

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

**Petition No:** 20 of 2024  
**Date of Institution:** 27.01.2024  
**Arguments Heard on:** 10.04.2024  
**Decided on:** 14.05.2024

**CORAM.**

Devendra Kumar Sharma

**CHAIRMAN.**

Yashwant Singh Chogal

**MEMBER (Law).**

Shashi Kant Joshi

**MEMBER.**

**In the matter of:**

**The HP State Electricity Board Ltd. through,  
the Chief Engineer (System Operation),  
Vidyut Bhawan, Shimla-171004. ...Joint Petitioner No. 1.**

**AND**

**M/s Rudra Small Hydro Electric Project,  
Vill. Maned, P.O. Chetru, Tehsil Dharmshala,  
Distt. Kangra-176209 (HP) through,  
Sh. Abhinav Thakur (Authorised Signatory),  
....Joint Petitioner No. 2.**

**Versus**

**The Himachal Pradesh Energy Development Agency,  
(HIMURJA), Urja Bhawan, SDA Complex, Kasumpti,  
Shimla-171009, through its Chief Executive Officer,  
.....Respondent**

**Joint Petition under Section 86 (1) (b) of the Electricity Act, 2003 and  
Regulation 50 and 50-A of the HPERC (Conduct of Business)  
Regulations, 2005, as amended from time to time, for approval of the  
Power Purchase Agreement under Generic Levellised Tariff to be  
executed by the HPSEBL with M/s Rudra Small Hydro Electric Project  
(0.75 MW).**

Present:-

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

Sh. Abhinav Thakur, Authorised Representative for the Joint Petitioner No. 2.

Sh. R.K. Shukla, Project Manager for the Respondent.

## **ORDER**

This Joint Petition has been filed under Section 86 (1) (b) of the Electricity Act, 2003 (Act for short) read with Regulations 50 and 50-A of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, as amended from time to time, (CBR for short) by the Himachal Pradesh State Electricity Board Limited (HPSEBL or Joint Petitioner No. 1 for short) and M/s Rudra Small Hydro Electric Project (Joint Petitioner No. 2 for short) for the approval of Long Term Power Purchase Agreement at Generic Levellised Tariff in respect of 0.75 MW Rudra Small Hydro Power Project (SHP for short) on Charan Khadd, a tributary of Beas River in Beas Basin in District Kangra, Himachal Pradesh (Project for short).

### **FACTS OF THE CASE**

2. As per the Petition, the Directorate of Energy Government of Himachal Pradesh accorded Techno Economic Clearance (TEC) for Rudra HEP (0.75 MW) vide Order No. DoE/CE/TEC-Rudra/2016-8932-40 dated 19.12.2016 (Annexure P-VII) and accordingly, the Joint Petitioner No. 2 signed Implementation Agreement (IA for short) on 14.11.2017 (Annexure P-III) for implementation of the Project.

3. As per the Joint Petition, the Joint Petitioner No. 2 on availing the benefit of "One Time Amnesty" Scheme signed SIA with the Government of Himachal Pradesh (GoHP for short) on 29.01.2021 (Annexure P-IV) whereby the GoHP granted 'One Time Amnesty' to the Project by re-defining the zero date.

4. The parties also executed the Connection Agreement on 18.10.2022 (Annexure-V) that the interconnection point in respect of the Project shall be on existing 11 kV Bagli feeder emanating from 2x25 / 31.5 MVA, 132/33/11 kV Gurkari, Sub-station (Kangra) through solid tap with appropriate protection arrangement.

5. As per the Petition, the Joint Petitioner No. 2 has opted to sell the net saleable energy from the Project to Joint Petitioner No. 1 at Generic Levellised Tariff, as may be applicable, as per the provisions of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 (HPERC RE Regulation 2017 for short), as amended from time to time. It is averred that as per Regulation 5 (1) of HPERC RE Regulations, 2017, 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 Long Term Power Purchase Agreement under REC Mechanism.

6. As per the Petition, the GoHP vide notification dated 15.05.2018, further amended vide Order dated 10.10.2018, has mandated the HPSEBL to purchase entire power from the Small Hydro Projects (SHPs) having capacity upto 25 MW on Generic Levellised Tariff, as determined by the Commission.

