

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

Petition No: 170 of 2025
Instituted on: 13.06.2025
Heard on: 07.08.2025
Decided on: 19.08.2025

CORAM:

YASHWANT SINGH CHOGAL
MEMBER (Law)-cum-Chairman.

SHASHI KANT JOSHI
MEMBER .

In the matter of:-

M/s Kangra Hydro Power Ventures(P) Limited ...**Petitioner.**

Versus

The Himachal Pradesh State Electricity Board Ltd.
....**Respondent**

Application /Petition under Regulation 75 of the HPERC (Conduct of Business) Regulations 2024 read with clauses 6.2 and 8.8 of the PPA/SPPA, the RE Tariff Regulations, 2017, and the Commission's order dated 05.09.2022 in Petition No. 73 of 2019, as well as the tariff order dated 15.02.2020 passed in Suo-Moto Petition 76 of 2019, seeking adjustment/correction or subsidy already factored into the provisional tariff under the Clause 6.2 of the PPA, including benefits under the MNRE scheme and the Industrial Development Scheme (IDS), 2017, after deducting the amount of Rs. 1,90,52,325/- already received by the Petitioner on 11.04.2025 under the IDS 2017, in respect of GAJ-III SHP (5 MW) of the Petitioner, M/s Kangra Hydro Power Ventures (P) Limited, Located in District, Kangra, HP.

Present:-

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

ORDER

This order would dispose of the application filed by the Petitioner under Regulation 75 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations 2024 read with

Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from Renewable Energy Sources and Terms and Conditions) Regulations, 2017 (RE Regulations, 2017 for short), seeking adjustment/correction in the tariff without considering the impact of financial assistance or subsidy already factored into the provisional tariff under the Clause 6.2 of the PPA, in respect of GAJ-III SHP (5 MW) .

2. Petitioner has setup GAJ-III SHP (5 MW) on Gaj khad, a tributary of Beas river in the Beas Basin, Distt. Kangra, H.P. (Project for short).

3. A Joint Petition for approval of Power Purchase Agreement was filed by the Petitioner and Respondent being Petition No. 73 of 2019 which was allowed by the Commission vide order dated 05.09.2022 (Annexure P-52) allowing provision tariff of Rs. 3.53 per kWh after adjustment of free power and subsidy being provided by the Ministry of New and Renewable Energy (MNRE) and subsidy /financial assistance being provided under Industrial Development Scheme, 2017 (IDS, 2017 for short) with further direction to the parties to approach the Commission on grant of subsidy for appropriate tariff. Pursuant to said order, the Petitioner signed the Supplementary Power Purchase Agreement (SPPA) on 23.11.2023.

4. A Review Petition was also filed for reviewing the order dated 05.09.2022 but said Review Petition was dismissed by the Commission vide order dated 01.06.2023 (Annexure P-53).

5. It is case of Petitioner that though the Petitioner signed the Implemented Agreement on 07.04.2011 with the Govt. of H.P and an area of 3.8436 hectare was ordered to be diverted vide letter dated 03.06.2011 (Annexure P-3). Vide letter dated 22.09.2016 (Annexure-P-4), it was conveyed that the possession of the land be treated as delivered on or after 21.02.2012.

6. The Essentiality Certificate was issued by the Directorate of Energy (DOE) vide letter dated 07.01.2013 (Annexure P-6). The No Objection Certificate for use of Forest Land was given vide letter dated 27.12.2013 (Annexure P-8) and the Petitioner applied for the lease on 29.01.2014 and was informed vide letter dated 17.05.2014 (Annexure 9) to obtain NOC from the various Departments. The Director, HIMURJA vide letter dated 11.08.2014 (Annexure P-10) requested the Petitioner to deposit Extension Fee w.e.f 07.10.2013 to 31.03.2016 amounting to Rs. 10.74 Lac. The validity of IA was extended by the GoHP upto 31.03.2016 vide letter dated 17.07.2014. Further, the approval for the enhancement of capacity of the project from 3.60 MW to 5.00 MW was conveyed vide letter dated 14.03.2016, which is also

evident from 2nd Supplementary Implementation Agreement (2nd SIA) (Annexure P-15).

