BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Miscellaneous Application No:	**392 of 2025**
Date of Institution:	30.06.2025
Arguments Heard on:	07.08.2025
Decided on:	**14.08.2025**

CORAM:

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

SHASHI KANT JOSHI
MEMBER.

M/s VSBR Solar Power Project,
Registered Office at Village and Post Office Ramnagar,
Tehsil Dharamshala, Distt. Kangra, H.P. **…....Petitioner.**

Versus

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

Application under Section 151 of the Code of Civil Procedure, 1908, read with Regulation 75 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024, for correction in provisional tariff allowed by the Commission vide order dated 03.11.2023 in Petition No. 59 of 2023 in respect of VSBR Solar Power Project (5.0 MW) commissioned on 05.01.2025 by allowing tariff of Rs. 3.72 per kWh as per Clause 12 E(i) of order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023.

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/ Petition filed by M/s VSBR Solar Power Project (Applicant/ Petitioner for short) that a Joint

Petition No. 59 of 2023 was filed for the approval of Power Purchase Agreement (PPA for short) by the Petitioner and the Himachal Pradesh State Electricity Board Limited (HPSEBL/ Respondent for short) which was allowed by the Commission vide Order dated 03.11.2023 permitting the Joint Petitioners to sign the PPA (Annexure P-5).

2. It is averred that the Petitioner has set up 5.0 MW Solar Power Project i.e. VSBR Solar Power Project at Village Jogi Bhatian, Tehsil Fatehpur, Distt. Kangra, H.P. (Project for short). The Petitioner has been selling its power to the HPSEBL under long term PPA dated 27.01.2024. It is averred that the Petitioner achieved the commercial operation of the project on 05.01.2025 which is beyond the Scheduled Commercial Operation Date (SCOD) i.e. 19.05.2024, as contained in order dated 03.11.2023. Thus, the tariff of Rs. 3.72 per kWh as allowed by the Commission vide order dated 03.11.2023 in Petition No. 59 of 2023 was declined by the Respondent and rather, a tariff of Rs. 3.47 per kWh was made applicable.

3. It is averred that the Petitioner and the Respondent filed a joint Petition being Petition No. 59 of 2023 before the Commission for approval of long term PPA which was decided on 03.11.2023 subject to following conditions:-

"(i) The tariff of Rs. 3.72 per kWh will be applicable to the Project of the Joint Petitioner No. 2 which will be subject to further adjustment of subsidy, if any, and is provisional.

(ii) The Joint Petitioner No. 2 shall bear the cost of 33 kV bays and O&M charges (if any) of the proposed 33 kV bay as mentioned in Para 8 above. The 33 kV Single Circuit dedicated line from the project to the Sub-station shall be constructed by the Joint Petitioner No. 2.

(iii) The undertaking of the Joint Petitioner No. 2 that the Project is at rural area shall form a part of the PPA. Similarly, the joint agreement dated 16.10.2023 between VSBR Solar Project and Vijay Soni Solar Project shall also form part of the PPA. Further, the above Project Developers shall not claim any damages of losses if any, occurring out of said joint evacuation arrangement in future.

(iv) The Joint Petitioner No.2 shall apply to the State/Central Government or its designated department(s)/agency(ies), for grant of applicable subsidy/financial assistance to the Solar Power Project immediately on receipt of this Order if not already applied, and shall intimate the Joint Petitioner No.1 i.e. HPSEBL of the receipt of financial assistance/subsidy released to the Project by the State/ Central Government or its designated Department(s)/ agency(ies), within 15 days of receipt of the same and an affidavit to this effect shall be furnished by the Joint Petitioner No. 2 which shall form part of the PPA.

(v) The Joint Petitioner No. 2 shall make an endeavour to avail the admissible subsidy/financial assistance (if any). In case the subsidy/financial assistance is not availed or Joint Petitioner No. 2 fails to approach the State/Central Government or its designated Department(s)/ agency(ies), the same shall be deemed to have been availed by the Joint Petitioner No. 2 and the Joint Petitioner No. 1 shall carry out the adjustment of such benefit, if any, admissible to the project after a period of 2 years from the date of the Order, as per Order dated 31.03.2023 passed by the Commission in Suo Moto Petition No. 11/2023. The Joint Petitioner No. 1 shall also intimate the Commission in this regard on making adjustment.

(vi) In case the meter is installed in the premises of the Joint Petitioner No. 2, the notional line losses upto the injection point shall be borne by the Joint Petitioner No. 2.