7. It is averred that the Petitioners have agreed for sale/purchase of energy generated from the Project at the generic levellised tariff determined by the Commission in relation to the control period defined under the provisions of HPERC RE Regulations 2017, encompassing the scheduled date of commencement of operation of the project, as fixed by the GoHP. Further, in order to ascertain the applicability of relevant control period, the Chief Executive Officer, HIMURJA/Respondent has issued a certificate Scheduled Commercial Operation Date (SCOD for short) (AnnexureP-VI) vide letter dated HIMURJA/SHP-IA/ Rudra (RSHEP)/2012-2804 dated 20.07.2021, on the prescribed format (Annexure P-1) that the SCOD of the Project shall be 28.01.2024, as per the construction period of 24 months approved in the concurrence accorded on 19.12.2016. Therefore, the Project clearly falls under the ambit of 4<sup>th</sup> control period defined under HPERC RE

Regulations, 2017. Further the Commission has determined the generic levellised tariff for SHPs above 100 kW vide Order dated 17.11.2023 in Suo Moto Petition No. 7 of 2023 under Regulation 14 of the HPERC RE Regulations, 2017 for the period w.e.f. 01.10.2023 to 31.03.2027, which is Rs. 4.93 per kWh for the Small Hydro Projects having installed capacity above 100 kW to 2 MW, subject to the adjustment on account of incentive and/or subsidy and/or grant available to the Project, additional tariff on account of O&M, variation in free power structure and rounding.

8. In respect of adjustment on account of incentive/subsidy/grant, it is averred that the Ministry of Commerce and Industry vide Notification No. 2(2)/2018-SPS dated 23.04.2018 notified the Industrial Development Scheme for Himachal Pradesh and Uttarakhand, whereby Central Capital Investment Incentive (Subsidy for short) is being given for access to credit @ 30% of the investment in plant and machinery with upper limit of Rs. 5 Crore which was effective from 01.04.2017 till 31.03.2022 and as per the mandatory requirement of scheme, given at item No. 17 therein, all eligible units would have to register under the Scheme with the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India for availing the benefit. For this purpose, the Joint Petitioner No. 2 had to submit an

online application alongwith DPR but the Joint Petitioner No. 2 has not applied for the same within outer date i.e. 31.03.2022. Further, as per the Scheme, the units should start commercial production within 18 months of the approval but the SCOD of the Project has been fixed as 28.01.2024, which is beyond the scope of this Scheme as the same was available only upto 31.03.2022. Thus, the Joint Petitioner No. 2 was not able to fulfill the aforesaid mandatory requirement of the Scheme and, therefore, no adjustment on account of subsidy is required to be carried out.

9. Though, it is Joint Petition, yet it is averred on behalf of the HPSEBL that the Commission vide Order dated 17.11.2023 (in Suo Moto Petition No. 7 of 2023) has clarified that the adjustment of subsidy(ies)/grant(s)/ incentive(s) etc., as per the HPERC RE Tariff Regulations, 2017 is not linked to the actual receipt of such subsidy etc. by the developers, but is linked to the availability of the same under the relevant Government Scheme(s) and had the Joint Petitioner No. 2 registered itself with the Department of Industrial Policy and Promotion, the Project could have received the aforesaid subsidy. As such, the subsidy of Rs. 69.90 lakh, calculated by taking into account the 30% incentive rate to the electro-mechanical cost, mentioned in the Technical Concurrence dated 19.12.2016, may be considered available

to Joint Petitioner No. 2 and as per the provisions of para 7.14 (ii) of the Tariff Order dated 17.11.2023, (the relevant para is 7.13 (ii)) the adjustment on account of aforesaid subsidy is required to be made at appropriate stage as per the tariff order.

10. It is further averred that the Joint Petitioners No. 1 and 2 could not arrive at mutual consensus for adjustment of subsidy and the Commission may decide the same.

11. The provisions of Para 12 and 19.2 of the IA dated 14.11.2017 have been quoted in para 14 (c) of the Petition that no adjustment in tariff is required to be made on account of variation in free power structure.

12. It is also averred that no other case has been filed in respect of the Project and that the Joint Petitioner No. 2 shall pursue with State/Central Government in respect of any financial assistance/ grant/subsidy and has filed an affidavit (Annexure P-IX) to this effect. Averments regarding reimbursement of water cess have also been made in para 18 of the Petition. Hence, the Petition for approval of the PPA.