7. On 11.05.2015 (Annexure P-11), the Deputy Commissioner Kangra (DC Kangra) vide letter dated 11.05.2015 approved transfer of diverted land from reserve pool to allotable pool. The Naib Tehsildar Drini, vide letter dated 09.02.2016 (Annexure P-13) intimated Sub-Divisional Officer (Civil) Dharamshala of the actual lease amount. The revised Techno Economic Clearance (TEC) was accorded vide letter dated 12.02.2016 (Annexure P-14). The Petitioner vide letter dated 03.10.2016 (Annexure P16) requested DC, Kangra to consider actual possession date as effective date for calculation of lease money but the DC Kangra intimated vide letter 03.01.2017 (Annexure P-17) that project had been established prior to 31.12.2012 and the lease money is to be calculated from the date of diversion of forest land and not from taking actual possession. The Petitioner vide letter date 06.05.2017 (Annexure P-18) replied the Show Cause notice regarding delay and requested for withdrawal the show cause. Vide letter dated 08.05.2017 and 07.07.2017 (Annexure P-19 and 20), the Petitioner requested DC Kangra for amendment in the consideration of effective date for calculation of lease money and that the actual date of possession of land be taken as effective date for the calculation. The Petitioner also made a detailed representation (Annexure P-21) on 10.07.2017 to the

Additional Chief Secretary (Power) requesting to intervene in the lease case. The DRO Dharamshala vide letter dated 16.08.2017 (Annexure P-22) informed the Petitioner to visit his office on any working day for calculation of the lease money. Vide letter dated 10.10.2017 (Annexure P-23), the Petitioner requested HIMURJA for extension of IA without extension charges. The petitioner attended the office of DRO on 13.10.2017. On 17.10.2017 (Annexure P-24), the Petitioner again requested the DC Kangra to consider the date of possession as the date for calculation of lease money. On 15.12.2017, the DC Kangra informed the ACS (Revenue) for clarification regarding the date of calculation of lease amount.

8. Vide letter 28.02.2018 (Annexure P-25), the Petitioner requested HIMURJA for the extension of IA till settlement of lease case and on 23.05.2018 (Annexure P-26), the HIMURJA informed that Govt. has approved the Grant of extension period of IA without extension fee till execution of lease deed. Similarly, the HIMURJA vide letter dated 01.10.2018 (Annexure P-27) intimated the Petitioner of the approval of construction schedule. The ACS (Revenue) Govt. of HP intimated the DC vide letter dated 26.10.2018 (Annexure P-28) that the calculation of the recovery of annual lease money is to be made w.e.f 21.02.2012 as per Rule 8 of the H.P Lease Rules, 2011.

9. The Government of India (GoI) notified MNRE subsidy scheme on 02.07.2014 allowing subsidy of Rs. 1.50 Crore per MW with upper limit of Rs. 5.00 Crore and requested the project developers to apply for the subsidy within six months from start of construction activities or within six months from date of disbursement of first loan installment, whichever is earlier. The scheme remained in force until 30.03.2017. The adjustment of Rs. 5.00 Crore towards MNRE subsidy has been made by the Commission in the provisional tariff which is factually and legally untenable as the Petitioner was neither eligible nor availed the benefit of MNRE Scheme (Annexure P-29).

10. As per the Petitioner, the Construction work on the main component of the project commenced in June 2018, but the Petitioner accelerated the construction activities at the project site from 01.11.2018, after obtaining the requisite clearance and lease approval from the Government of Himachal Pradesh (GoHP). Subsequently, the petitioner applied for availing the MNRE subsidy vide application dated 20.10.2018 (Annexure P-30) to the MNRE that the construction activity commenced on 01.06.2018 and the financial closure has been achieved with Power Finance Corporation Ltd., New Delhi, and the first disbursement of loan amount has been received on 01.06.2018 and requested the MNRE to release the capital subsidy (MNRE subsidy) for the Project. Not only this, the HIMURJA vide letter dated 16.04.2019

(Annexure P-31) also intimated MNRE that the pre-construction activities started in Feb, 2018 and the construction work on the main component of the project was started in June, 2018 and that the proposed date of commercial operation was June 2019. The Petitioner also intimated the MNRE that the 50% of the work at site had been completed as per report submitted by the Project Officer, HIMURJA and requested for release of 50% of Capital subsidy to the petitioner. The petitioner also submitted quarterly progress report(s) to the MNRE on 13.07.2019, 03.03.2020 and also commissioning report and monthly generation data in respect of its project on 13.06.2020 and requested to update the status of subsidy application of the Petitioner. The copies of letters dated 13.07.2019, 03.03.2020 and 13.06.2020 have been annexed as (Annexure P-32). The petitioner vide email dated 29.06.2020 (Annexure P-33) also informed the MNRE that the project has successfully been commissioned on 07.12.2019 and a joint petition had been filed for the approval of PPA as per HPERC Regulations and the Capital Subsidy is a pass through in the Tariff and requested MNRE for release of the capital subsidy.

