

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

**Petition No.78 of 2020**

Instituted on 08.10.2020

Heard on 11.11.2021

Decided on **09.12.2021**

In the matter of:-

1. M/s Batot Hydro Power Ltd.  
Gobid Mahal, 86-B, NS Road, Mairne Drive,  
Mumbai-400002 (India)
  2. M/s Belij Hydro Power Ltd.  
Door No. 13-2-64 1<sup>st</sup> Lane, Gunturivari Thota,  
Guntur, Andhra Pradesh-522001
  3. M/s Jal Shakti Ltd.  
D-411, Kanjanga Block, Aditya Enclave,  
Ameerpet, Hyderabad-500016
- .....Petitioners**

**Versus**

1. The State of Himachal Pradesh, through its  
Secretary (MPP & Power),  
Shimla-171002.
  2. The HP Power Transmission Corporation Ltd., through its  
Managing Director,  
Near Shimla Bye-Pass Road, Tutikandi, Panjari,  
Shimla-171005.
  3. The HP State Electricity Board Ltd. through its  
Managing Director,  
Vidyut Bhawan, Shimla-171004.
  4. The HIMURJA through its  
CEO, Urja Bhawan, SDA Complex,  
Kasumpti, Shimla-171009
- .....Respondents**

**CORAM**

**DEVENDRA KUMAR SHARMA  
CHAIRMAN**

**BHANU PRATAP SINGH  
MEMBER**

**YASHWANT SINGH CHO GAL  
MEMBER (LAW)**

**Counsel:**

For Petitioner:	Sh. Umesh Kanwar, Advocate
For Respondent No.1:	Sh. Shanti Swaroop Bhatti, Consultant (Legal)
For Respondent No.2:	Sh. I. P Singh, Consultant (Legal)
For Respondent No.3:	Sh. Surinder Saklani, Advocate a/w Sh. Kamlesh Saklani, Authorised Representative
For Respondent No.4:	Ms Kamlesh Shandil, Advocate

**ORDER**

This is Petition under Section 86(1)(f) and 94 of the Electricity Act,2003 for adjudicating the dispute between the Petitioners and Respondents. The case of the Petitioners in brief is that the Petitioners being generating Companies had filed a Joint Petition No.92/2009 averring that they had established joint dedicated system for evacuation of power from the Projects and prayed for evacuation of energy through joint evacuation system to be set up by them alongwith benefit of deemed generation and the proposal in this regard was allowed by the Commission vide Order dated 21.12.2009. It is averred that the Petitioners and GoHP entered into Implementation Agreements on different dates for implementation of Small Hydro Electric Projects (hereinafter to be referred as the Projects) and subsequently the Petitioners also executed the Power Purchase Agreements (hereinafter to be referred as PPAs) with the Respondents No.3. According to the Petitioners, the Interconnection Point of three Power Producers and the line connecting the three power Producers to the Interconnection Point are the same and Commission had agreed that instead of having different lines connecting at the Interconnection Point, the Projects may be connected through the common line. Therefore, all the three Projects of the Petitioners were connected by a common line with the approval of the Commission. The Implementation Agreement and the Power Purchase Agreement of the Petitioner No.1 are

annexed as Annexure P-2 & P-3. As per them, according to the PPA, the permanent Interconnection Point of the Projects was to be made at Karian and not at Jarangla. Also that in Petition No.92/2009, the Petitioners had sought approval of the construction of 33kv Dedicated Line for evacuation of power from their Projects to HPSEBL under HPERC (Power Procurement from Renewable Sources and Co-generation by the Distribution Licensee) Regulations,2007. Further in Petition No.92/2009, it was stated by the Respondent No.2 that the smooth evacuation of power from the Projects of the Petitioner will be available only after completion of Karian Sub-station and that the commissioning of 33/220 kV bays alongwith 33 kV line shall be done by 31.12.2010 and that the same was also reflected in the Order dated 21.12.2009. Thus, the Petitioners were under a bonafide belief that the common transmission line would be connected with the Sub-station at Karian by 31.12.2010. As per the Petitioners, it was also held in Petition No.92/2009 that the aforesaid transmission line be initially constructed upto interim/temporary pooling Point at 33 kV Sub-station at Jarangla till the completion/commissioning of Interconnection Point at Karian by 31.12.2010 and that on commissioning of the Extra High Tension Sub-station at Karian, the Interconnection Point shall be shifted by the Petitioners from Jarangla to Karian by extending 33 kV line at their cost and also that the cost involved in providing the interim Interconnection Facility at Jarangla and shifting the same to Karian was also to be borne by the Petitioners.