### **Impleadment of Himurja as Respondent to the Petition**

13. As per the SIA "One Time Amnesty" was granted to the Joint Petitioner No. 2 and as per the timelines of the "One Time Amnesty"

Scheme incorporated in the SIA dated 29.01.2021, the Joint Petitioner No. 2 was required to sign the Power Purchase Agreement within a period of one month from the date of signing of SIA and the zero date of start of construction was within 12 months after the signing of the SIA, extendable to further period of 12 months. Though, the SCOD of the Project has been re-defined as 28.01.2024 but there is no explanation in the Petition for the delay in filing the Petition for the approval of PPA. In the circumstances, the impleadment of the HIMURJA was considered necessary for the disposal of the Petition. Accordingly, the HIMURJA, through its Chief Executive Officer was impleaded as Respondent in the Petition vide Order dated 26.02.2024.

### **REPLY OF RESPONDENT**

14. The HIMURJA, has submitted reply on 30.03.2024 giving brief note on Rudra Small Hydro Project that the TEC for the Project was accorded by the Department of Energy on 19.12.2016 for 0.75 MW and IA was signed on 14.11.2017 and as per the provisions of IA, construction activities were to be started within six months from the effective date of the signing of IA i.e. by 13.05.2018 but the GoHP vide notification dated 07.11.2020 (Annexure-A) introduced 'One Time Amnesty' Scheme for redefining of zero date for Projects where IAs have been signed but zero date has not been achieved and redefining

the SCOD for the Project under construction stage. Vide the notification dated 07.11.2020, (Annexure R/A to the reply of HIMURJA) the SHPs were required to apply for availing the scheme within one month from the date of issue of notification i.e. by 06.12.2020 and sign SIA with GoHP within three months from the date of notification i.e. 06.02.2021. Accordingly, SIA was signed by M/s Rudra Small Hydro Electric Project for availing of the 'One Time Amnesty' Scheme on 29.01.2021. The construction schedule for the completion of works was approved by the Himurja, and a new SCOD was fixed for 28.01.2024. Further, the commencement of the work was achieved on 28.03.2022, after obtaining all clearances and that the Joint Petitioner No. 2 has represented on 16.06.2023 for extension of SCOD on the following grounds:

- (i) that work was stopped by local villagers due to a landowner dispute.
- (ii) Covid has disrupted the labour force and availability of skilled man power from 2020 and there was minimal man power available in 2021 and 2022 due to Covid-19.
- (iii) IPP signed the connectivity agreement on 11.03.2022 and applied for the signing of a PPA with HPSEBL.

15. Also averred that the Respondent has forwarded the case for extension of SCOD to the GoHP on 17.10.2023 (Annexure-C).

### **Analysis by the Commission**

16. We have heard Sh. Kamlesh Saklani, Authorised Representative for the Joint Petitioner No. 1 and Sh. Abhinav Thakur, Authorised Representative for the Joint Petitioner No. 2 and Sh. R.K. Shukla, Project Manager for the Respondent and have perused the entire record carefully.

17. The IA in respect of the Project was signed on 14.11.2017 (Annexure P-III). However, for the reasons best known to the Joint Petitioner No. 2, the construction of the Project was not commenced as per the timelines. Meanwhile, the GoHP introduced the 'One Time Amnesty' Scheme on 07.11.2020 by redefining the zero date for the Projects which were under the investigation and clearance stage and SCOD for the Projects which were under the construction stage. It appears that the Project was under the investigation and clearance stage, as such, the Joint Petitioner No. 2 submitted an application to the GoHP for availing the benefits under the 'One Time Amnesty' Scheme which appear to have been granted and the Joint Petitioner No. 2 accordingly, signed the SIA on 29.01.2021 as stipulated in the Scheme, (Annexure P-IV). As per the SIA, the Joint Petitioner No. 2 was required to sign the Power Purchase Agreement within one month from the date of signing of SIA, meaning thereby that the PPA was required to be

signed well before 28.02.2021. However, there is no explanation in the entire Petition for non signing of the PPA within the stipulated period.

