BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Petition No:	**12 of 2025**
Instituted on:	10.01.2025
Heard on:	01.07.2025
Decided on:	**17.07.2025**

CORAM:

DEVENDRA KUMAR SHARMA
CHAIRMAN.

YASHWANT SINGH CHOGAL
MEMBER (Law).

SHASHI KANT JOSHI
MEMBER.

<u>In the matter of:-</u>

M/s Flowgen Renewable Energy Private Limited,
Registered Office at House No. 137, Pritam Nagar,
Tehsil Bhatiyat, Distt. Chamba, H.P.-176001, through,
Sh. Manoj Kumar, Authorised Signatory.

…..….Petitioner.

Versus

The HP State Electricity Board Limited. through its,
Chief Engineer (System Operation),
Vidyut Bhawan, Shimla-171004. **…….Respondent.**

Petition/Application under Regulation 75 of the HPERC (Conduct of Business) Regulations, 2004 for correction/ re-calculation of tariff excluding subsidy amounting to Rs. 1.50 Crore for the Jail SHEP (1.20 MW) of the Petitioner i.e. M/s Flowgen Renewable Energy Pvt. Ltd.

Present:-

Sh. L.S. Mehta, Ld. Counsel for the Petitioner.
Sh. Kamlesh Saklani, Authorised Representative for the Respondent.

ORDER

This Application/ Petition has been filed by M/s Flowgen Renewable Energy Private Limited (the Applicant/ Petitioner for short) under Regulation 75 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 (the CBR, 2024 for short) for correction/ re-calculation of tariff in respect of Jail Small Hydro Electric Project (1.20 MW) situated at Jail Nallah, a tributary of Parvati river in Beas Basin, Distt. Kullu, H.P. (Project for short) by excluding the adjustment of subsidy amounting to Rs. 1.50 Crore adjusted in the tariff under Clauses 6.2 and 8.8 of the PPA dated 09.10.2015 signed by the Petitioner with the Himachal Pradesh State Electricity Board Limited (the HPSEBL/ Respondent for short).

2. The Petitioner and the Respondent had filed a Joint Petition before the Commission in the year 2015 for the approval of the Power Purchase Agreement (PPA) in respect of the Project being Petition No. 101 of 2015 which was allowed by the Commission vide order dated 16.09.2015 (Annexure P-5) subject to the following conditions:-

> *"(i)The generic levellized tariff, with depreciation benefit, shall be Rs. 3.14 per kWh for the first 12 years and Rs. 3.27 per kWh for the rest period of the useful life of the Project alongwith other conditions specified in the clause 6.2 (i) of the PPA is required to be modified accordingly.*
> *(ii)The 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, 2012 and Commission's order dated 20.05.2013 and 30.06.2015."*

3. As per the Petitioner, the Directorate of Energy (DoE), Government of Himachal Pradesh (GoHP for short) accorded Techno

Economic Clearance (TEC for short) for setting up the Project in favour of M/s Rainbow Hydro Power Co-operative Society Ltd. with the GoHP on 16.05.2013 signed a tripartite agreement for change of name of the entity from M/s Rainbow Hydro Power Co-operative Society Ltd. to M/s Flowgen Renewable Energy Pvt. Ltd. Thereafter, the GoHP signed an Implementation Agreement (IA) on 14.08.2013 with the Petitioner in respect of the Project. The GoHP also signed a Supplementary Implementation Agreement (SIA for short) with the Petitioner on 05.12.2014 in respect of the Project.

4. Accordingly, the Power Purchase Agreement (PPA) was signed by the Petitioner with the Respondent on 09.10.2015 (Annexure P-6). Clauses 6.2 and 8.8 thereof read as under:-

> *"6.2 TARIFF FOR NET SALEABLE ENERGY*
>
> *Case 'A'*
>
> *The HPSEBL, shall pay for the Net Saleable delivered and sold to it by the Company at the Interconnection Point at a fixed rate of Rs. 3.14 per kWh for the first 12 years and 3.27 per kWh for the remaining period of the project i.e., upto 40 years. This rate also accounts for:-*
>
> *(i) The Government supply including Free Power/ Energy/ (for Home State) @ 2% for 12 years, 12% for remaining useful life of the project in addition to 1% free power towards the Local Area Development Fund;*
>
> *(ii) Capital subsidy @ Rs. 1.50 Cr.*
>
> *(iii) ………..*
>
> *(iv) Mandatory water discharge downstream from diversion structure of the Project based on the instructions of the State government which presently provide that for the purpose of determination minimum discharge, the threshold value not less than 15% of the minimum inflow observed in the lean season shall be considered.*