In case the metering point is in the facilities of the HPSEBL, the notional line losses from injection point to the metering location have to be borne by the HPSEBL and credit for the losses from the *injection point to the metering location shall be given to the Joint Petitioner No. 2 by the HPSEBL.*

(vii) *The Scheduled Date of Synchronisation of the Project is 04.05.2024 and Scheduled Commercial Operation Date (SCOD) of the project is 19.05.2024 which has been specified in Schedule-I which shall form a part of the PPA. In case commissioning of the Project is delayed beyond SCOD i.e. 19.05.2024, and the tariff in the said control period is less, the Joint Petitioner No. 2 shall have to provide power to the Joint Petitioner No. 1 on said tariff only.*

(viii) *The additions and alterations qua 'Base Rate of Late Payment Surcharge', 'Default Trigger Date', 'Due Date', 'Outstanding Dues', 'Payment Security Mechanism' and Regulations 31-B, and Regulation 31-BB, as per Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Sixth Amendment) Regulations, 2023 shall be carried out at appropriate places in the draft PPA before approved draft PPA is sent to the parties. Similarly, any other necessary addition and alteration, if any, required to be carried out as per Connection Agreement dated 22.08.2023 or the prevailing Regulations, etc. be also carried out before approved draft PPA is sent to the parties."*

4. Subsequently, as per order dated 03.11.2023, a PPA was signed between the parties on 27.01.2024 (Annexure P-6). Clause 6.2 of the PPA read as under:-

"(a) The HPSEBL shall pay for the Net Saleable Energy delivered and sold to it by the Petitioner at the Interconnection Point at a fixed rate of Rs. 3.72 per kWh determined as per Commission's order dated 30.03.2023 in Suo Moto Petition No. 11 of 2023, in the matter of determination of generic levellized tariff for Solar PV Projects for FY 2023-24 (for a period w.e.f. 01.04.2023 to 30.09.2023) under the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources Terms and Conditions for the Tariff Determination) Regulations, 2017.

(b) The rate of Rs. 3.72 per kWh as per Commission's order above, is provisional and can also be reviewed for adjustment on the following lines and for specific provisions under Section 8.8:-

(i) The tariff of Rs. 3.72 per kWh is determined for the Project being situated in the rural area as per the order of the Commission dated 31.03.2023. The affidavit to this effect attached at Annexure-VI.

(ii) The rate given above shall be applicable if the entire capacity of the project is commissioned on or before Scheduled Commercial Operation Date (SCOD) i.e. 19.05.2024. However, if the Commissioning of the project is delayed beyond 19.05.2024, the rate determined by the Commission for the category under which the total capacity of the project falls for the Control Period(s) n which the capacities are commissioned for the respective capacity(Ies) or the rate of Rs. 3.72 per kWh as above whichever is lower, shall be applicable. For the purpose, weighted average rate based on the capacity(ies) commissioned during different Control Periods and respective applicable rates as per above provisions shall be worked out from time to time.

(iii) Based on the financial assistance/subsidy, if any, released to the project, HPSEBL shall carry out adjustment of such benefit as per the provisions of the order of the Commission dated 31.03.2023 in Suo-Moto Petition No. 11 of 2023, in the matter of determination of generic levellised tariff for Solar PV Projects for FY 2023-24 for a period w.e.f. 01.04.2023 to 30.09.2023) under the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources Terms & Conditions for the Tariff Determination) Regulations, 2017.

(iv) In case the subsidy/financial assistance is not availed or the company fails to approach the State/Central Government or its designated departments)/ agency(ies), the same shall be deemed to have been availed by the Company and the HPSEBL shall carry out the adjustment of such benefit, if any, admissible to the project after a period of 2 years from the date of issuance of order dated 03.11.2023.

(v) In case the capital subsidy or incentive and/or subsidy and/or grant etc. is admissible to the company, the tariff shall be adjusted as per the provisions of Determination of generic levellised tariff for Solar PV Projects under Regulation 18 of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 and Commission's order dated 31.03.2023 in Suo-Moto Petition No. 11 of 2023, in the matter of determination of generic levellised tariff for Solar PV Projects for FY 2023-24 for a period w.e.f. 01.04.2023 to 30.09.2023) under the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the renewable Energy Sources Terms & Conditions for the Tariff Determination) Regulation, 2017.

