

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

Petition No: 73 of 2019
Instituted on: 19.11.2019
Heard on: 06.08.2022
Decided on: **05.09.2022**

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

....Joint Petitioner No.1

AND

M/s Kangra Hydro Power Venture Pvt. Ltd.. through,
Mr. S. Balasubramaniam, Authorised Signatory,
House No. 123, Ward No. 4,
Raghunathpur, Distt. Kullu, HP-175101.

.....Joint Petitioner No.2

Versus

The HIMURJA, Govt. of HP, through,
Director,
SDA Complex, Kasumpti, Shimla-171009.

.....Respondent.

**Petition under Section 86(1) (b) of the Electricity Act, 2003 for approval
of Long-term Power Purchase Agreement under Generic Levellised
Tariff in respect of GAJ-III SHEP (5.0 MW).**

CORAM

**DEVENDRA KUMAR SHARMA
CHAIRMAN**

**BHANU PRATAP SINGH
MEMBER**

**YASHWANT SINGH CHOGAL
MEMBER (Law)**

Present:-

- Sh. Kamlesh Saklani, Authorised Representative for Joint Petitioner No.1.
- Sh. L.S Mehta, Ld. Counsel for Joint Petitioner No.2.
- Ms. Kamlesh Shandil, Ld. Counsel for the Respondent.

ORDER

The present Joint Petition has been filed by the Himachal Pradesh State Electricity Board Ltd. (hereinafter to be referred as Joint Petitioner No. 1) and M/s Kangra Hydro Power Ventures Pvt. Ltd. (hereinafter to be referred as Joint Petitioner No. 2) for the approval of Long-Term Power Purchase Agreement under Section 86(1)(b) of the Electricity Act, 2003, on Generic Levellised Tariff in respect of Gaj-III Small Hydro Electric Project (5.00 MW) on Gaj Khad, a Tributary of river Beas, situated at Vill. Rawa, P.O. Kareri, Sub Tehsil Darini, Distt. Kangra (Project for short).

2. It is averred that the government of HP vide notification dated 15.05.2018, further amended vide order dated 10.10.2018, has made it mandatory for the Joint Petitioner No. 1 to purchase entire power from the Hydro Projects up to 25 MW capacity and the Commission has also accorded in approval this regard vide letter No. 2274-77 date 23.11.2018.

3. It is also averred that the Petitioner No. 2 has signed the Implementation Agreement with the government of HP on 07.04.2011 and the aspect of free power to the government of HP has been dealt with in Clause 12.1 of the Implementation Agreement. Also averred that the draft power purchase agreement is based on the model power purchase agreement approved by the Commission vide order dated 19.03.2012 which has been suitably modified to the extent of Himachal Pradesh Electricity Regulatory

Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017. As per the Petitioners, the Salient features of the Project are depicted in form-A.

4. We have heard the authorized representatives of the Joint Petitioner No. 1, Ld. Counsels for the Joint Petitioner No. 2 and the Respondent and have perused the record carefully.

5. It is apparent from the record that on revised Techno Economic Clearance to the project for 5.00 MW capacity, vide letter No. DOE/CE/(Energy)/PEC-Gaj-III -2015-10797-805 dated 12.08.2016, the Supplementary Implementation Agreement was executed by the Joint Petitioner No. 2 with government of HP on 3rd May, 2016. It is also apparent from the record that 2nd Supplementary Implementation Agreement was also executed by Joint Petitioner No. 2 with government of HP on 8th Aug., 2019 incorporating the terms and conditions on account of extension in time period of COD, revised free Energy, captive use of power and amendments made in certain clauses subsequent to the already signed Implementation Agreement (IA for short) and Supplementary Implementation Agreement (SIA for short).

6. This Commission vide interim order dated 28.08.2020, has accorded approval for signing the Power Purchase Agreement allowing approval of tariff of Rs. 3.27 per KWh subject to further adjustment as per final order.