These rate of Rs. 3.14 per kWh & Rs. 3.27 per kWh (as cited above) are firm and fixed and shall not be subject to any indexation, escalation, adjustment or review due to any reason whatsoever except for specific provisions under Section 8.8.

(Complete details with regards to items (i) to (iv) above to be given)

…………………………………………………………..

8.8 LEVIES, TAXES, DUTIES, CESS ETC.

(1) Save as provided in Sub-sections (2) and (3) of this Section, the per kWh rate mentioned in Section 6.2 shall be firm and shall not be subject to any review.

(2) In the event of any change in the structure of free power (Govt. Supply), for the Project from that considered in the per kWh rate under Section 6.2, the HPSEBL shall adjust the said rate, but only to the extent of permissible limits as per the formula and other terms and conditions contained in Regulation 35 of the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012.

(3) If after the effective Date:

i) A water cess or tax on generation is levied which impacts all or any of the projects, and/ or

ii) The limit of 13% for the pass through of the Government Supply (free power) in the tariff, as per the National Hydro Policy/ Tariff Policy is revise, and/ or

iii) The mechanism or the quantum of the capital subsidy or budgetary grant mentioned, in Section 6.2 and Regulation 21 of the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determinations) Regulations, 2012 is changed as a matter of policy, and/ or

iv) The State Government revises its instructions with regard to the minimum flow of water downstream of diversion structure of the Small Hydro Projects and implements the same:

and, taking into consideration these factors, the Commission reviews the tariff by a general order for a specific order for the Project for any period in accordance with Sub-regulation 3 of Regulation 19 of the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determinations) Regulations, 2012, such revised rate, alongwith the terms and conditions, as ordered *by the Commission shall be applicable for the period for which it is so ordered by the Commission."*

5. The Commission notified the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012 (RE Regulations, 2012 for short). The Regulations 21 and 19 whereof read as under:-

"21. ***Subsidy or incentive or grant/budgetary support by the Central/State Government.-*** *(1) While determining the generic levellised or project specific levellised tariff, as the case may be , for the renewable energy project(s) under these Regulations, the Commission shall take into consideration any incentive and /or subsidy and /or grant available under the schemes of the Central or State Government or its agencies, including accelerated depreciation benefit under the Income Tax Act.:*

Provided that for tariff determination, 90% of the capital subsidy available to the project as per applicable scheme of the MNRE/State Government shall be considered:

Provided further that the Commission may evolve suitable mechanisms for incorporating impact of the subsidy component for determination or adjustment of generic levellised tariffs for various categories of projects:

Provided further that the capital subsidy under the schemes of the Central or State Government or its agencies , shall, unless the circumstances otherwise warrant, be ordinarily adjusted against the principal component of the loan amount as additional reduction apart from the normal payment:

Provided further that where the Central Government or the State Government notifies or has notified any generation based incentive (GBI) scheme for a particular kind of renewable technology, such technology based generating station shall be assumed to have availed the benefit of such a scheme and their tariffs shall automatically be treated as reduced by the amount of generation based incentive (GBI) per unit for the period during which such incentive remains applicable.

(2) Where any additional grant or budgetary support is available to any respect, apart from the incentive and /or subsidy and /or grant available under sub- regulation (1) of this regulation, the Commission shall account for 100% of such budgetary support, while deterring project specific liveliest tariff.

(3) The amount of subsidy shall be considered for each renewable source as per the applicable policy of the MNRE/ State Government and if

the amount and /or mechanism of subsidy is changed by the MNRE/State Government, consequent corrections in tariffs may be carried out by the commission in accordance with regulation 19.