18. The Joint Petitioner No. 2 has raised two issues. Firstly, that the Joint Petitioner No. 2 could not avail the industrial subsidy as the SCOD was 28.01.2024 whereas the subsidy Scheme was valid only till 31.03.2022, as such, no adjustment on account thereof is required to be made. Secondly, the SCOD of the Project is 28.01.2024 which falls within the ambit of 4<sup>th</sup> control period and the Joint Petitioner No. 2 is entitled for the tariff of the 4<sup>th</sup> control period commencing w.e.f. 01.10.2023 to 31.03.2027.

19. Coming to the first issue of the non adjustment of the industrial subsidy, the Joint Petitioner No. 2 has come out with a stand that though the Industrial Development Scheme for the States of Himachal Pradesh and Uttarakhand was available w.e.f. 01.04.2017 till 31.03.2022 but due to various reasons, Joint Petitioner No. 2 could not avail such subsidy. Also, the SCOD dated 28.01.2024 is beyond the outer date of 31.03.2022, as such, no adjustment of subsidy is required to be made in the tariff. However, the Joint Petitioner No. 1 has come out with a stand that the Joint Petitioner No. 2 was required to get the Project registered with the Department of Industrial Policy and Promotion through online and avail the benefits under the Scheme.

Significantly, the SIA was signed on 29.01.2021 and as per SIA, the zero date for the start of construction was within 12 months from the signing of SIA. The said period of 12 months had been fixed in the 'One Time Amnesty' Scheme dated 07.11.2020 after taking into consideration each and every aspect of the matter and also taking into consideration that earlier timelines provided in the IA were not adhered to. As per the Industrial Subsidy Scheme, one of the requirements was to get the Project registered online with copy of DPR on the portal of Ministry of Commerce and Industry, Govt. of India. It is none of the case of the Joint Petitioner No. 2 that DPR had not been prepared. No satisfactory explanation has been provided in the Petition for not getting the Project registered online under the above Scheme for claiming Industrial subsidy. It is mentioned in the Petition on behalf of the HPSEBL that had the Joint Petitioner No. 2 registered the Project under the Scheme through DIPP Portal, the subsidy could have been availed. The Scheme was valid till 31.03.2022, whereas the SIA had been signed on 29.01.2021. Hence, the Joint Petitioner No. 2 had more than one year after signing SIA on 29.01.2021, for getting the Project registered for claiming the subsidy under the above Scheme till 31.03.2022. Since, no satisfactory reasons have been assigned in the Petition for not applying online for claiming the subsidy despite sufficient

time, there appears to be willful delay in this regard on the part of the Joint Petitioner No. 2 so that the adjustment of the subsidy amount in the tariff is not made and higher tariff is availed. Therefore, there are no reasons for not making any adjustment of the subsidy as per para 7.13 (ii) of the tariff Order dated 17.11.2023 in Suo Moto Petition No. 7 of 2023 and Regulation 22-C of HPERC RE Regulations 2017 as amended and notified vide notification dated 26.09.2023. Hence, the adjustment of subsidy amount of Rs. 69.90 lakh, as mentioned in the Petition, is required to be made while determining the tariff.

20. Coming to the second issue of grant of tariff of the 4<sup>th</sup> control period, it is averred that SCOD of the Project is 28.01.2024 which falls within the 4<sup>th</sup> control period, as such, tariff of 4<sup>th</sup> control period commencing from 01.10.2023 till 31.03.2027 is required to be allowed in favour of the Project. As per the 4<sup>th</sup> proviso to Regulation 13(I) (aa) of the HPERC RE Regulations, 2017, as amended and notified vide notification dated 26.09.2023, the project shall be entitled to the tariff where SCOD of the project falls. The SCOD of the Project is 28.01.2024 and this Commission has notified 4<sup>th</sup> control period w.e.f. 01.10.2023 to 31.03.2027, as per the HPERC RE Regulations, 2017, as amended and notified vide notification dated

26.09.2023 and as per the 4<sup>th</sup> control period, the tariff structure for SHPs above 100 kW to 25 MW is as under:-