11. As per the Petitioner, vide letter dated 06.01.2023 (Annexure P-34), it informed the MNRE that by the time of making application for availing the MNRE subsidy, the scheme was not in existence and till date no scheme has been introduced but the Commission while

approving the PPA has made adjustment of MNRE subsidy of Rs. 5.00 Crore in the generic levelled tariff order passed by the Commission. The MNRE vide letter dated 09.02.2023 (Annexure P-35) intimated the Petitioner of non-existence of such scheme. On 05.04.2023 (Annexure P-36), the Petitioner intimated the MNRE pursuant to letter dated 09.02.2023 that the Petitioner had already applied for MNRE subsidy within six months of first disbursement of loan installment/ start of construction as required under the MNRE scheme.

12. The District Revenue Officer, Dharamshala vide letter dated 14.11.2018 (Annexure P-37) intimated the Sub-divisional Officer (Civil) Shahpur that the lease money be calculated w.e.f. 21.02.2011 to 20.02.2012 as per the H.P. Lease Rules, 1993 read with Rule 8 (i) of H.P. Lease Amended Rules, 2010. The Naib Tehsildar, Sub-Tehsil Drini vide letter dated 16.01.2019 (Annexure P-38) informed the Sub-Divisional Officer, Shahpur of the lease amount of Rs. 1,11,682.42. The Additional District Magistrate, Kangra issued notice dated 22.02.2019 (Annexure P-39) seeking presence of the Petitioner in case of grievances on 07.03.2019 at 11:00 AM.

13. The Deputy Commissioner, Kangra vide letter dated 28.03.2019 (Annexure P-40) ordered diversion of forest land measuring 3-84-36 hectares w.e.f. 21.02.2012 i.e. from the date of possession of land for further period of 40 years. The Petitioner vide letter dated 03.08.2019

(Annexure P-41) requested the District Collector, Kangra to sign lease agreement. On 08.08.2019 (Annexure P-42), the Petitioner signed the 2nd Supplementary Implementation Agreement (2nd SIA) with the GoHP. The HIMURJA vide letter dated 16.09.2019 (Annexure P-43) intimated the revised construction schedule mentioning the COD as 31.12.2019. The Petitioner also deposited the lease money with the GoHP through e-challan on 15.08.2020. The Deputy Commissioner, Kangra vide letter dated 27.03.2021 (Annexure P-44) sought clarification from Additional Chief Secretary-cum-Financial Commissioner (Revenue), GoHP as to whether the Gair Mumkin Kuhal and Gair Mumkin Rasta can be granted on lease basis or not. The SCOD certificate issued by the HIMURJA to the Petitioner provided that the operation of the Project has been commenced from 22.12.2019 (Annexure P-45). The Deputy Commissioner, Kangra vide letter dated 12.10.2021 (Annexure P-46) informed the Petitioner of incorporating a condition that while establishing the Project, the rights of the local people are not affected, who may be allowed to use the public paths and similarly the use of Kuhals be also not affected. The lease deed was signed with the GoHP on 08.07.2022 (Annexure P-47) for 40 years w.e.f. 21.10.2012 from the date of possession.

14. The Project was declared commercially operational on 22.12.2019 and a Joint Petition No. 73 of 2019 was filed before the Commission on

18.11.2019. The provisional tariff of Rs. 3.27 per kWh was allowed to Project on 28.03.2020 (Annexure P-48) and the PPA was signed by the Petitioner with the HPSEBL on 14.09.2020.

15. It is averred that the Commission has framed the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from Renewable Energy Sources and Terms and Conditions) Regulations, 2017 and Clause 20 and 22 thereof provide for the adjustment of subsidy or incentive or grant/ budgetary support by the Central/ State Government which have been reproduced.

16. The Commission vide order dated 15.02.2020 in Suo Moto Petition No. 76 of 2019 has determined the generic levellized tariff in respect of Small Hydro Projects upto 25 MW. Clauses 8.13 and 8.18 whereof have been reproduced in the Petition.