(4) The Commission shall determine two generic levellised tariffs or project specific levllised tariffs, as the case may be, one by considering accelerated depreciation and the other without it, and the atriff to any renewable energy generator shall be applicable as provided in succeeding sub- regulation(5):

Provided that for ascertaining income tax benefits on account of accelerated depreciation for the purpose of tariff determination –

(a) assessment of benefit shall be based on normative capital cost or the cost admitted ,a s the case may be, accelerated depreciation rate, as per relevant provisions under the Income Tax Act and the Corporate Tax rate ;

(b) in case of generic levellised tariff, capitalization of renewable energy projects shall be considered during second half of the financial year and in case of project specific levellised tariff, the expected date of commencement of operation of the project shall be considered:

(c) per unit benefit shall be derived on levellised basis at the discount factor equivalent to the post tax weighted average cost of capital.

(5) It shall be assumed that the renewable energy generator shall avail the benefit of accelerated depreciation and accordingly the tariff, which accounts for the accelerated depreciation, shall be applicable unless the renewable energy generator establishes, to the satisfaction of the distribution licensee, that he has not availed or is not entitled to such a benefit."

"19. Review of tariff- *(1) Save as provided in sub-regulations (2) and (3) , the generic levellised tariff or project specific levellised tariff, as the case may be, determined in accordance with the provisions of these Regulations shall be firm and shall not to subject to any review.*

(2) Impact of any change (s) in the rate of free power under the general policy for allotment of sites, but only to the extent permitted under regulation 35 and further within the limit of 13% as per the National Tariff Policy and /or National Hydro Policy, shall be payable /adjustable as per the provisions of regulations 35.

(3) If, after the determination of the generic levellised tariff for the control period or the project specific levellised tariff for a project,-

(i) a water cess or atx on generation is levied which impacts all or any of the projects; and /or

(ii) the limit of 13% for the pass through of free power in the tariff, as per the National Hydro Policy/Tariff Policy is revised: and/or

(iii) **)** *the mechanism or quantum of the capital subsidy or budgetary grant mentioned in regulation 21 is changed as a matter of policy; and /or*

(iv) the State Government revises its instructions with regard to the minimum flow of water downstream of diversion structure of the SHPs and implements the same :

The Commission may, suo moto or on an application made to it, by generic or specific order, review the tariff for the residual tariff period or such other part as it may deem fit, for the projects or group of projects actually impacted, to account for the impact of such changes:

Provided that while revising the tariff, the Commission may incorporate such terms and conditions, including the period for which such revised tariff shall be applicable, as it may deem fit."

6. It is averred that the Government of Himachal Pradesh (GoHP) vide notification dated 07.11.2020 has allowed One Time Amnesty Scheme by re-defining the zero date for Project(s) which were under the investigation and clearance stage where IAs had already been signed and by re-defining the Scheduled Commercial Operation Date (SCOD) for the Project(s) under construction stage.

7. In line with the aforesaid one time amnesty scheme dated 07.11.2020, the Petitioner signed a 2nd Supplementary Implementation Agreement (2nd SIA for short) on 23.12.2020 (Annexure P-8) with the GoHP. Pursuant thereto, the SCOD in respect of the Project has been redefined as 11.01.2021 and the DoE has also approved the revised construction schedule. The Project was commissioned on 11.01.2021

as evident from the letter issued by the independent engineer dated 11.01.2021 (Annexure P-7 Colly).

8. As per the Petitioner, the Ministry of Commerce and Industry vide notification No. 2 (2)/ 2018-SPS dated 23.04.2018 had notified the ‘Industrial Development Scheme (IDS, 2017 for short) for the States of Himachal Pradesh and Uttarakhand’ applicable from 01.04.2017 to 31.03.2022 whereby the Central Capital Investment Incentive (subsidy) was being given for access to credit @ 30% of the investment in plant & machinery with an upper limit of Rs. 5.00 Crores (subsidy for short). However, as per the requirement of Item No. 17 of the IDS, 2017, all eligible units were required to register under the scheme on the Portal of Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, Government of India (GoI) prior to becoming eligible for any benefit of the IDS, 2017. Accordingly, the Applicant got registered on the DIPP portal on 27.02.2021.