2. As per the Petitioners, as an interim measure, awaiting the completion of sub-Station at Karian, their Projects were delayed and subsequently commissioned and connected at the Jarangla sub-Station in June,2012. Therefore, on account of delay on the part of Respondent No.2 in commissioning the Interconnection Point at Karian, the Petitioners had to invest more than Rs.82.00 lacs on building the infrastructure at temporary Interconnection Point at Jarangla. Also that when the Projects were allotted,

the generation capacity was much higher but the Petitioner were compelled to reduce the generation capacity because Sub-station at Karian was completed only in the year 2012, approximately nine(9) years after the assurance made before the Commission and the common transmission line from Jarangla to Karian was also delayed on account of delay in commissioning of Sub-station at Karian. Therefore, the Petitioners entered into a Connection Agreement with Respondent No.2 on 25.09.2019 qua the terms and conditions with regard to connection work to be carried out by the parties (Annexure P-5).

3. Further averred that vide communication dated 8.11.2019, the Petitioner companies were directed to deposit a sum of Rs.1,46,41,348/- with Respondent No.2 being cost of construction of two bays at Karian sub-Station (Annexure P-6), containing detailed bifurcation of charges qua the cost of construction of one bay amounting to Rs.73,20,674/-. The Petitioners vide letter dated 14.11.2019 (Annexure P-7) replied back that they had suffered loss on account of two floods at the Project site and had to reduce the generation owing to the restrictions put forth by the Respondent No.3 and also requested the Respondent No.2 for reduction of bay charges. However, the Respondents failed to address the issues raised vide letter dated 14.11.2019 compelling them to make a detailed representation dated 11.12.2019 (Annexure P-8). The Petitioners in representation dated 11.12.2019 also requested the Respondents to deduct the amount spent by them for creating the facility at Jarangla as they have fulfilled all the modalities as stipulated in Order dated 21.12.2009 and that delay was on account of the Respondents and escalation in the cost of construction qua the aforementioned Sub-station was also brought to the notice of Respondents. Pursuant thereto, the Respondent No.3 vide intra Department letter dated 09.12.2019 (Annexure P-9) informed that the final Evacuation Point i.e. Karian sub-Station has been commissioned by the Respondent No.2 on 29.10.2019 and when they further approached the Respondent No.3 vide letter dated 10.1.2020 (Annexure P-10), the

Respondent No.3 acknowledging the issues raised by the Petitioners, directed the Chief Engineer (Op.North), HPSEBL, Dharmshala to consider the issues raised by the Petitioners before transferring the Interconnection Point of the Petitioners from Jarangla to Karian. However, without addressing the grievances raised by the Petitioners and without awaiting the response of the Respondent No.3 in view of letter dated 10.01.2020, directed disconnection of the Petitioners from the Jarangla sub-Station vide letter dated 24.01.2020 (Annexure P-11) in an arbitrary manner. Subsequently, the Respondent No.3 inspected the electricity installations i.e. line built by the Petitioners and vide letter dated 27.01.2020 (Annexure P-12) granted provisional approval to the Petitioner qua energizing the installation after curing certain rectifiable defects. Strangely, the Respondent No.2 vide letter dated 05.02.2020 (Annexure P-13) asked the Petitioners to deposit the amount qua the two bays and to the utter surprise of the Petitioner, the demand was enhanced from Rs.1,46,41,369/- to Rs.1,87,82,600/- without assigning any reason for escalation. A communication dated 01.01.2014 was also appended to the Demand Notice dated 05.02.2020 qua Interconnection of Kurtha SHEP. Subsequently, final approval was accorded in favour of the Petitioners for energizing the line after removal of curable defects vide communication dated 04.03.2020 (Annexure P-14). It is specifically averred that the delay in construction of sub-Station at Karian and the generation loss to the Petitioners had occurred on account of the Respondents. It is averred that the Respondent authorities had been continuously threatening the Petitioners on the strength of bargaining Power qua the disconnection of transmission line in case they fail to pay the enhanced bay charges and the Petitioners without prejudice to their rights agreed to pay the charges for one bay as per the revised and enhanced demand made by the Respondent No.2 and deposited an amount of Rs.95 lacs on 15.04.2020. Not only this, the Petitioners also agreed to all the conditions mentioned in letter dated 13.04.2020 qua the grant of connectivity