17. The Commission allowed the Joint petition No. 73 of 2019 for the approval of PPA between the Petitioner and the HPSEBL vide order dated 05.09.2022 (Annexure P-52) whereby the adjustment of an amount of Rs. 90 lakh per MW towards the Industrial Subsidy and an adjustment of MNRE subsidy of Rs. 5.0 Crore was made in the tariff and a provisional tariff of Rs. 3.53 per kWh was allowed to the Project.

18. The Petitioner filed a Review Petition No. 31 of 2023 for review of order dated 05.09.2022 and the Commission vide order dated

01.06.2023 dismissed the Petition after observing the following in para 31:-

“31. Significantly, the tariff which has been allowed to the Petitioner vide impugned Order dated 05.09.2022 is the provisional tariff and the Petitioner has been given a liberty to approach the Commission for appropriate tariff after availing the Industrial Subsidy. Therefore, whatever subsidy is considered and sanctioned by the Ministry of Industry and Commerce in case of the Project, appropriate adjustment shall be made accordingly. Therefore, there is no error apparent on the face of record or discovery of any new and important matter of evidence which has escaped the attention of the Commission while passing the Order dated 05.09.2022.”

19. After dismissal of Review Petition, the SPPA was signed by the Petitioner with the HPSEBL on 23.11.2023 (Annexure P-54).

20. The Petitioner on 03.08.2024 (Annexure P-57) informed the HPSEBL that the Petitioner had applied for the MNRE subsidy but MNRE has clearly made out a case that there is no such scheme available.

21. According to the Petitioner, the Ministry of Commerce and Industry vide Notification No. 2(2)/2018-SPS dated 23.04.2018 introduced the 'Industrial Development Scheme for Himachal Pradesh and Uttrakhand' (IDS, 2017) whereby the Central Capital Investments Incentive (Industrial Subsidy) was being given for access to credit @ 30% of the investment in plant & machinery with an upper limit of Rs. 5 crores which was applicable from 01.04.2017 to 31.03.2022. As per Item No. 17 of the said scheme, all the eligible units were required to

register through the Department of Industrial Policy and Promotion (DIPP) Portal, Ministry of Commerce and Industry, GoI. The Petitioner had also registered its Project on 29.09.2020 and Registration No. IDS/HP/2020/1333 was issued (Annexure P-55).

22. The General Manager, District Industries Centre, Kangra vide letter dated 13.08.2021 (Annexure P-56) informed the Petitioner that some shortcomings have been observed in the application and requested the Petitioner to complete the same as per check list of the IDS Portal.

23. It is averred that the Petitioner had informed the HPSEBL that the case for the industrial subsidy has already been recommended by the empowered committee constituted by the DoE for release of the eligible amount on account of Industrial subsidy and the case of the Petitioner is under process at the Department of Industries, Shimla and the Industrial Subsidy as per DoE recommendation was Rs. 190.52 Lakhs i.e. 30% of 635.08 Lakh and requested the Respondent to file a Joint Petition for determination of final tariff. The Petitioner again approached the Respondent vide letter dated 13.12.2024 and 10.03.2025 (Annexure P-58) to file joint miscellaneous Petition but in vain.

24. The Ministry of Commerce and Industry, GoI vide letter dated 18.02.2025 (Annexure P-59), conveyed the sanction of release of Rs. 20,58,56,113/- for payment of central capital investment incentive

(Industrial subsidy) for access to credit under IDS, 2017 for FY 2024-25 in respect of 20 beneficiary units of Himachal Pradesh and that an amount of Rs. 1,90,52,375/- was approved for payment to the Project of the Petitioner which has duly been received by the Petitioner on 11.04.2025. Accordingly, the Petitioner vide letter dated 11.04.2025 (Annexure P-60) intimated the Respondent regarding receipt of Industrial subsidy amounting to Rs. 1,90,52,375/- and requested for filing Joint Miscellaneous Petition but in vain. Thus, the Petitioner has been compelled to file the present application for the correction/determination of tariff.

25. It is averred that the Commission has allowed the provisional tariff after considering the impact of MNRE Subsidy of Rs. 5.0 Crore as also the admissible Industrial Subsidy but no subsidy has been provided by the MNRE and only a sum of Rs. 1,90,52,325/- has been granted on account of Industrial Subsidy and the re-determination of tariff is required to be made by increasing the tariff without considering the MNRE subsidy and the receipt of actual disbursement amount of Industrial subsidy. Hence, the Petition.