9. Further the Petitioner submitted an application to the Industries Department, regarding status of its application for IDS on 13.09.2024 but in response thereto vide letter No. Ind.Klu.CCIIAC/17/Misc-1675 dated 28.09.2024 the Petitioner was informed that “as on date the status of the application is reflected on DPIIT portal as “closed”. So the unit is not eligible for any kind of incentive under IDS, 2017”. In the

circumstances, the Project is not eligible for availing any subsidy either under IDS, 2017 or subsidy being provided by the Ministry of New and Renewable Energy (MNRE) for Hydro Electric Projects. Copy of letter dated 28.09.2024 issued by Industries Department with reply dated 25.07.2024 and application dated 28.09.2024 are annexed as Annexure P-9 (Colly).

10. It is averred that the Petitioner made detailed representation to the Respondent on 14.11.2024 (Annexure P-10) that in the light of the Government's decision to close the IDS, 2017, the subsidy amount of Rs. 1.50 Crore, which has been adjusted in the tariff under Clause 6.2 of PPA requires reconsideration and the tariff is to be re-calculated without adjustment of subsidy but no fruitful action has been taken. In the circumstances, the Petitioner has been compelled to file the present Petition.

11. According to the Petitioner, the tariff rate of Rs. 3.14 per kWh for the first 12 years and Rs. 3.27 per kWh thereafter, as fixed under Section 6.2 of the PPA was determined after taking into account subsidy of Rs. 1.50 Crore as per the provisions of Regulation 21 of the RE Regulations, 2012 and once said subsidy has not been released to the Petitioner, the Petitioner has been unfairly burdened and tariff is likely to be corrected.

Hence, the Petition.

REPLY OF THE RESPONDENT

12. The application has been resisted by the Respondent by filing reply that the Petition is devoid of merits and not maintainable. Further, the claim of the Petitioner is based on gross misinterpretation of the PPA dated 09.10.2015 and fundamental misunderstanding of the applicable regulatory framework as the Petitioner has sought to improperly invoke multiple subsidy mechanisms which are distinct in nature and have no bearing on the determination of tariff. Further, the tariff structure agreed upon in the PPA i.e. Rs. 3.14 per kWh for the first 12 years and Rs. 3.27 per kWh for the remaining period was determined in accordance with the order dated 20.06.2013, supplemented vide order dated 30.06.2015 issued by the Commission whereby the generic levellized tariff and associated terms and conditions for the each category of SHP under RE Regulations, 2012 was worked out.

13. It is averred that the Commission in said tariff order has determined a tariff of Rs. 3.20 per kWh with Accelerated Depreciation (AD) benefits and Rs. 3.34 per kWh without AD benefits for the SHPs having a capacity above 200 kW to 2.0 MW. The tariff also accounted for a capital subsidy of Rs. 1.80 Crore per MW under the MNRE

Subsidy Scheme in accordance with the RE Regulations, 2012. Additionally, the order dated 30.06.2015 provided for an increment of Rs. 0.07 per kWh in tariff for projects eligible under the MNRE Subsidy Scheme notified on 02.07.2014 which allowed a subsidy of Rs. 1.50 per MW. Since, said scheme was in force at the time of execution of PPA, the same was duly factored into the tariff determination.

14. It is averred that IDS, 2017 is wholly independent of the MNRE Subsidy Scheme, 2014. The IDS, 2017 was introduced at much later stage. The Petitioner having applied for incentive under IDS, 2017 now cannot seek to conflate the two schemes to derive undue benefits. The tariff determined under the PPA does not factor in incentives/ subsidies available to the Petitioner under IDS, 2017 and any denial of benefits due to procedural lapses or ineligibility cannot be a ground for revising the tariff which does not account for such subsidies in the first place. According to the HPSEBL, the Representation dated 14.11.2024 is contrary to Clause 8.8 (1) of the PPA which specifically states that the tariff agreed upon is firm and not subject to review. Further, Regulation 19 (3) of the RE Regulations, 2012 stipulates that the tariff revision is permissible only if there is modification in the subsidy mechanism post-execution of the PPA. However, no such modification has occurred which renders the claim of the Petitioner untenable. The Respondent

has acted in compliance of the PPA leaving no scope for granting the relief sought by the Petitioner.