to them at Karian Sub-station by the Respondents, and the same was conveyed to them vide mail dated 16.4.2020. Further, in order to avoid the disconnection, the Petitioners have deposited the amount of Rs.1.88 Crore for obtaining connectivity approval. According to them, the Respondents have not considered factum of amount spent at Jarangla and then connecting the same line to Karian which was supposed to be original Interconnection Point qua the lines of Petitioners and without their fault, they were forced to invest at Jarangla and the Interconnection Point at Karian was commissioned only in the year 2019. Also averred that in Para 10 of the Order dated 21.12.2009 in Petition No.92/2009, it was observed by the Commission that the Empowered Committee had suggested that the 33 kV line as proposed to be extended at Interconnection Point at Karian shall be designed in such a manner to carry three Circuits (two Circuits with WOLF conductors and one with AB Cable of appropriate size or otherwise) and it was left to the Petitioners by the Empowered Committee that pursuant to stringing of two WOLF Conductors in the first Phase, the stringing of the third AB Conductor was left to the Petitioners after approval by Respondent No.2. It is averred that in the Order dated 21.12.2009, it has been categorically held that the stringing of the Third Conductor was to be done in accordance with relevant conditions and in case of the Petitioners, the same is not required. It is also averred that Respondent No.2 has granted connectivity to them to Karian Sub-station on 24.4.2020. The Petitioners have prayed that cost of Rs.84 lacs alongwith upto date interest incurred by the them for the setting up and maintaining of the temporary Interconnection Facility at Karian be refunded. The Petitioners be also compensated for the loss sustained on account of delayed commissioning of Karian sub-Station and that the stringing of the Third AB Conductor at the Interconnection Point be dispensed with for the time being as two existing Conductors are more than sufficient to carry the cumulative capacity around

36 MW in the line against 13.5 MW being generated. The generation losses suffered by them be also made good.

4 The Petition has been resisted and contested by the Respondents No.2 and 3 by filing separate replies.

5. The Respondent No.2 in their reply have averred that the Interconnection Facilities and Interconnection Point have been defined under Clauses No.2.2.46 and 2.2.47 of the Power Purchase Agreement. According to them, the provisions of Power Purchase Agreement have been misinterpreted by the Petitioner as according to Power Purchase Agreement, initial Interconnection (Project line) upto Jarangla Sub-station of the Respondents No.3 was to be provided by the Petitioners and lateron the shifting thereof was also to be carried out by them. The equipments for incoming bays were to be provided by the Respondent No.3. It is also averred that the construction of linking transmission line from Power House to the Evacuation Point/sub-Station was the sole responsibility of all the Independent Power Producers/Petitioners. It is averred that the Petitioners have misinterpreted the Order dated 21.12.2009. Further that the Contract Agreement for carrying out work for Karian sub-Station could only be signed on 29.6.2011 and the award of work for Karian and Rajera Transmission Line was made on 6.9.2011. According to them, the Commission has not commented anything about commissioning of assets and has only noted that on commissioning of Karian sub-Station, Interconnection Point shall be shifted from Jarangla sub-Station at the cost of the Petitioners and other Independent Power Producers proposed to be connected at 33/220 kV Karian sub-Station. It is averred that the Petitioner No.1 signed PPA with Respondent No.3 on 23.8.2014 and signed Connection Agreement with Respondent No.2 on 25.9.2019 much later than commissioning of Karian Sub-station on 12.5.2018 and applied for grant of connectivity at 33/220 kV at Karian Sub-station on 10.12.2018 and were permitted connectivity at Karian sub-Station

on 2.1.2019 (Annexure-R-2/1). Thus, there was no Agreement between the Petitioners and Respondent No.2 in respect of 33/220 kV Karian sub-Station till September,2019. It is denied that Projects of the Petitioners were delayed due to Respondent No.2 and that delay in construction of Karian sub-Station and Karian-Rajera Transmission line is beyond the control of replying Respondent. It is submitted that the generation loss, if any, due to transmission outages is payable by the Respondent No.3. Also averred that the Petitioner's reluctance to deposit required amount for construction of bays for interfacing as per the actual expenditure incurred by the replying Respondents cannot form the basis for raising the dispute. It is denied that the demand for deposit of bay charges is arbitrary. As per them, in the initial demand, necessary additional components were inadvertently left out and after inclusion of the same, the per bay cost was worked out to be Rs.93,91,200/- during February, 2020 and after inclusion of the additional components, the revised cost was mentioned as Rs.1,87,82,600/- (two bays) and the break-up was also supplied to the Petitioners. Further that the investments by the Petitioners for connecting at Jarangla Sub-station and lateron shifting to Karian sub-Station is inaccordance with the Order of the Commission in Petition No.92/2009. Also averred that the alleged dispute/claims raised by the Petitioners are not maintainable against the Respondent No.2 as the PPAs have been signed with Respondent No.3. It is submitted that no proposal for stringing of the Third Circuit has been submitted by the Petitioners. It is also submitted that responsibility of the replying Respondent will commence on the execution of Long Term Access Agreement or Transmission Service Agreement, as the case may be, regarding usage of concerned transmission system.