REPLY OF THE RESPONDENT

26. The application has been resisted by the Respondent by filing reply that on 06.09.2019, the Petitioner informed the Respondent that the Project was in the advance stage of construction and will be

commissioned by 15.11.2019 and requested to initiate the process for signing of PPA. The Respondent vide letter dated 03.10.2019 requested the Petitioner to ascertain the claim for MNRE subsidy and the Petitioner in response thereto vide letter dated 04.10.2019 submitted that it had applied for MNRE subsidy on 23.10.2018 by enclosing a copy of letter dated 20.10.2018 addressed to the MNRE. The Petitioner achieved financial closure with the Power Finance Corporation Limited with first loan disbursement on 01.06.2018.

27. Further, averred as per the tariff order dated 24.03.2018, in Suo Moto Petition No. 70 of 2017, the generic levelled tariff for the small hydro projects upto 5 MW was Rs. 3.61 per kWh which was inclusive of admissible capital subsidy of Rs. 112.50 lakh per MW under the MNRE Scheme, 2014.

28. According to the Respondent, the parties in the Joint Petition considered a subsidy of Rs. 75 lakh per MW representing 75% of admissible subsidy under the MNRE Scheme, 2014 and accordingly, made adjustment in the tariff computation in terms of para 8 of SHP order dated 24.03.2018 and based on the methodology in said order, the generic levelled tariff was worked out to be Rs. 3.68 per kWh which was submitted in Joint Petition No. 73 of 2019.

29. According to the Respondent, the Commission determined the generic levelled tariff for the second control period (01.10.2019 to

31.03.2020) under the RE Regulations, 2017 vide order dated 15.02.2020. The Project had commenced the operation w.e.f. 22.12.2019 after getting extension from time to time. The certificate issued in this regard by the HIMURJA on 18.05.2020 was also submitted before the Commission in Petition No. 73 of 2019.

30. It is further averred that the Commission vide order dated 05.09.2022 in Petition No. 73 of 2019 has observed that the benefit of MNRE Scheme, 2014 would be available to the Petitioner only if the scheme had been renewed or extended. The application for the MNRE subsidy was made on 20.10.2018 after the closure of the scheme on 31.03.2017. The Commission had also observed in the order approving the PPA that the Petitioner had commenced construction after taking possession of the land on 21.02.2012 and the lease deed was signed much later on 08.07.2022.

31. As per the Respondent, the delay in not getting the MNRE subsidy is on account of the Petitioner and since the Petitioner had commenced the construction activities on 21.10.2012 and the application for grant of MNRE subsidy was made only in October, 2018, after the lapse of the scheme, the Petitioner cannot be permitted to seek upward tariff revision.

32. As far as IDS, 2017 is concerned it is averred that the Commission in order dated 05.09.2022 has considered a normative

benefit of Rs. 90 lakh per MW in line with the methodology provided under the RE Regulations, 2017 and the tariff order dated 15.02.2020 and since the Petitioner has received Rs. 1,90,52,325/- on 11.04.2025 under IDS, 2017, the Commission may consider in its wisdom to consider the adjustment of the same in line with RE Regulations, 2017 and tariff order dated 15.02.2020.

33. 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 entire record carefully. The following points arise for determinations in the Petition:-

Point No. 1: Whether the Petitioner has not received the MNRE subsidy and the provisional tariff allowed in Petition No. 73 of 2019 is required to be increased/ corrected?

Point No. 2: Whether the Petitioner has received Industrial subsidy amounting to Rs. 1,90,52,325/- only under IDS, 2017 and tariff is required to be re-determined/ re-calculated by taking into account such subsidy of Rs. 1,90,52,325/- ?

Point No. 3: **Final Order**

34. For the reasons to be recorded hereinafter in writing, our point wise findings are as under.

Point No. 1: Yes

Point No. 2: Yes

Point No. 3: The Petition allowed per operative part of the order.
(Final Order)

REASONS FOR FINDINGS

Point No. 1:

35. As per the MNRE Scheme, 2014, the application for claiming the subsidy is required to be filed within six months from the start of construction activities or within six months from the date of disbursement of first installment of loan. In the circumstances, during the course of the hearing, the Petitioner was directed to file affidavit giving chronology of events right from the date of allotment of the Project and signing of the IA till the date of filing of application for availing the subsidy. The affidavit in question has been filed on 14.07.2025.

