

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

Petition No: 63 of 2024
Date of Institution: 15.02.2024
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 its,
Chief Engineer (System Operation),
Vidyut Bhawan, Shimla-171004.Joint Petitioner No. 1.**

AND

**M/s New Dhauladhar Hydro Project
C/O Variety Shoe Store, Main Bazzar, Palampur,
Distt. Kangra-176061 (HP) through,
Sh. E.S.V.V.S. Narayan Murty (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 New Dhauladhar Hydro Project in
respect of Baner Hydro Electric Project (1.0 MW).**

Present:-

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

Sh. Vikas Chauhan, Advocate 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 New Dhauladhar Hydro Project (Joint Petitioner No. 2 for short) for the approval of Long Term Power Purchase Agreement at Generic Levellised Tariff in respect of 1.00 MW Baner Hydro Electric Project (SHP for short) on Baner Khadd, a tributary of Beas River in Beas Basin in District Kangra, Himachal Pradesh (Project for short).

2. As per the Petition, the Directorate of Energy, Government of Himachal Pradesh accorded Techno Economic Clearance (TEC) for Baner HEP (1.0 MW) vide Order No. DoE/CE/TEC-Baner/2016-12948-55 dated 15.03.2017 (Annexure P-VII) and accordingly, the Joint Petitioner No. 2 signed Implementation Agreement (IA for short) on 27.03.2018 (Annexure P-III) for implementation of the Project.

FACTS OF THE CASE

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 06.02.2021 (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 31.12.2021 (Annexure P-V) that the interconnection point in respect of the Project shall be on existing 11 kV Gopalpur feeder emanating from 33/11 kV Nagri Sub-station through solid tap with appropriate protection arrangement, using the distribution and communication system of the Distribution Licensee/SLDC, to transmit electricity as well as real time data to and/or from the facility through the electrical system of the Distribution Licensee.

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 the 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 as 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 the HPERC RE Regulations, 2017, encompassing the Scheduled Commercial Operation Date (SCOD for short) 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 SCOD certificate vide letter No. HIMURJA/ SHP-IA/Baner(NDHP)/2009-2798 dated 20.07.2021 (Annexure P-VI) on the prescribed format (Schedule-I) that the SCOD of the Project shall be 05.02.2024, as per the construction period of 24 months approved in the concurrence accorded on 15.03.2017. Thus, the Project clearly falls under the ambit of 4th control period defined under the 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 to 31.03.2022 and as per the mandatory requirement of the 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 along with DPR, but the Joint Petitioner No.

2 has not applied for the same within time i.e. 31.03.2022. Thus, the Joint Petitioner No. 2 could not apply for the same within the outer limit. Thus, after adjustment of subsidy of Rs. 72.75 lakhs, the tariff for the Project comes to Rs. 4.73 per kWh.

9. Averments regarding water cess and Royalty, etc have also been made averring that in view of deletion of Clause 4.1.1.1 (xiv) of Swaran Jayanti Policy, 2021 by the Govt. of HP by making amendment in the Policy vide notification No. MPP-F(1) 2/2005-XV-II dated 12.12.2023 and consequently, Clause 6.1 of the draft PPA is proposed to be deleted.

10. The provisions of Para 12 and 19.2 of the IA dated 27.03.2018 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.

11. 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.

Impleadment of Himurja as Respondent to the Petition

12. 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 06.02.2021, 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 05.02.2024 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

13. The HIMURJA, has submitted reply on 30.03.2024 that the TEC for the Project in respect of Baner HEP was accorded by the Department of Energy on 15.03.2017 for 1.0 MW and IA was signed on 27.03.2018 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 27.03.2018 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 Notification dated 07.11.2020, (Annexure-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 to sign SIA with GoHP within three months from the date of Notification i.e. 06.02.2021. Accordingly, SIA was signed by M/s New Dhauladhar Hydro Project for availing of the 'One Time Amnesty' Scheme on 06.02.2021. The construction schedule for the completion of works was approved by the HIMURJA, and a new SCOD was fixed for 05.02.2024, after obtaining all clearances and that the Joint Petitioner No. 2 also represented to the Respondent for extension of SCOD. It is averred that the Joint Petitioner No. 2 has not achieved the timelines of the SIA.