6. The Respondent No.3 in their reply have averred that the Petition is not maintainable. As per them, in view of the Master Plan for evacuation of



power from various Small Hydro Electric Projects (SHEPs), the Interconnection Point for the Projects was Karian Sub-station and as a temporary/interim arrangement, the Small Hydro Electric Projects were allowed interfacing at 33.11 kV Jarangla Sub-station, if the Projects were completed before 33/132/220 kV Karian sub-Station is energized. As per Respondents No.3, one of the conditions of the interim arrangement was that the cost of Interim/Short time arrangement shall be borne by the Independent Power Producers/ Petitioners and they had also submitted an undertaking that they shall shift the Interconnection Point to Extra High Voltage Sub-station at Karian as and when the same is commissioned (Annexure R/3-1). It is averred that in the PPA executed between the Independent Power Producers and HPSEBL, all the aspects were made clear regarding Interconnection Point and Interconnection Facilities at Clauses 2.2.47 and 2.2.46. It is submitted that the claim for refund of the amount spent at Jarangla sub-Station is baseless as the Interconnection Facilities were exclusively for the use of Petitioners which have become idle on the date of evacuation of power through permanent Interconnection Point at Karian and the Petitioners may dismantle the same being their own asset. It is submitted that the delay in commissioning of the Karian Sub-station is not attributable to the replying Respondent in any manner. It is also mentioned that the Petitioners had represented to the replying Respondent for reimbursement of the cost of the equipments already installed at Jarangla and the replying Respondents vide letter dated 10.1.2020 requested the Chief Engineer(Op.North), HPSEBL, Dharmshala to take necessary action as deemed fit. Further, it is apparent from letter of the Chief Engineer(System Planning), HPSEBL dated 13.11.2020 (Annexure R-3/2) that facility at Jarangla has become idle. According to them, the replying Respondent has not threatened the Petitioners for disconnection. In nutshell, the case of the Petitioners has been denied.

7. In rejoinder to the reply filed by Respondent No.2, the contents thereof have been denied and those of the Petition have been re-affirmed. Similarly, in rejoinder to the reply filed by the Respondent No.3, the contents of the reply too have been denied and those in the Petition have been reaffirmed.

8. The Respondents No.1 & 4 have adopted the reply filed by the Respondent No.3.

9. We have heard Sh. Shanti Swaroop, Ld. Consultant(Legal) for Respondent No.1, Sh.Umesh Kanwar, Ld. Advocate for Respondent No.2, Sh. I.P.Singh, Ld. Consultant(Legal) for Respondent No.2, Sh.Kamlesh Saklani, Authorised Representative for Respondent No.3, and Ms. Kamlesh Shandil, Ld. Counsel for Respondent No.4 and have also perused the case file carefully. The Respondent No.2 has also filed written arguments in support of their contention.

10. The present Petition has been filed by the Petitioners under Sections 86 of the Electricity Act, 2003 for adjudication of the dispute existing between the Petitioners and the Respondents with regard to the expenditure incurred on account of setting up and maintaining the temporary Interconnection Point by the Petitioners at Jarangla. Besides, the Petitioners have also claimed compensation for loss of power generation due to delay in commissioning of Karian Sub-station and for dispensing with stringing of Third AB conductor.

11. The Respondent No.2 HPPTCL has mentioned in their reply that 220/33 kV Sub-station at Karain has been commissioned on 12.05.2018 and the Petitioners have got the Interconnection Point of their projects shifted and connected to the 220/33 kV Karian Sub-station on 25.04.2020.

