(Shashi Kant Joshi)
Member

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

-Sd-
(Devendra Kumar Sharma)
Chairman