7. The record, shows that a Miscellaneous Application No. 99/2020 was filed on 18.06.2020 for placing on record the certificate issued by Director Himurja vide letter HIMURJA/SHP-IV/KPS(37)/2006-2844 dated 18.05.2020 that extension in time period for completion of the project has been granted by the Govt. w.e.f. 07.10.2013 to 31.03.2016 with extension fee and w.e.f. 01.04.2016 till the execution of lease deed without extension fee for the reasons of non execution of lease deed by revenue department. Therefore, the date of commencement of operation of the project may be considered accordingly.

8. It is also evident from record that one more Miscellaneous Application was filed by the parties being MA No. 106/2020 for placing on record the certificate issued by Director, Himurja that the date of commencement of operation of the project may be considered as 22.12.2019 as evident from letter HIMURJA/SHP-IV/KPS(37)/2006-3666 dated 29 June, 2020. This certificate is based upon letter No. HPDOE/CE (Energy/Project COD/2020-632-38 dated 27.05.2020.

9. Since the COD of the Project was repeatedly changed, this Commission impleaded Himurja, as a necessary party to the Petition and directed Himurja to file a detailed reply with chronological analysis of period of delay condoned with authenticated documents and the date of execution of the lease

deed. Such reply by the Himurja has been filed on 22.07.2022. It is evident from the reply of Respondent Himurja as under:-

- (i) On 03.06.2011, the Environment and Forest Ministry granted diversion of 3.8436 hectares of forest land in favour of Petitioner No. 2 for construction of 3.6 MW Gaj-III SHEP under section 2 of Forest Conservation Act, 1980 on fulfilling certain conditions as contained in the said letter.
- (ii) The Directorate of Energy, issued Essentiality Certificate to the Joint Petitioner No. 2 on 07.01.2013 recommending lease of diverted forest land after obtaining all NOCs from the relevant departments/authorities.
- (iii) On 27.12.2013, the Sub-divisional Officer (Civil) Dharamshala issued NOC for the use of the forest land for the Project.
- (iv) On 29.01.2014, the Joint Petitioner No. 2 submitted lease application to Deputy Commissioner Kangra.
- (v) On 17.05.2014, the Distt. Revenue Officer Kangra at Dharamshala informed the Joint Petitioner No. 2 to obtain NOC from various departments i.e. PWD, I&PH, Local bodies, National Highway Authority etc. in accordance with the amended H.P. Lease Rules, 2012.
- (vi) On 11.08.2014, the extension of completion period of Project was extended till 31.03.2016 on payment of Rs. 10.74 lakh.

- (vii) On 11.05.2015, the Deputy Commissioner Kangra approved the transfer of diverted forest land from reserve pool to allotable pool for lease.
- (viii) On 08.02.2016, Joint Petitioner No. 2 requested Naib Tehsildar, Drini to consider the actual possession date as the effective date for calculation of lease money.
- (ix) On 09.02.2016, Naib Tehsildar, Drini informed the Sub-divisional Officer (Civil), Dharamshala indicating the minimum and maximum annual lease amount as Rs. 4,61,255.05 and Rs. 48,72,822.08.
- (x) On 03.05.2016, IA dated 07.04.2011 was followed by SIA for enhancement of capacity of the Project from 3.60 MW to 5.00 MW.
- (xi) On 03.10.2016, the Joint Petitioner No. 2 requested Deputy Commissioner Kangra to consider the actual possession date as effective date for calculation of lease money.
- (xii) On 03.01.2017, the Deputy Commissioner, Kangra, intimated Joint Petitioner No. 2 that Project has been established prior to 31.12.2012, therefore, the lease money is to be calculated from the date of diversion of forest land (03.06.2011) and not from the date of taking actual possession (21.02.2012).