36. It is evident from the said affidavit that the GoHP allotted Gaj-III SHP to the Petitioner on 06.09.2006 but the Petitioner after carrying out detailed survey and calculations submitted the DPR for Gaj-III 5.0 MW. During the year, 2010, the Petitioner submitted a proposal for bifurcation of Gaj-Garju 5.0 MW SHEP into two Projects which was also approved by the council of Ministers on 11.10.2010. Out of these two Projects, one Project was named as Gaj-III (3.60 MW) on Gaj Khad, whereas, the 2nd Project to be known as Gaj-Garju (1.25 MW) was approved as new allotment. The GoHP signed IA with the Petitioner for implementation of 3.60 MW Project on 07.04.2011. On 03.06.2011, the GoHP allowed diversion of 3-84-36 hectare of forest land in favour of the Petitioner for construction of 3.60 MW Gaj-III SHEP and lease

amount of Rs. 1,19,954/- was deposited. Thereafter, a significant time was consumed in correspondence regarding execution of lease deed.

37. It is also apparent from the affidavit of chronology of events that the Gol, Ministry of New and Renewable Energy (MNRE) notified scheme for small hydro projects on 02.07.2014 with subsidy of Rs. 1.50 Crore per MW with an upper limit of Rs. 5.0 Crore to be availed within six months from the start of construction activities or within six months from the date of disbursement of first loan installment as evident from Clause (5) of Annexure-B attached to the MNRE scheme.

38. Undisputedly, this subsidy of Rs. 5.0 Crore has been factored into while allowing the provisional tariff for the Project vide order dated 05.09.2022 in Petition No. 73 of 2019.

39. The affidavit of chronology of events further shows that the validity of the IA was extended by the GoHP upto 31.03.2016 vide letter No. NES-F (1)-2/2013 dated 17.07.2014 and capacity was enhanced from 3.60 MW to 5.00 MW vide letter dated 14.03.2016. On 11.05.2015, the Deputy Commissioner, Kangra approved the transfer of diverted forest land from the reserve pool to the allotable pool. The Revised TEC to the Project for 5.0 MW capacity has been allowed on 12.02.2016 and the Petitioner also signed the SIA with the GoHP for the enhanced capacity of 5.0 MW on 03.05.2016.

40. It is also evident from the affidavit of chronology of events that the DFO, Dharamshala intimated the Petitioner on 22.09.2016 that the marking of trees was completed by 23.11.2011 and the execution of felling and extraction of trees was completed on 21.02.2012 and the possession of the land be treated as delivered on or after 21.02.2012. The Petitioner on 03.10.2016 requested the Deputy Commissioner, Kangra to consider the actual date of possession as effective date for calculation of lease money but the Deputy Commissioner, Kangra on 03.01.2017 intimated the Petitioner that the lease money is to be calculated from the date of diversion of forest land and not from the date of taking actual possession. The Petitioner also took up the matter with the Deputy Commissioner, Kangra vide letters dated 08.05.2017 and 07.07.2017 for amendment in consideration of effective date for calculation of lease as actual date of possession.

41. The affidavit of chronology of events further shows that on 10.07.2017, the Petitioner made a detailed representation to the Additional Chief Secretary (Power), GoHP for intervening in the lease case. On 15.12.2017, the Deputy Commissioner, Kangra sought clarification in the matter from Additional Chief Secretary, Revenue (ACS Revenue).

42. The affidavit of chronology of events further shows that the HIMURJA on 23.05.2018 informed the Petitioner of the approval of the

GoHP qua extension in time period of IA without extension fee w.e.f. 01.04.2016 till the execution of lease deed. Further, on 01.10.2018, the HIMURJA informed the Petitioner with respect to the approval of construction schedule.

43. The affidavit of chronology of events further shows that the ACS (Revenue) informed the Deputy Commissioner, Kangra on 26.10.2018 qua the land diversion permission that the calculation of lease money is to be made from 21.02.2012, as per Rule 8 of the H.P. Lease Rules, 2011.

44. It is also evident from the affidavit of chronology of events that though the construction activities initially commenced from June, 2018 but the Petitioner accelerated the construction activities from 01.11.2018 after getting the clearances and approval of lease from the GoHP and subsequently, the Petitioner applied for MNRE subsidy on 20.10.2018 vide application No. KHPVPL/GAJ-III/SUBSIDY/2018-19. Thus, the Petitioner started the construction activities only on 01.06.2018 and financial closure has been achieved with the Power Finance Corporation Limited, New Delhi accordingly and first installment of loan was received on 01.06.2018.