(vi) The Company shall apply to the State/Central Government or its

> *designated departments)/ agency(ies), for the grant of applicable subsidy/financial assistance to the Solar Power Project immediately on receipt of the order dated 03.11.2023 and shall intimate HPSEBL of the receipt of financial assistance/ subsidy released to the project by the State/Central Government or its designated departments)/ agency(ies), within 15 days of receipt of the same as per the affidavit attached at Annexure-VIII."*

5. According to the Petitioner, despite best efforts the commissioning of the Project was delayed and in this regard a representation was also made on 26.03.2024 (Annexure P-7) to the HIMURJA. Considering such request, the provisional registration of Project was extended by the HIMURJA by six months vide letter dated 05.04.2024 (Annexure P-8).

6. According to the Petitioner, the process for synchronization and commissioning of the Project was initiated well in time by appointing Sh. Yograj Sharma, as Independent Engineer, as evident from letter dated 04.04.2024 (Annexure P-9) and the Chief Electrical Inspector, GoHP vide letter dated 09.04.2024 (Annexure P-10) gave tentative approval for 45 days. Vide letter dated 11.04.2024 (Annexure P-11), the Petitioner requested the Meter and Testing Division, HPSEBL Kangra for the testing charges. The Petitioner also submitted the details vide letter dated 11.04.2024 regarding two members for the formation of the Commissioning Committee. Vide letter dated 29.05.2024 (Annexure P-13), the Petitioner intimated the Superintending Engineer (Design) of the proposed date of

synchronization of the Project and submitted all requisite documents which was responded on 05.07.2024 (Annexure P-14) to furnish more documents. Vide letter dated 25.10.2024 (Annexure P-15), the Petitioner again requested for the details of the testing charges which was responded on 26.10.2024 (Annexure P-16).

7. Vide letter dated 12.11.2024 (Annexure P-17), the Petitioner again sought extension from the HIMURJA till 31.03.2025 higlighting several compelling reasons which were beyond the control of the Petitioner including hurdles in obtaining bank loan for want of delay in getting revolving letter of credit by the HPSEBL which impacted the sanction of loan but the loan was ultimately sanctioned vide letter dated 13.02.2024 (Annexure P-18). The HIMURJA in response to letter dated 16.11.2024 (Annexure P-19) granted extension for the Project uptill 31.03.2025 with a condition that the tariff applicable would be as per the rates prevailing at the time of commissioning of the Project. After completing all formalities, as evident from Annexures P-20, P-21, P-22, P-23 and P-24, the Project was declared commercially operative from 05.01.2025, as conveyed vide letter dated 19.02.2025 (Annexure P-25).

8. According to the Petitioner, the Commission vide order dated 31.03.2023 (Annexure P-26) in Suo Moto Petition No. 11 of 2023 has

determined the generic levellized tariff for the Solar PV Projects for FY 2023-24 (for a period w.e.f. 01.04.2023 to 30.09.2023). Para 12 thereof has been reproduced.

9. According to the Petitioner, when the Respondent issued the energy bill from 05.01.2025 to 31.01.2025 on 22.02.2025 and for the period 01.02.2025 to 28.02.2025 on 07.03.2025 (Annexure P-29 Colly), the Petitioner noticed certain discrepancies and sought clarification from the Respondent about the applicable tariff on 08.05.2025 (Annexure P-30) that the Project was commissioned on 05.01.2025 and in accordance with order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023, the applicable tariff for the Project was 3.72 per kWh as the Petition was filed before 30.09.2023 and the Project was commissioned on 05.01.2025. However, no response was given by the Respondent constraining the Petitioner to file the present application.

10. The Petitioner has given detailed reasons leading to the delay in commissioning of the Project but has averred that despite adverse circumstances, the Petitioner has been able to commission the Project on 05.01.2025, well within the control period as per order dated 31.03.2023 passed in Suo Moto Petition No. 11 of 2023.

11. The Commission vide order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023 has allowed the tariff of Rs. 3.72 per kWh for Solar PV Projects above 1 MW and upto 5 MW situated outside urban and industrial areas which was valid upto 31.03.2025 as per Clause 12 (E) (i) of the said tariff order and that the Joint Petition for the approval of PPA was filed before the Commission on 22.09.2023 and the Project has been commissioned on 05.01.2025. Therefore, the Petitioner is legally entitled to the tariff of Rs. 3.72 per kWh and the observation made in order dated 03.11.2023 in Petition No. 59 of 2023 to the extent that in the event of delay in commissioning the Project on or beofre the SCOD, the tariff of the control period in which the Project is commissioned shall be applicable is inconsequential in view of Clause 12 (E)(i) as mentioned above. Hence, the Petition.