Analysis by the Commission

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

15. The record reveals that the parties have signed Supplementary Connection Agreement dated 04.12.2023. The IA in respect of the Project was signed on 27.03.2018 (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 06.02.2021 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 05.03.2021. However, there is no explanation in the entire Petition for not signing of the PPA within the stipulated period.

16. In so far as the adjustment of Industrial subsidy is concerned, the Scheme was valid till 31.03.2022, whereas the SIA has been signed on 06.02.2021. Thus, the Joint Petitioner No. 2 had more than one year after signing SIA on 06.02.2021, 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 on the part of the Joint Petitioner No. 2. 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 the HPERC RE Tariff Regulations, 2017, as amended and notified vide notification dated 26.09.2023. Hence, the adjustment of subsidy amount of Rs. 72.75 lakh, as mentioned in the Petition, is required to be made while determining the tariff.

17. Coming to the issue of grant of tariff of the 4th control period, it is averred that SCOD of the Project is 05.02.2024 which falls within the 4th control period, as such, tariff of 4th control period commencing from 01.10.2023 till 31.03.2027 is required to be allowed in favour of the Project. As per the 4th 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 05.02.2024 and this Commission has notified the 4th control period w.e.f. 01.10.2023 to 31.03.2027, as per the HPERC RE Tariff Regulations, 2017, as amended and notified vide notification dated 26.09.2023 and as per the

4th 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 |

18. The Project capacity is 1.0 MW, as such, the tariff for the project without adjustment of subsidy would be Rs. 4.93 per kWh. As per the petition, the subsidy amount of Rs. 72.75 lakh was available to the Joint Petitioner No. 2. As observed above, the Joint Petitioner No. 2 has not applied for and availed the subsidy, despite that the subsidy @ 30% of the investment in plant and machinery (Rs. 242.5 Lakh) with an upper limit of Rs. 5 Crore was available to the Joint Petitioner No. 2 under the Industrial Subsidy Scheme. Accordingly, the above tariff of Rs. 4.93 per kWh, in respect of the Project, shall be subject to the adjustment of above said amount of Rs. 72.75 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. 72.75 lakh, the tariff of Rs. 4.73 per kWh will be applicable to the Project of the Joint Petitioner No. 2.

19. It is mentioned by the Respondent that the Joint Petitioner No. 2 has not achieved the timelines of the SIA and status in this regard 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, in respect of the Project will not make Joint Petitioner No. 2 entitled for the enhanced tariff, as the same will not be in interest of the consumers.

20. The Petition is duly supported by affidavits of the Joint Petitioners and the Respondent.

21. 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 30.12.2021, the Supplementary Connection Agreement dated 04.12.2023, the Implementation Agreement dated 27.03.2018, the Supplementary Implementation Agreement dated 06.02.2021, the SCOD Certificate dated 19.07.2021 (Annexure-I), the Joint Petitioners have made out a

case for the approval of the Long Term PPA under the Generic Levellised Tariff.

22. 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.72.75 Lakh per MW and 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. 4.73 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 this 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 Baner SHEP (1.0 MW), the notional line losses up to the injection point shall be borne by the M/s New Dhauladhar Hydro Project.”

- (v) In sub-clause (1) of Clause 8.8 of Article 8 of the Draft PPA, the text starting after the words "In the end of" in second line of the sub-clause (1) shall be renumbered as sub-clause (2).

24. 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 file after needful be consigned to the records.

Announced
14.05.2024

-Sd-
(Shashi Kant Joshi)
Member

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

-Sd-
(Devendra Kumar Sharma)
Chairman