REJOINDER

15. In rejoinder, the contents of the reply have been denied and those of the Petition have been reaffirmed.

16. During the course of the hearing, the Petitioner was directed to submit the affidavit of chronology of events after allotment of the Project and signing of IA which has been submitted on 25.06.2025.

17. We have heard Sh. L.S. Mehta, Ld. Counsel for the Petitioner and Sh. Kamlesh Saklani, Authorised Representative for the Respondent and have perused the record carefully.

18. Sh. L.S. Mehta, Ld. Counsel for the Petitioner has submitted that the Petitioner had applied for incentive under IDS, 2017 well in time and the Project was also registered under the scheme but no such capital incentive under IDS, 2017 has been provided to the Project. Thus, the tariff is required to be re-calculated.

19. Sh. Kamlesh Saklani, Authorised Representative for the Respondent on the other hand has submitted that the Petitioner has tried to confuse between the MNRE Subsidy Scheme and the IDS, 2017, as the Petitioner had signed the PPA with the Respondent on 09.10.2015 and the adjustment in tariff has been made in terms of the

MNRE Scheme for Small Hydro Projects which had been notified on 02.07.2014 and was in existence till 30.09.2017. Further, since the Petitioner has availed part of the incentive under the MNRE Scheme, complete incentive/ subsidy could not be granted to project due to inefficiency of the Petitioner. Thus, the tariff cannot be adjusted and the IDS, 2017 has no bearing with the present controversy.

20. We have carefully gone through the submissions and perused the entire record carefully. The following points arise for determination in the Petition:-

Point No. 1: Whether the tariff of Rs. 3.14 per kWh for the first 12 years and Rs. 3.27 per kWh for the rest period of the useful life of the Project as allowed by the Commission vide order dated 16.09.2015, is required to be re-calculated/ re-worked in view of denial of IDS, 2017?

Point No. 2: **Final Order**

Point No. 1: No.

Point No. 2: The Petition dismissed per operative part of the Order.

REASONS FOR FINDINGS

Point No. 1:

21. The Petitioner, has reproduced Regulations 19 and 21 of the RE Tariff, Regulations 2012 which provide for the adjustment of

subsidy/incentive/grant/budgetary support provided by the State/ Central Governments. Regulation 19 and 21 and produced as under:-

*"**19. Review of tariff-** (1) Save as provided in sub-regulations (2) and (3), the generic levellised tariff or project specific levellised tariff, as the case may be, determined in accordance with the provisions of these Regulations shall be firm and shall not to subject to any review.*

(2) Impact of any change(s) in the rate of free power under the general policy for allotment of sites, but only to the extent permitted under regulation 35 and further within the limit of 13% as per the National Tariff Policy and/or National Hydro Policy, shall be payable/adjustable as per the provisions of regulations 35.

(3) If, after the determination of the generic levellised tariff for the control period or the project specific levellised tariff for a project,-

(i) a water cess or tax on generation is levied which impacts all or any of the projects; and/or

(ii) the limit of 13% for the pass through of free power in the tariff, as per the National Hydro Policy/ Tariff Policy is revised; and/or

(iii) the mechanism or quantum of the capital subsidy or budgetary grant mentioned in regulation 21 is changed as a matter of policy; and/or

(iv) the State Government revises its instructions with regard to the minimum flow of water downstream of diversion structure of the SHPs and implements the same;

the Commission may, suo motu or on an application made to it, by generic or specific order, review the tariff for the residual tariff period or such other part as it may deem fit, for the projects or group of projects actually impacted, to account for the impact of such changes:

Provided that while revising the tariff, the Commission may incorporate such terms and conditions, including the period for which such revised tariff shall be applicable, as it may deem fit.

***21. Subsidy or incentive or grant/budgetary support by the Central / State Government.-** (1) While determining the generic levellised or project specific levellised tariff, as the case may be, for the renewable energy project(s) under these Regulations, the Commission shall take into consideration any incentive and/or subsidy and/or grant available under the schemes of the Central or State Government or its agencies, including accelerated depreciation benefit under the Income Tax Act:*

Provided that for tariff determination, 90% of the capital subsidy available to the project as per applicable scheme of the MNRE/ State Government shall be considered:

Provided further that the Commission may evolve suitable mechanisms for incorporating impact of the subsidy component for determination or adjustment of generic levellised tariffs for various categories of projects:

Provided further that the capital subsidy under the schemes of the Central or State Government or its agencies, shall, unless the circumstances otherwise warrant, be ordinarily adjusted against the principal component of the loan amount as additional reduction apart from the normal payment:

Provided further that where the Central Government or the State Government notifies or has notified any generation based incentive (GBI) scheme for a particular kind of renewable technology, such technology based generating station shall be assumed to have availed the benefit of such a scheme and their tariffs shall automatically be treated as reduced by the amount of generation based incentive (GBI) per unit for the period during which such incentive remains applicable.