REPLY OF THE RESPONDENT

12. The Review Petition has been resisted by the Respondent by filing the reply averring that the Commission vide order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023 has determined the generic levellized tariff for Solar PV Project upto 5 MW for the control period 01.04.2023 to 30.09.2023 subject to fulfilment of the following conditions:-

a) That a joint Petition seeking approval of Power Purchase Agreement be submitted to the Commission on or before 01.04.2023 but not later than 30.09.2023.
b) That the project be commissioned on or before 31.03.2025.

13. Further averred that the Petition No. 59 of 2023 was jointly filed and a tariff of Rs. 3.72 per kWh was allowed with a condition that in the event of delay of commissioning beyond 31.03.2025, the applicable tariff shall be lower of (i) the tariff determined for the control period in which the Project is commissioned or (ii) the tariff agreed in the PPA.

14. Further, the Commission vide order dated 03.11.2023, has accorded the approval to the draft PPA with a stipulation that if the commissioning is delayed beyond 19.05.2024 (SCOD), the tariff during the control period in which the Project is commissioned will apply, if lower. The PPA was accordingly executed on 27.01.2024 in accordance with the above terms. Since, the Project was commissioned after 19.05.2024, the tariff of Rs. 3.47 per kWh, as determined by the Commission for Solar PV Projects for FY 2024-25 was in force on the actual date of commissioning which has been made applicable to the Project. Thus, in compliance to the order dated 03.11.2023 and terms of PPA, the HPSEBL has commenced the purchase of energy at the rate of Rs. 3.47 per kWh.

15. According to the Respondent, the correction as sought by the Petitioner is not permissible in view of order dated 31.03.2023 passed in Suo Moto Petition No. 11 of 2023. In nutshell, the case of the Petitioner has been denied.

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

17. Sh. L.S. Mehta, Ld. Counsel for the Petitioner has submitted that the Project of the Petitioner is entitled for the tariff of Rs. 3.72 per kWh, as contained in the order dated 03.11.2023 in the Petition No. 59 of 2023 which is strictly in accordance with tariff order dated 31.03.2023, passed by the Commission in Suo-Moto Petition No. 11 of 2023 whereby the tariff for the Solar PV Project for period for 01.04.2023 to 30.09.2023 was determined. According to him, the Commission in order dated 31.03.2023 in Suo-Moto Petition No. 11 of 2023 has clearly provided under Clause 12(E)(i) that in cases where the Petition for approval of the PPA is submitted to the Commission on or after 01.04.2023 but not later than 30.09.2023, said tariff shall be applicable for such capacity(ies) as are commissioned on or before 31.03.2025.

18. According to him, the Joint Petition was filed on 22.09.2023, strictly as per order dated 31.03.2023 and the Project has been commissioned on 05.01.2025, as such, the tariff of Rs. 3.47 per kWh cannot be made applicable to the Project merely because the commissioning was beyond the SCOD and the action of the Respondent in restricting the tariff to Rs. 3.47 per kWh and levying of liquidated damages is contrary to order dated 31.03.2023.

19. Sh. Kamlesh Saklani, Authorized Representative for the Respondent on the other hand has submitted that HPSEBL has acted in accordance with the order dated 03.11.2023 in the Joint Petition and PPA dated 27.01.2024 wherein it was clearly mentioned that in the event of delay of SCOD, the tariff for control period in which project is actually commissioned shall be applicable and, therefore, the Petitioner shall have to provide the power to the Respondent on said tariff only. According to him, since the commissioning was delayed beyond the SCOD and the tariff on the date, when the project was commissioned was Rs. 3.47 per kWh, in respect of the capacity of the project, the Petition is not maintainable.

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

<u>Point No. 1</u>: Whether the Petitioner is entitled to the tariff of Rs. 3.72 per kWh as per Order dated 03.11.2023 in Petition No. 59 of 2023 and energy bills are required to be rectified accordingly?

<u>Point No</u>. 2: **Final Order**

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

Point No. 1: Yes

Point No. 2: (Final Order) The Application allowed per operative part of the order.

<u>REASONS FOR FINDINGS</u>

<u>Point No. 1:</u>

22. It is simple case of the Petitioner that a tariff of Rs. 3.72 kWh was allowed to the project vide order dated 03.11.2023 in the Petition No. 59 of 2023 but on account of a stipulation in the order dated 03.11.2023 in Petition No. 59 of 2023 that in case the commissioning of project is delayed beyond SCOD i.e. 19.05.2024, the Petitioner shall have to provide the power to the Respondent on the tariff which will be applicable on the date of commissioning of the Project and, therefore, tariff of Rs. 3.47 per kWh has wrongly been applicable for the Project. Whereas, the Project is entitled to the tariff of Rs. 3.72 per kWh.