12. The Ld. Counsel for, the Petitioners has submitted that on account of delay on the part of the Respondent No. 2 HPPTCL in commissioning of the

Interconnection Point at Karian, the Petitioners had to invest more than Rs. 82 lacs on building and maintaining the infrastructure at the temporary Interconnection Point at Jarangla. Further submitted that the combined generation capacity of the projects of the Petitioners was much higher than the power allowed to be generated by the Petitioners from time to time on the verbal instructions of the Respondents. According to him, as per Order dated 21.12.2009 in Petition No. 92 of 2009, the Respondent No.2 had been directed to build/construct Extra High Tension Sub-station at Karian well before 31.12.2010 but there was intentional delay on the part of the Respondents to construct the Extra High Tension Sub-station at Karian which could be commissioned on 12.05.2018 and the Petitioners were connected to the same on 25.04.2020, thus a huge loss has been sustained by them. It is further submitted that as per the order passed in Petition No. 92 of 2009, only the temporary Interconnection Point was to be shifted to Karian but the Respondent No.2 HPPTCL, instead of shifting/relocating the bays from Jarangla to Karian has constructed new bays at Karian at the additional cost to be borne by the Petitioners. As per him, the cumulative capacity of all the three Projects of the Petitioners is 13.5 MW and the total capacity of line upon stringing of the two WOLF conductors is 36 MW which is more than double the generation capacity of the projects, thus the shifting of the third circuit, as per the present conditions, is not required.

13. The Ld. Consultant (Legal) for Respondent No.2 (HPPTCL) has submitted that in the PPA dated 23<sup>rd</sup> August, 2014 signed by the Petitioner No.1 with Respondent No.3 (HPSEBL), the Interconnection Facilities and Interconnection Point were clearly defined in Clauses 2.2.46 and 2.2.47 which stipulate in unequivocal terms that the Interconnection Facilities, which include for the incoming bays for project lines, be maintained by the Respondent No.3 at 33kV Sub-station at Jarangla and later on the Interconnection Point shall be shifted by the Petitioners from Jarangla to

Karian by extending 33kV lines. Said clauses further stipulate that the cost involved in providing the Interconnection Facilities and Interconnection Point at Jarangla and further shifting thereof to Karian shall also be borne by the Project proponents i.e. the Petitioner in terms of the Commission's Order dated 21.12.2009 passed in Petition No. 92 of 2009 for evacuation of power. Moreover, the Petitioners at the time of signing of PPAs in 2014 had a clear understanding that the Karian Sub-station is not ready and for said reason, the Commission had given consent for evacuation of power through temporary Interconnection Point at Jarangla Sub-station of Respondent No.3, while approving the PPA in the present case. As per him, until Sept., 2019 the Petitioner had no Agreement with the Respondent No.2 (HPPTCL), as such the Petitioner cannot raise any claim for compensation for alleged delay in construction of Karian Sub-station by the HPPTCL. As per him, the shifting of Interconnection Point from Jarangla to Karian Sub-station proposed and conceived in terms of duly executed PPA was the responsibility of the Petitioners.

14. Ld. Counsel for the Respondent No.3 has submitted that the temporary/interim arrangement at Jarangla Sub-station had been made only for the Petitioners and had to be shifted by them to Interconnection Point at Karian at their cost and, therefore, the Petitioners are not entitled to the refund of the amount as claimed. He has also submitted that neither any loss on account of generation has been sustained by the Petitioners nor any direction to reduce the generation was issued by the Respondent No.3 and the claim is baseless.

15. The Petitioners, before approaching this Commission had not resorted to the Good Faith Negotiations, and therefore, the parties were directed vide this Commission Interim Order dated 28.01.2021 to conduct the Good Faith Negotiations in the first instance. Ld. Counsel for Respondent No.3 submits

that in compliance thereof, a meeting on Good Faith Negotiations was conducted on 23.04.2021 in the Chambers of Managing Director, HPSEBL, Vidyut Bhawan, Shimla in respect of Belij ka Nallah-II HEP(3.5MW), Belij (5.00MW) and Dunali (5.0MW) between the representatives of the HPSEBL, HPPTCL, HIMURJA, M/s Batot Hydro Power Ltd, M/s Belij Hydro Power Ltd. and M/s Jal Shakti Ltd. In the Good Faith meeting, the representatives of the Petitioners mentioned that before shifting to the permanent Interconnection Point at 220/33 kV Karian Sub-station of the HPPTCL, these IPPs/Petitioners were provided temporary connectivity at 33kV Jarangla Sub-station of the HPSEBL, which had been commissioned by them at their own cost and on shifting to the permanent Interconnection Point at 220/33kV Karian Sub-station, the equipment installed by them at 33 kV Jarangla Sub-station of the HPSEBL has become idle. Therefore, the IPPs requested the HPSEBL to take over the said equipment at the depreciated cost as they are now connected at 220/33kV Karian Sub-station of the HPPTCL and do not require these equipments. The HPSEBL mentioned that the cost involved in providing the temporary Interconnection Facilities at Jarangla and subsequent shifting thereof to Karian was to be borne by the IPPs as per the HPERC Order dated 21.12.2009 passed in Petition No. 92 of 2009, as such, the equipment installed at 33 kV Jarangla Sub-station of HPSEBL, for providing temporary connectivity, is lying idle and is not required by the HPSEBL. The HPSEBL rather mentioned that said equipment has occupied huge space at the HPSEBL Sub-station and asked the Petitioners to dismantle their equipment and vacate the space immediately. According to him, Good Faith Negotiation has ended without any result.