(2) Where any additional grant or budgetary support is available to any project, apart from the incentive and/or subsidy and/or grant available under sub-regulation (1) of this regulation, the Commission shall account for 100% of such budgetary support, while determining project specific levellised tariff.

(3) The amount of subsidy shall be considered for each renewable source as per the applicable policy of the MNRE/State Government and if the amount and/or mechanism of subsidy is changed by the MNRE/State Government, consequent corrections in tariffs may be carried out by the Commission in accordance with regulation 19.

(4) The Commission shall determine two generic levellised tariffs or project specific levellised tariffs, as the case may be, one by considering accelerated depreciation and the other without it, and the tariff to any renewable energy generator shall be applicable as provided in succeeding sub-regulation(5):

Provided that for ascertaining income tax benefits on account of accelerated depreciation for the purpose of tariff determination-

(a) assessment of benefit shall be based on normative capital cost or the cost admitted, as the case may be, accelerated depreciation rate, as per relevant provisions under the Income Tax Act and the Corporate Tax rate;

(b) in case of generic levellised tariff, capitalisation of renewable energy projects shall be considered during second half of the financial year and in case of project specific levellised tariff, the expected date of commencement of operation of the project shall be considered;

(c) per unit benefit shall be derived on levellised basis at the discount factor equivalent to the post tax weighted average cost of capital.

(5) It shall be assumed that the renewable energy generator shall avail the benefit of accelerated depreciation and accordingly the tariff, which accounts for the accelerated depreciation, shall be applicable unless the renewable energy generator establishes, to the satisfaction of the distribution licensee, that he has not availed or is not entitled to such a benefit."

22. It is evident from Regulation 21 (ibid) that while determining the generic levellized tariff or project specific levellized tariff, as the case

may be, for the renewable energy Projects under these Regulations, the Commission shall take into consideration any incentive and/ or subsidy and/ or grant available under the schemes of State or Central Governments or its agencies and evolve suitable mechanism for incorporating the impact of subsidy component for determination or adjustment of generic levellized tariff for various categories of the Projects. Further, the capital subsidy unless the circumstances otherwise warrant, be ordinarily adjusted against the principal component of the loan amount as additional reduction apart from normal payment. Further, whenever such subsidy is notified, the generating station shall be assumed to have been availed the benefit of such scheme and their tariff shall automatically be treated as reduced by the amount of generation based incentive per unit during the currency of such incentive.

23. A tariff of Rs. 3.14 per kWh for first 12 years and Rs. 3.27 per kWh for the rest of the useful life of the Project was provided to the Project vide order dated 16.09.2015 which reads as under:-

> *"The Commission under Sub-section (1) (b) of Section 86 of the Electricity Act, 2003 grants consent to the PPA with the following conditions:-*
>
> *(i) The generic levellized tariff with depreciation benefit, shall be Rs. 3.14 per kWh for the first 12 years and Rs. 3.27 per kWh for the rest period of useful life of the Project alongwith other conditions specified in the Clause 6.2 of the PPA. The Clause 6.2 (i) of the PPA is required to be modified accordingly.*

(ii) The 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, 2012 and Commission's order dated 20.05.2013 and 30.06.2015."