- (xiii) 06.05.2017, the Joint Petitioner No. 2 replied the show cause notice dated 18.04.2017 issued by Himurja that the delay is not to be attributable to the Petitioner.
- (xiv) On 08.05.2016 and 07.07.2017, the Joint Petitioner No. 2 again requested the Deputy Commissioner Kangra for consideration of effective date as actual date of possession of the land for the purpose of calculating Lease money.
- (xv) On 10.07.2017, the detailed representation was made by the Joint Petitioner No. 2 to the Additional Chief Secretary (Power) to intervene in the lease matter.
- (xvi) On 10.10.2017, the Joint Petitioner No. 2 requested the HIMURJA for extension of completion time without extension charges.
- (xvii) On 26.10.2018, the Additional Chief Secretary (Revenue) Government of H.P. directed the Deputy Commission Kangra that the lease amount be calculated from the date of possession i.e. 21.02.2012.
- (xviii) On 16.01.2019, the Niab Tehsildar, Sub Tehsil Drini informed the Sub-divisional Officer (Civil), Shahpur that the annual lease amount is determined as Rs. 1,11,682.42.
- (xix) On 28.03.2019, the Deputy Commissioner Kangra passed order permitting lease of the diverted land for 40 years w.e.f. 21.02.2012 i.e. from the date of possession of the land.

- (xx) On 08.08.2019, the Petitioner No. 2 executed second SIA with the Government of HP incorporating the terms and conditions in the agreement.
- (xxi) On 16.09.2019, Himurja intimated the Petitioner with regard to the revised construction schedule of the Project with date of COD as 31.12.2019.
- (xxii) On 22.12.2019, the Project was declared Commissioned.
- (xxiii) On 15.10.2020, the Petitioner No. 2 deposited the lease money and on 08.07.2022, the Lease deed was signed for a period of 40 years w.e.f. 21.02.2012 i.e. the day of possession of the land by the Joint Petitioner No. 2.

10. It is apparent from the aforesaid detailed reply of Himurja that the Lease deed has been signed on 08.07.2022 w.e.f. 21.02.2012 i.e. from the date of possession of the land for a period of 40 years. It is also apparent from the reply of Himurja that the Petitioner had commenced the construction activities of the project after the possession of the land on 21.02.2012, though the lease deed has been finally signed and on 08.07.2022.

11. It is also evident from the reply of HIMURJA that revised schedule of construction was firstly extended upto 31.03.2016 and subsequently till 31.12.2019 or till the execution of Lease deed and the Project of the Petitioner has been declared Commissioned on 22.12.2019. It is also evident from the

record that SIA and Second SIA were signed by the Joint Petition No. 2 on 03.05.2016 and 08.08.2019 respectively incorporating the terms and conditions on account of enhancement of capacity of the Project and extension in time period of COD.

12. Though it is not very clear as to when the Joint Petitioner No. 2 commenced the construction of the Project but it is fairly apparent from the lease deed dated 08.07.2022 that the possession of the land had been handed over to the Joint Petitioner No. 2 on 21.02.2012 and the Joint Petitioner No. 2 had commenced the construction of the project on getting the possession which is further evident from letter dated 06.05.2017 of the Joint Petitioner No. 2 (Annexure R-16) of the reply of Himurja that the Joint Petitioner No. 2 had started the construction in a Ceremonial manner even before formal possession of land and after getting the possession on 21.02.2012, Joint Petitioner No. 2 started the construction vigorously. Though, it is mentioned in letter dated 06.05.2017 that the construction was halted on getting instructions from Deputy Commissioner Kangra in between but it is a matter of record that the Project has been commissioned on 21.12.2019, though the Lease deed has been signed on 08.07.2022 suggesting that pending Lease, the construction was going on.

13. It is also apparent from letter dated 23.05.2018 and 01.10.2018 of Himurja (Annexure R-23 and R 24) of the reply of Himurja that the time was

extended w.e.f. 01.04.2016 till execution of the lease deed and the date of COD was 30.06.2019. Letter dated 16.09.2019 (Annexure R-33) of the reply of Himurja shows that date of COD of Project was extended to 31.12.2019.