23. It is mentioned in the Petition that the project could not be commissioned on the date of SCOD due to the reasons beyond the

control of the Petitioner but the Petitioner has been able to commission the same on 05.01.2025 i.e. within the control period which was upto 31.03.2025. However, instead of allowing tariff of Rs. 3.72 per kWh, a lower tariff of Rs. 3.47 kWh has been allowed which is contrary to the order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023 whereby the Generic Levellized Tariff for the Solar PV projects for a period w.e.f 01.04.2023 to 30.09.2023 was determined by the Commission allowing tariff of Rs. 3.72 kWh for the Solar PV Projects above 1 MW upto 5 MW capacity situated in the Rural Areas which are commissioned on or before 31.03.2025. It is also the case of the Petitioner that the stipulation in the order dated 03.11.2023 in Petition No. 59 of 2023 to the effect that in case of delayed commissioning of the Project beyond SCOD i.e. 19.05.2024, the Petitioner will have to provide the power to the HPSEBL on said the tariff, as applicable at the date of commissioning of the Project, is contrary to the Generic Levellized Tariff Order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023.

24. The Joint Petition No. 59 of 2023 had been filed before the Commission on 30.09.2023, as evident from the copy of order dated 03.11.2023. A tariff of Rs. 3.72 per kWh was allowed to the Petitioner.

However, in clause (vii) of para 14 of order dated 03.11.2023 in Petition No. 59 of 2023 it was mentioned as under:-

> *"(vii) The Scheduled Date of Synchronisation of the Project is 04.05.2024 and Scheduled Commercial Operation Date (SCOD) of the project is 19.05.2024 which has been specified in Schedule-I which shall form a part of the PPA. In case commissioning of the Project is delayed beyond SCOD i.e. 19.05.2024, and the tariff in the said control period is less, the Joint Petitioner No. 2 shall have to provide power to the Joint Petitioner No. 1 on said tariff only."*

25. Since, the Project could not be commissioned well before the SCOD and was commissioned on 05.01.2025, the Respondent has applied the tariff to the Project as applicable on the date of the commissioning of the Project.

26. According to Clause 12 (E)(i) of the generic levellized tariff order dated 31.03.2023 in Suo-Moto Petition No. 11 of 2023 the tariff as determined vide order dated 31.03.2023 was valid till 31.03.2025, provided the Petition(s) for the approval of PPA is filed on or after 01.04.2023 but not later than 30.09.2023. Clause 12(E)(i) reads as under.

> *"in cases where the joint petition for approval of PPA is submitted to the Commission on or after 01.04.2023, but not later than 30.09.2023, this tariff shall be applicable for such capacity)ies) as are commissioned on or before 31.03.2025"*

27. Undisputedly, the Joint Petition No. 59 of 2023 had been filed on 22.09.2023 which was within the currency of the period as provided in tariff order dated 31.03.2023 in Suo-Moto Petition No. 11

of 2023. The Project of the Petitioner has been commissioned on 05.01.2025 i.e. within the currency of the period provided for commissioning of the Project i.e. 31.03.2025. Therefore, the tariff of Rs. 3.72 kWh was applicable to the project and not Rs. 3.47 kWh, as made applicable by the HPSEBL.

28. In fact, the stipulation in the order dated 03.11.2023 in Petition No. 59 of 2023 that in case the commissioning of the Project is delayed beyond SCOD i.e. 19.05.2024, the Joint Petitioner No. 2 shall have to provide power to the Joint Petitioner No. 1 on the tariff as applicable on the date of commissioning, runs counter to the Clause 12 (E) (i) of order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023. Thus, said condition in order dated 03.11.2023 in Petition No. 59 of 2023 is inconsequential. Therefore, there is an apparent error in order dated 03.11.2023 in Petition No. 59 of 2023 and, as a result thereof, a serious prejudice has been occasioned to the Applicant. The Applicant is entitled to the tariff of Rs. 3.72 per kWh from the date of the commissioning of the Project and not Rs. 3.47 per kWh as made applicable by the Respondent/ HPSEBL and energy bills are required to be rectified accordingly. Point No. 1 is accordingly decided in favour of the Applicant and against the Respondent.

Final Order

29. In view of the aforesaid discussion and findings, the Application succeeds and allowed. The Applicant shall be entitled to the tariff of Rs. 3.72 per kWh as allowed vide order dated 03.11.2023 in Petition No. 59 of 2023 w.e.f. the date of commissioning of the Project and energy bills are order to be rectified accordingly.

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

The file after doing the needful be consigned to records.

Announced
14.08.2025

-Sd-
(Shashi Kant Joshi)
Member

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