16. The entire controversy revolves, around the issue whether or not the cost of temporary Interconnection Point set up by the Petitioners and subsequent maintenance was to be borne by the Petitioners or they are entitled

for the depreciated cost and amount claimed in the Petition and whether or not the stringing of the third circuit, as per present conditions is not necessary. Therefore, it is relevant to reproduce sub-paras (a) (f) and (m) of para 10 of Order dated 21.12.2009 in Petition No. 92 of 2009 as under:-

- “(a) *the 33kV line from the proposed pooling Sub-station at Dunali upto the Sub-station at Jarangla (ultimately to be executed upto Karian) shall be designed by the Petitioners, so as to carry three circuits (two circuits with “WOLF” conductor and one with AB cable of appropriate size or otherwise). At least two circuits with WOLF conductor shall be strung in the first Phase itself and the timeframe for stringing the third circuit shall be got approved by the Petitioners from the HPPTCL and the Board after taking into account various related factors. The proposal regarding stringing of the third circuit shall be submitted by the Petitioners to the Board and the HPPTCL, in due course of time, but in any case before the synchronization of the first Small Hydro Electric Projects;*
- (f) *on commissioning of the EHT Sub-station proposed to be constructed by the HPPTCL at Karian, the Interconnection Point shall be shifted by the Petitioners from Jarangla to Karian by extending 33kV line(s) at their cost. The cost involved in providing the Interconnection Facilities at Jarangla and subsequent shifting thereof to Karian shall also be borne by the Petitioners. For this purpose the Petitioners, the Board and the HPPTCL shall file a joint petition before this Commission at an appropriate stage (i.e. well before the completion of Karian Sub-station) for change of Inter-Connection Point;*
- (m) *the petitioners will jointly sign the requisite Interconnection Agreement(s) with the Board and the HPPTCL immediately and deposit the estimated cost for providing Interconnection Facilities as per mutually agreed schedule, so as to enable the Board and the HPPTCL, to construct Interconnection Facilities at Jarangla and Karian respectively.”*

17. It is apparent from the aforesaid order that the 33kV line would be initially constructed (designed by the Petitioners) upto the temporary Pooling Point at 33kV Sub-station at Jarangla till the Inter-connection Point at Karian is commissioned. Further, it is also clear that on commissioning of the EHT Sub-station proposed at Karian, the Interconnection Point shall be shifted by the Petitioners from Jarangla to Karian by extending 33 kV line at their own cost.

18. Here, it is also relevant to reproduce to Clauses 2.2.46 and 2.2.47 of the PPA which are reproduced as under:-

**Clause 2.2.46** *“Interconnection Facilities” means all the facilities which shall include, without limitation, switching equipment, protection control and metering devices etc. for the incoming bay(s) for the Project line(s), to be installed and maintained by the Board at 33/11kV sub-station at Jarangla and later the Interconnection Point shall be shifted by the iPP’s from Jarangla to Karian by extending 33kV line(s) at their cost. The cost involved in providing the Interconnection Facilities at Jarangla and subsequent shifting thereof to Karian shall also be borne by the IPP as per Commission’s Order dated 21.12.2009 in case of Petition No. 92 of 2009 for evacuation of power.*

*Note: Since the Karian sub-station is expected to be completed shortly, the interconnection facilities shall be shifted from Jarangla to Karian on its commissioning by the IPP at his cost. Further, other requirements for joint evacuation of power from Baliy-Ka-Nala HEP shall be subject to Commission’s Order dated 21.12.2009 in case of Petition No. 92 of 2009.*

**Clause 2.2.47** *“Interconnection Point” means the physical touch point where the Project Line(s) and the allied equipment forming a part of the Interconnection Facilities are connected to the 33kV bus-bars on the 33kV sub-station of the Board at Jarangla and later shifted to Karian in view of Commission’s order in case of petition No. 92/2009.”*

19. It is thus apperent on record that the Petitioners at the time of signing of the PPA in 2014 had clear understanding that the Karian Sub-station was not ready and for these reasons the Commission while approving the PPA had given consent for evacuation of power through temporary interconnection at Jarangla Sub-station of the Respondent No.3. The note to Clause 2.2.46 of PPA clearly provides that the cost involved in providing the Interconnection Facilities and Interconnection Point at Jarangla and further shifting thereof to Karian shall be borne by the Project proponents (Petitioners) in terms of the

Commission's Order dated 21.12.2009, passed in Petition No. 92 of 2009 for evacuation of Power.