14. The Project is a Renewable Energy Project. There was subsidy Scheme for such projects from the Ministry of Renewable Energy. However, the entire Petition is silent about the availing of MNRE subsidy. It is apparent on record that the Joint Petitioner No. 2 had received the possession of the land on 21.02.2012 and commenced the construction activity and the lease matter was delayed on account of enhancement of Project capacity and dispute regarding the calculation of lease money whether or not the same should be from the date of diversion of land dated 03.06.2011 or actual date of possession dated 21.02.2012. Once the Joint Petitioner No. 2 had received the possession and commenced the construction soon after 21.02.2012, it was incumbent upon Joint Petitioner No.2 to submit the application for claiming MNRE subsidy during the validity period of said Scheme and since no such detail has been mentioned, the adjustment of such subsidy amount, as per the project capacity of the Project, is required to be made while determining the tariff. Here, it is relevant to mention that the claim for MNRE subsidy was made by the Joint Petitioner No. 2 only on 20.10.2018 but by said date, the aforesaid Scheme had come to an end. Hence, the benefit of the Scheme would accrue to Joint Petitioner No. 2 only if the Scheme is renewed/extended by the Ministry of MNRE.

15. In so far as Industrial subsidy/Financial assistance is concerned, there is no mention of claiming such subsidy in the Petition. No document in this regard has also been filed. Said Scheme was also valid till 31.03.2022. The Project was eligible for said subsidy. Therefore, the admissible subsidy/Financial assistance in this regard amounting to Rs. 90,000,00/- per MW (on deemed normative basis) is required to be deducted while determining the tariff of the Project of the Joint Petitioner No. 2.

16. Therefore, in view of the powers vested in the Commission under Section 86 (1) (b) of the Act and taking into consideration the notifications dated 15.05.2018 and 10.10.2018 of the GoHP and the tentative admissible MNRE subsidy of Rs. Five Crore and Industrial subsidy of Rs. 90 lakh per MW and the interim order dated 28.08.2020 approving Provisional Tariff, the Joint Petitioners have made out a case for the approval of the PPA under the generic levelled tariff as per the provisions of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017. Hence, the Petition is 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. 3.53 Per kWh after adjustment of Free Power,

MNRE subsidy and subsidy/Financial assistance given under the Industrial Development Scheme.

- (ii) The Project has been synchronized on 21.12.2019 and considering that financial assistance/subsidy of MNRE and Industrial Development Scheme for Himachal Pradesh & Uttarakhand notified by the Ministry of Commerce & Industry, if any, may be received by the Joint Petitioner in due course as mentioned above, provisional tariff shall be applicable for a maximum period of 2 years.
- (iii) The Joint Petitioner No. 2 shall intimate the Joint Petitioner No.1 i.e. HPSEBL, about the receipt of financial assistance/subsidy, if any, 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 petitioners shall approach the Commission at least 1 (one) month before completion of the period of 2 (two) years from the issuance of this Order or immediately after the release of Financial assistance/subsidy as per item (iii) above, whichever is earlier, for continuation of this tariff or for any other tariff as may become applicable to the project.

(v) The provisional tariff of Rs. 3.53 per kWh allowed by this order shall be applicable from the date of synchronization of the Project i.e. 21.12.2019.

(vi) The clause 6.2 of PPA shall be modified to the extent that the levellised provisional tariff of 3.53 per kWh 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 (iv) of this para.

17. It is ordered that the Joint Petitioner No. 2 shall make an endeavor to avail the admissible subsidy/financial assistance as mentioned in Paras 14, 15 and 16 above. In case the subsidy/Central financial assistance is not availed, the same shall be deemed to have been availed by Joint Petitioner No.2.

18. Other terms and conditions of the PPA shall be subject to provisions of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 and Tariff Order issued there under on 15.02.2020 in Suo-Motu Petition No.76 of 2019 for the determination of Generic Levellised Tariffs for Small Hydro Projects for 2nd Control Period (01.10.2019 to 31.03.2020).

19. The Petitioners are directed to execute the Supplementary 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.

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

Sd/-
(Bhanu Pratap Singh)
Member

Sd/-
(Devendra Kumar Sharma)
Chairman

HPERC