“A. the Generic Levelised Tariffs under the HPERC RE Regulations, 2017 for various categories of SHPs is reproduced as under :-

| Sr. No. | Capacity                           | Generic levelised tariff in Rs. /kWh of net saleable energy without considering subsidy |
|---------|------------------------------------|---|
| (i)     | Above 100 kW to 2 MW capacity      | 4.93  |
| (ii)    | Above 2 MW but below 5 MW capacity | 5.03  |
| (iii)   | 5 MW to 25 MW capacity             | 4.78  |

21. The Project capacity is 0.75 MW, as such, the tariff for the project without adjustment of subsidy would be Rs. 4.93/- kWh, which is subject to the adjustment of subsidy amount as per Regulation 22-C (ibid). As per the petition, the subsidy amount which was available to the Joint Petitioner No. 2 was Rs. 69.90 lakh. As observed above, the Joint Petitioner No. 2 has not applied for the subsidy. The subsidy @ 30% of the investment in plant and machinery (Rs. 233 Lakh) with an upper limit of Rs. 5 Crore was available to the Company under the Industrial subsidy Scheme. Accordingly, the tariff of Rs. 4.93/ kWh, in respect of the Project, shall be subject to the adjustment of above said amount of Rs. 69.90 lakh, on account of subsidy, as per the provisions of Regulation 22-C of the HPERC RE Regulations 2017, as amended and notified vide notification dated 26.09.2023. Hence, after adjustment of the subsidy of Rs. 69.90 lakh, the tariff of Rs. 4.78 per kWh will be applicable to the Project of the Joint Petitioner No. 2.

22. It is mentioned by the Respondent that the Joint Petitioner No. 2 has requested for extension of SCOD and such request has been sent to the Govt. of HP. In this regard, it is relevant to mention that the Petitioner has availed 'One Time Amnesty', and the further relaxation, if any, will not make Joint Petitioner No. 2 entitled for the enhanced tariff, as the same will not be in interest of the consumers.

23. The Petition is duly supported by affidavits of the Joint Petitioners.

24. Thus, 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 Electricity Act, 2003 and Regulations 50 and 50-A of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 and also taking into consideration the notifications dated 15.05.2018 and 10.10.2018 of the GoHP, Swaran Jayanti Policy, 2021, 'One Time Amnesty' Scheme dated 07.11.2020, the Connection Agreement dated 18.10.2022, the Implementation Agreement dated 14.11.2017, the Supplementary Implementation Agreement dated 29.01.2021, the SCOD Certificate dated 17.07.2021 (Annexure-I), the Joint Petitioners have made out a case for the approval of the Long Term PPA under the Generic Levelled Tariff.

25. Accordingly the Petition succeeds and the PPA is ordered to be approved subject to the following terms and conditions:-

- (i) After considering the financial assistance of Rs. 69.90 Lakh and with adjustment of said amount, as per the provisions of Regulation 22-C of the HPERC RE Regulations 2017, as amended and notified vide notification dated 26.09.2023, the tariff of Rs. 4.78 per kWh is applicable to the Project of the Joint Petitioner No. 2.
- (ii) In case of any financial assistance or subsidy is availed or granted to the Joint Petitioner No. 2 after the order, the intimation thereof shall be given to the Joint Petitioner No. 1/ the HPSEBL, within 15 days of receipt thereof by the Joint Petitioner No. 2 and the parties shall approach the Commission either jointly or individually for appropriate tariff adjustment in this regard.
- (iii) The deferment of free power shall be applicable to the Joint Petitioner No. 2 in accordance with the provisions notified by the State Govt. in this regard. Therefore, Clause 6.1 of the draft PPA shall be retained or modified accordingly.
- (iv) At the end of Clause 7.1 of Article 7, following shall be inserted:-

“7.1A. In case the meter is installed in the premises of the Rudra Small Hydro Electric Project (0.75 MW), the notional line losses up to the injection point shall be borne by the M/s Rudra Small Hydro Electric Project (0.75 MW).”

- (v) In Sub-clause (2) of clause 8.8 of Article 8 of the draft PPA, the word and figure “36-B” shall be substituted with the word and figure “36-C”.

26. 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 records.

The file after needful be consigned to the record.

**Announced**  
**14.05.2024**

-Sd-  
(Shashi Kant Joshi)  
**Member**

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

-Sd-  
(Devendra Kumar Sharma)  
**Chairman**