45. The affidavit of chronology of events further shows that on 28.03.2019, the Deputy Commissioner Kangra passed the diversion order diverting 3-84-36 hectares of land on lease basis to the Petitioner

w.e.f. 21.02.2012 from the date of possession of land for a further period of 40 years subject to certain terms and conditions.

46. Meanwhile, the Petitioner also executed the 2nd SIA with the GoHP in line with the State Hydro Power Policy, 2018. On 16.09.2019, revised construction schedule in respect of the Project was supplied by the HIMURJA to the Petitioner fixing the CoD as 31.12.2019.

47. The affidavit of chronology of events further shows that the HIMURJA on 16.04.2019 intimated the Director (SHP), MNRE, GoI that the pre-construction activities were started in February, 2018 and construction work on the main components were started in June, 2018 and proposed date of commercial operation is in June, 2019 and more than 50% of work at Project site has been completed. The Petitioner in the meanwhile, also submitted quarterly project reports to the MNRE pursuant to the application made on 20.10.2018. On 29.06.2020, the Petitioner intimated the MNRE about successful commissioning of the Project on 07.12.2019.

48. The Joint Petition for the approval of PPA was filed on 19.11.2019 and on 28.08.2020, the Commission allowed a provisional tariff of Rs. 3.27 per kWh subject to further adjustment as per final order in Petition No. 73 of 2019. The PPA was accordingly signed on 14.09.2020 and lease deed was signed on 08.07.2022.

49. The affidavit of chronology of events further shows that on 06.01.2023, the Petitioner informed the MNRE that by the time the Petitioner had applied for claiming the MNRE Subsidy, the scheme was not in existence and till date no new subsidy scheme has been approved by the Government but while deciding the case of the Petitioner for the approval of the PPA by the Commission, a capital subsidy of Rs. 5.0 Crore towards MNRE subsidy has been considered.

50. The affidavit of chronology of events further shows that on 09.02.2023 the MNRE intimated the Petitioner that presently there is no scheme available for subsidy for development of SHPs and application of the Petitioner cannot be considered. On 05.04.2023, the Petitioner further intimated the MNRE in response to letter dated 09.02.2023 that it had applied for subsidy on 20.09.2018 within six months of the disbursement of first loan installment/ start of construction and in case any scheme is launched in future, the Project of the Petitioner be considered.

51. It is evident from the aforesaid affidavit of chronology of events that the final order for the diversion of forest land was passed by the Deputy Commissioner, Kangra only on 28.03.2019. It is also evident from the affidavit of chronology of events that the pre-construction activities at the Project site commenced in February, 2018 and the construction work started on the main component during June, 2018

and vigorous construction activities were commenced on 01.11.2018. The affidavit of chronology of events further shows that the first installment of loan was disbursed on 01.06.2018. The MNRE Subsidy Scheme dated 02.07.2014 (at Pages 122-152 of the Petition) shows that the scheme was initially introduced during the year 2014-15 and for the remaining period of the 12th Plan i.e. the year upto 31.03.2017. As per the eligibility criteria, as mentioned in Annexure-B of the Scheme, a request on the application form alongwith documentary proof, complete in all respect, should be submitted to the Ministry within six months after commencement of work at site or six months after first disbursement of loan from the financial institution/ bank, whichever is earlier. It is the case of the Petitioner that the first disbursal of the loan installment was received on 01.06.2018 and that the pre-construction activities at site initially commenced during February, 2018 and construction of main components started in June, 2018 and the activities were accelerated w.e.f. 01.11.2018 and rightly so, the first installment of loan was received on 01.06.2018. There is nothing on record that the construction activities had commenced during the validity of the MNRE Scheme, 2014 which was valid upto 31.03.2017. Since, the construction activities at the Project commenced only in February, 2018 and the first installment of loan was disbursed on 01.06.2018, clearly, the Project was not eligible for submitting the claim for the MNRE Subsidy, as the

Scheme had lapsed on the date of commencement of construction activities and disbursal of first installment of loan. In the circumstances, the case of the Petitioner regarding MNRE subsidy under the MNRE Scheme, 2014 was rightly not considered.