20. There is nothing on record that the Petitioners had been assured either by the Respondent No.2 or by Respondent No.3 that the depreciation cost of the material used by the Petitioners at temporary point at Jarangla will be provided to them. In fact, the entire cost of setting up of said temporary Interconnection Point and shifting the same to Karian including bays was to be borne by the Petitioners. On the commissioning of permanent Interconnection Point at Karian, said temporary Interconnection Point has become idle and is of no use to the Respondents. Hence, there is no occasion for the Respondents to refund the amount as claimed. On the contrary, the Petitioners have unnecessarily occupied the space of Respondent No.3. In fact, the Petitioners have failed to produce any document that the cost of any, of the temporary Interconnection Point was to be borne by the Respondents.

21. It is interesting to note that the Petitioners through Petition No. 92 of 2009 approached the Commission for approval of construction of 33kV dedicated line for evacuation of power from their Projects. The PPA was signed on 23.08.2014. Though the Petitioners have also claimed compensation for delay of 9 years in setting up the 33/220 kV Karian Substation (Interconnection Point) in May 2018, much after the committed date i.e. 31.12.2010 but the Petitioners have not been able to substantiate that they are entitled for any claim on account of loss of generation. It is apparent on record that the Petitioners have signed the PPA on 23.08.2014, after the committed date i.e. 31.12.2010 meaning thereby that they had not commissioned their Projects by the said date of 31.12.2010. A temporary Interconnection Point has been provided to the Petitioners at Jarangla for evacuation of energy. Thus, no loss on account of energy whatsoever has been sustained by them. Therefore, even if there is delay in commissioning of the



Permanent Interconnection Point at Karian, which was commissioned in the year 2018 and the Petitioners were connected to the same in the year 2020, yet their power was being evacuated smoothly, therefore no loss, whatsoever, has been occurred to them. Even otherwise, the Petitioners have not produced even a single document on record justifying such loss.

22. The Petitioners have also claimed that they have sustained loss because as per Order dated 21.12.2009 passed in Petition No. 92 of 2009, only the temporary Interconnection Point from Jarangla was to be shifted to Karian but instead of shifting/relocating the bays from Jarangla to Karian, new bays have been constructed at Karian at additional cost to be borne by the Petitioners. The careful perusal of Order dated 21.12.2009 in Petition No. 92 of 2009 nowhere suggests that the Respondent No.2 was restricted to shift or relocate the bays from Jarangla to Karian. Rather, it is apparent from the Order dated 21.12.2009 in Petition No. 92 of 2009 that EHT Sub-station was to be constructed and upon commissioning of the same, the Interconnection Point had to be shifted from Jarangla to Karian by the Petitioners by extending 33kV line(s) at the cost of the Petitioners. It was specifically ordered in sub-para (f) of para 10 of the Order dated 21.12.2009 that the cost involved in providing the Interconnection Facilities at Jarangla and subsequent shifting thereof to Karian shall also be borne by the Petitioners. Not only this, a Petition was also to be filed jointly by the parties at appropriate stage but no such Petition has been filed and rather, upon the commissioning of the Interconnection Point at Karian, the Petitioners have been connected to the same. Thus, the claim for the refund of amount for setting up and maintaining the temporary Interconnection Facility at Jarangla or for depreciated cost or generation loss has been raised only to be rejected.

23. It is held by Hon'ble Apex Court in **Gujarat Urja Vikas Nigam Ltd. v/s Solar Semiconductor Power Company (India) Pvt. Ltd. & others**

**(2018) ELR (SC) 0032; Gujarat Vikas Nigam Ltd. v/s Emoco Ltd. & another (2016) 11 SCC 182, and Transmission Corporation of AP Limited & another v/s Sai Renewable Power Pvt. Ltd. & others (2011) 11 SCC 34**, that the PPA being binding and statutory instrument, both parties had to honour the same in true spirit and no stipulations as per PPA can be ignored. Hence the stipulations made in the PPA dated 23.08.2014, are binding on the parties.