24. It is thus evident that while working out the generic levellized tariff for the Project, the Capital subsidy of Rs. 1.50 Crore being provided by the MNRE has been taken into account as evident form Clause 6.2 of the PPA signed by the Petitioner on 09.10.2015. Clause 6.2 of the PPA has been reproduced by the Petitioner as under:-

"6.2 TARIFF FOR NET SALEABLE ENERGY

Case 'A'

The HPSEBL, shall pay for the Net Saleable delivered and sold to it by the Company at the Interconnection Point at a fixed rate of Rs. 3.14 per kWh for the first 12 years and 3.27 per kWh for the remaining period of the project i.e., upto 40 years. This rate also accounts for:-

(i) The Government supply including Free Power/ Energy/ (for Home State) @ 2% for 12 years, 12% for remaining useful life of the project in addition to 1% free power towards the Local Area Development Fund;

(ii) Capital subsidy @ Rs. 1.50 Cr.

(iii) ………..

(iv) Mandatory water discharge downstream from diversion structure of the Project based on the instructions of the State Government which presently provide that for the purpose of determination minimum discharge, the threshold value not less than 15% of the minimum inflow observed in the lean season shall be considered.

These rate of Rs. 3.14 per kWh & Rs. 3.27 per kWh (as cited above) are firm and fixed and shall not be subject to any indexation, escalation, adjustment or review due to any reason whatsoever except for specific provisions under Section 8.8."

25. The Petitioner had signed the IA on 14.08.2013 followed by SIA dated 05.12.2014 and had commenced the construction soon thereafter and the PPA was approved by the Commission vide order dated 16.09.2015 allowing tariff of Rs. 3.14 per kWh for first 12 years and Rs. 3.27 per kWh for the rest of the useful life of the Project.

26. Since there was no detail of the subsidy of Rs. 1.50 Crore as reflected in the PPA at Clause 6.2, the Petitioner was asked to file affidavit of chronology of the events eversince the allotment of the Project which has been filed on 25.06.2025. It has been mentioned in the affidavit of the chronology of events that the work on the Project had commenced in the month of October, 2015 after getting all requisite clearances and that a subsidy of Rs. 1.50 Crore per MW was accounted for in the PPA as said scheme was valid till 30.03.2017. Not only this, the first installment was disbursed to the Petitioner in the year 2016. The affidavit further shows that the previous management of the Petitioner had also requested for the grant of eligible subsidy but in the meanwhile said scheme was closed. Thus, it is evident from the affidavit of chronology of events that the Central Government notified the MNRE Subsidy Scheme on 02.07.2014 and allowed subsidy of Rs. 1.50 Crore per MW are the Scheme was valid till 30.03.2017. It is thus, clear from the above that while approving the PPA and determining the

generic levellized tariff for the Project, the Commission has taken into account only the MNRE Subsidy of Rs. 1.50 Crore as available at that time as per Regulation 22 of the RE Tariff Regulations, 2012.

27. The IDS 2017 was introduced in the year 2017. Though, the Petitioner has been granted the benefit of One Time Amnesty and signed SIA on 23.12.2020 but in the present case, the Petitioner had already signed the PPA with the Respondent on 09.10.2015 and therefore, is bound by the terms and conditions of the PPA. Since, the IDS, 2017 was not in existence at the time of signing of the PPA, the question of adjustment on account thereof or re-calculation based on the same does not arise. Though, the Petitioner has made a futile attempt by getting the Project registered under the IDS, 2017 on DIPP Portal for the subsidy which was never factored in while calculating the tariff of the Project.

28. Significantly, though the benefit under the One Time Amnesty Scheme was granted to the Petitioner and the Petitioner signed the SIA on 23.12.2020 yet a careful perusal of the SIA dated 23.12.2020 shows that the same has not affected the terms and conditions of the IA dated 14.08.2013 meaning thereby that the PPA signed on 09.10.2015 is valid for all intents and purposes. In the circumstances, the Petitioner has not been able to substantiate that the capital subsidy of Rs. 1.50 Crores in

respect of IDS, 2017 is required to be excluded from the tariff calculation or the tariff in respect of the Project is required to be increased or re-calculated. Point No. 1 is accordingly decided against the Petitioner.

Final Order

29. In view of the above discussions and findings, the Petition fails and is accordingly, dismissed.

30. The pending applications, if any, are also disposed off.

The file after needful be consigned to records.

Announced
17.07.2025

sd/-	sd/-	sd/-
(Shashi Kant Joshi) **Member**	**(Yashwant Singh Chogal)** **Member(Law)**	**(Devendra Kumar Sharma)** **Chairman**