52. Significantly, the Commission, while allowing provisional tariff of Rs. 3.53 per kWh to the Petitioner vide order dated 05.09.2022 in Petition No. 73 of 2019 has made an adjustment of Rs. 5.00 Crore qua the MNRE subsidy but in view of the above, no amount towards the MNRE subsidy, is required to be adjusted and the tariff is required to be re-worked. Point No. 1 is accordingly decided in favour of the Petitioner.

Point No. 2

53. Coming to the 2nd point of Industrial Subsidy, the said scheme was launched on 23.04.2018 which was valid w.e.f. 01.04.2017 to 31.03.2022. The Petitioner submitted the application for availing the said subsidy and got the Project registered on 02.09.2020, but only a subsidy of a sum of Rs. 1,90,52,375/- has been approved against the Project. However, while allowing provisional tariff of Rs. 3.53 per kWh to the Petitioner vide order dated 05.09.2022 in Petition No. 73 of 2019, the Commission had made adjustment of Rs. 90 Lakh per MW towards the IDS, 2017. Since, a sum of Rs. 1,90,52,375/- only towards Industrial Subsidy has been allowed and adjustment of only said amount is required to be made, the tariff is required to be re-worked and re-

calculated. Point No. 2 is accordingly decided in favour of the Petitioner and against the Respondent.

THE APPLICABLE TARIFF

54. In view of the above discussions and findings on Points No. 1 and 2, now the question arises as to what would be the applicable tariff in respect of the Project. The synchronization of the Project was on 22.12.2019, therefore, the generic levellized tariff for the 2nd Control Period w.e.f. 01.10.2019 to 31.03.2020, as determined vide order dated 15.02.2020 in Suo Moto Petition No. 76 of 2019 shall be applicable. As per said order dated 15.02.2020, the applicable tariff for Small Hydro Electric Projects from 100 kW and upto 25 MW is as under:-

Category	Capacity	Generic levellised Tariff in Rs./kWh of net saleable energy without considering subsidy.
Col. 1	Col. 2	Col. 3
(i)	Above 100 kW to 2 MW capacity	4.49
(ii)	Above 2 MW but below 5 MW capacity	4.38
(iii)	5 MW to 25 MW capacity	4.04

55. The Project capacity is 5.0 MW, therefore, as per the generic levellized tariff order dated 15.02.2020, the tariff of Rs. 4.04 per kWh should have been made applicable to the Project but a subsidy of Rs. 1,90,52,375/- being provided by the Ministry of Commerce and Industry as Industrial Subsidy has been availed by the Petitioner. After adjustment of said subsidy amount of Rs. 1,90,52,375/- and adjustment

on account of free power structure @ 13% for the entire tariff period of 40 years as per the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from Renewable Energy Sources and Terms and Conditions for Determination of Tariff) Regulations, 2017, the applicable tariff for the Project of the Petitioner comes to Rs. 3.80 per kWh which shall be applicable to the Project from the date of commercial operation.

FINAL ORDER

56. In view of the above, the Petition succeeds and allowed. The tariff of Rs. 3.80 per kWh is allowed for the Project w.e.f. the Commercial operation date of the Project subject to the following terms and conditions:-

- (i) The clause 6.2 of PPA shall be modified accordingly as per the above order.
- (ii) Other terms and conditions of order dated 05.09.2022 shall remain the same.
- (iii) In case any subsidy is made applicable to the Project in future, the Petitioner shall intimate the HPSEBL and the Commission for any appropriate order.

57. Significantly, the Petition has been filed pursuant to the directions issued in order dated 05.09.2022 in Petition No. 73 of 2019 for re-determining and re-calculating the tariff by not considering the impact of the MNRE subsidy and taking into account the actual release of Industrial Subsidy. Therefore, the Petition is required to be treated

under Section 86 (1) of the Electricity Act, 2003 and a court fee as per the schedule appended to the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 is required to be deposited. The Petitioner has deposited a fee of Rs. 40,000/- only. Thus, the Petitioner is directed to deposit the deficient court fee within seven days, from the date of this order. In case the deficient court fee is not deposited within seven days the Petition shall be deemed to have been dismissed.

58. The Joint Petitioners are directed to execute the Supplementary Power Purchase Agreement as per the above order after carrying out the necessary additions and alterations within 30 days from the date of this order. Three copies of the executed Supplementary Power Purchase Agreement be submitted to the Commission for record.

Let a copy of this order be supplied to the parties forthwith.

The file after needful be consigned to records.

Announced

19.08.2025

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

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