24. In the present case, the Connection Agreement was signed by the Petitioner with the Respondent No.2 in Sept., 2019 after the Karian Sub-station got commissioned in May, 2018. Therefore, until Sept., 2019, the Petitioners had no Connection Agreement with the Respondent No.2, i.e. HPPTCL. On this account also, the Petitioners cannot raise any claim against Respondent No.2 and especially when the energy of the project of the Petitioner was being evacuated uninterruptedly by allowing them to set up a temporary Interconnection Point at Jarangla. This Commission in similar matter in **Petition No. 52 of 2017- titled as M/s Sahu Hydro Vs. HPPTCL and another** decided on 15<sup>th</sup> Sept., 2018 and **Petition No. 38 of 2018 M/s Tangling Mini Hydel Power Project Vs. HPSEBL and HPPTCL** decided on 25.04.2019, has held that in the absence of the Connection Agreement between the parties, the contractual obligations cannot be performed and the parties cannot be entitled to the relief of the damages. Para 32 of the Commission's Order dated 15<sup>th</sup> Sept., 2018, passed in Petition No. 52 of 2017- M/s Sahu Hydro Power Ltd. v/s HPPTCL reads as under-

*“32 The Respondent No.1 (HPPTCL) is a statutory authority performing statutory functions and has to build the transmission system in the State in terms of statutory mandate. However, there cannot be any claim for compensation against it for any delay, particularly for the compensation for the loss of generation, without there being any agreement about the terms and conditions and the PERT Charts for all the works required for evacuation of power for indemnification.”*

25. In this regard, the law laid down by the Hon'ble APTEL in **Tata Motors Limited, Mumbai V/s Maharashtra Electricity Regulatory Commission, Mumbai and another 2015 ELR (APTEL) 0073** and in **Punjab State Power Corporation Limited (PSPCL) Vs. Patran Transmission Company Limited (PTCL)2018 ELR (APTEL) 0502**, is quite relevant wherein it has held that the judicial propriety and discipline demands that there is certainty and consistency in decision making process and earlier orders passed by the State Commission must be respected by the same Commission.

26. In so far as the claim qua stringing of third circuit is concerned, it was specifically ordered in sub-para (a) of para 10 of Order dated 21.12.2009 in Petition no. 92 of 2009 that at the first instance, at least two circuits with WOLF conductor shall be strung and the time frame for stringing the third circuit shall be got approved by the Petitioners from the HPPTCL and HPSEBL after taking into account various related factors. The Respondent No.2 HPPTCL in their reply has submitted that no proposal has been submitted by the Petitioners for stringing the third circuit. The Petitioners in para 28 of the Petition have mentioned that the cumulative capacity of the Projects of the Petitioners is only 13.5 MW against the total carrying capacity of the 36 MW of the line upon stringing the two WOLF conductors which is more than double the generation capacity of the Project of the Petitioners. The Respondent No.3 and 4 in their reply have not disputed the carrying capacity of 36 MW upon stringing of two WOLF conductors. Since the Commission has categorically held in para 10 of Order dated 21.12.2009 in Petition No. 92 of 2009 that atleast two circuits with WOLF conductors shall be strung in the 1<sup>st</sup> Phase and the timeframe for stringing the 3<sup>rd</sup> circuit shall be got approved by the Petitioners from the HPPTCL and the Board after taking account into

various related factors, it can safely be held that for the present, there is no necessity for stringing the 3<sup>rd</sup> circuit/AB conductor.

27. In view of the above, the Petitioners have failed to establish on record that they are entitled for the refund of amount for setting up and maintaining the temporary Interconnection Facilities at Jarangla or depreciation cost thereof or any generation loss has been sustained by them.

### **Conclusion**

28. In light of the foregoing discussion and findings, the Petition partly succeeds. The Petition qua claim for the refund of amount for setting up and maintaining the temporary Interconnection Facility at Jarangla or the compensation for loss qua generation is dismissed. However, the Petition regarding non stringing the third AB conductor at the Interconnection Point at Karian is allowed and stringing of third AB conductor is dispensed with for the time being as the two existing conductors are sufficient for carrying the cumulative capacity of 13.5 MW energy being generated by the Projects of the Petitioners.

The file after needful be consigned to records.

Announced

09.12.2021

-Sd-

**(Yashwant Singh Chogal)**

**Member(Law)**

-Sd-

**(Bhanu Pratap Singh)**

**Member**

-Sd-

**(Devendra Kumar Sharma)**

**Chairman**