BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Petition No:	**24 of 2025**
Instituted on:	20.01.2025
Heard on:	19.12.2025
Decided on:	**07.02.2026**

CORAM:

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

SHASHI KANT JOSHI
MEMBER .

In the matter of:-

The HP Power Corporation Limited.
Himfed Building, New Shimla-171009. **…. Applicant**

Versus

The HP State Electricity Board Limited. Through its
Chief Engineer (System Operation),
Vidyut Bhawan, Shimla-171004. **….. Respondent 1**

The HP State Load Despatch Centre. Through its
Chief Engineer,
SLDC Complex, Totu, Shimla-171011. **….. Respondent 2**

Petition under Section 86 (1) (f) of the Electricity Act, 2003 seeking directions to HPSEBL to make payment of tariff for power supplied by HPPCL's 32 MW Pekhubella Solar Power Project from 15.04.2024 to 26.12.2024 alongwith interest.

Present:-

Sh. Vikas Chauhan and Sh. Pratyush Singh, Ld. Counsel for the Petitioner.

Sh. Kamlesh Saklani, Authorized Representative for the Respondent No.1.

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Sh. Surinder Saklani, Ld. Counsel for the Respondent No. 2.

ORDER

The Himachal Pradesh Power Corporation Limited (HPPCL/ Petitioner for short) has filed the present Petition under Section 86(1)(f) of the Electricity Act, 2003 (Act for short) in terms of the liberty granted by the Commission vide Orders dated 16.12.2024 and 26.12.2024 seeking directions to Himachal Pradesh State Electricity Board Limited (the HPSEBL/ Respondent No. 1/ DISCOM for short) for making payment of the tariff for the power supplied by the HPPCL's 32 MW Pekhubella Solar Power Project situated at Village Pekhubella, Distt. Una, H.P. (Project for short) and consumed by the HPSEBL during the period 15.04.2024 to 26.12.2024 i.e., from the date of synchronization of the Project till the date of execution of the Power Purchase Agreement (PPA for short) at the rate of final tariff, as determined by the Commission along with interest on compounding basis.

2. On 29.06.2022, a meeting was held between representatives of HPPCL and HPSEBL for procurement of power by HPSEBL from HPPCL's Hydro as well as Solar Power Projects. The minutes of the meeting contain that HPSEBL was willing to procure power from all of HPPCL's Hydro as well as Solar Power Projects, including all of

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HPPCL's upcoming Hydro and Solar Power Projects (depending on HPSEBL's requirement). A copy of the Minutes of Meeting dated 29.06.2022 is annexed hereto and marked as **Annexure P-1**.

3. It is averred that in terms of the agreement between the parties as recorded in Minutes of Meeting (MoM for short) dated 24.01.2024 and the mutually agreed PPA filed before this Hon'ble Commission in Petition No. 48 of 2024 and on the basis the must run status of the Project, both the HPPCL and the HPSEBL had agreed that power supply from the Project will commence from the date of synchronization of the Project and the HPSEBL will purchase the entire power generated from the Project. The HPPCL has been supplying power from the Project to the HPSEBL w.e.f. 15.04.2024 (i.e., the date of synchronization of the Project with the State Grid), which is being consumed by the HPSEBL. However, since the mutually agreed, signed and stamped PPA was not formally executed between the parties, the HPSEBL has refused to make the payment of tariff for the power supplied during the period from 15.04.2024 to 26.12.2024.

4. It is further averred that the HPPCL and the HPSEBL had filed a Joint Petition No. 48 of 2024 before the Commission for approval of the PPA for supply of power from the Project to the HPSEBL on long-term

basis which was approved by the Commission vide Order dated 12.04.2024, @ tariff of Rs. 2.90 per unit and directed the parties to sign the PPA within 30 days, failing which permission for the same would stand denied. However, the PPA was not executed within the stipulated time for reasons beyond the control of the HPPCL. Accordingly, the HPPCL filed Petition No. 109 of 2024 seeking extension of time for execution of the PPA, which was accorded by the Commission vide Order dated 24.08.2024.

5. As per the HPSEBL, the Project was synchronized with the State Grid on 15.04.2024 and power supply to the HPSEBL commenced from 15.04.2024 onwards. The HPPCL, vide letters dated 08.05.2024, 22.07.2024, 20.08.2024, 07.09.2024, 16.09.2024, 24.09.2024 and 22.10.2024 repeatedly requested the HPSEBL for execution of the PPA/ Short Term PPA at the tariff of Rs. 2.90 per unit, as approved vide Order dated 12.04.2024, subject to the outcome of Review Petition No. 110 in 2024 against order dated 12.04.2024 in Petition No. 48 of 2024 in the Joint Petition. However, the HPSEBL vide letter dated 26.10.2024 refused to execute the PPA mentioning that any power supplied from the Project to the HPSEBL prior to 26.10.2024 would not be governed

retrospectively by the PPA and sought amendments including to the effective date of the PPA.

6. It is averred that despite the Project having been synchronized with the HPSEBL's grid on 15.04.2024, and despite extension in time being granted by the Commission for executing the PPA, the HPSEBL refused to execute the PPA. Further, the HPSEBL unilaterally sought to introduce amendments to the PPA, as approved by the Commission and as a result, neither the PPA was executed till 26.12.2024 nor the HPSEBL has made the payment for the power supplied by the HPPCL and consumed by the HPSEBL during the period from 15.04.2024 to 26.12.2024.

7. It is averred that power supply from the Project to HPSEBL had to commence with effect from the date of synchronization of the Project i.e., 15.04.2024, since:-

(a) HPPCL's Solar Project is a Must Run Power Plant in terms of Rule 3(1) of the Must Run Rules, 2021; Regulations 5.2(u) and 6.5(11) of the Indian Electricity Grid Code, 2010; and Regulation 49(1)(f)(3) of the Indian Electricity Grid Code,2023. Hence, HPPCL was mandated to generate power from the date of synchronization.

(b) Regulation 8(2) and 13(5) of HPERC RE Tariff Regulations 2017 provide for filing of a Joint Petition for approval of the mutually agreed PPA between the parties.

The HPSEBL and HPPCL had mutually agreed the terms and conditions of the PPA and filed it before Hon'ble HPERC for its approval [*admitted by HPSEBL and HPPCL @ Para 7 of Order dated 12.04.2024*]. The PPA was approved vide Order dated 12.04.2024 [*Para 19*].

The mutually agreed and approved PPA provides for commencement of power supply from synchronization of the Project. The PPA is binding on both the parties.

(c) In MoM dated 24.01.2024, HPSEBL agreed to purchase entire power generated from HPPCL's 32 MW Pekhubella Solar Project.

(d) Government of Himachal Pradesh (**GoHP**) Notification dated 21.09.2023 mandates HPSEBL to purchase all solar power generation by HPPCL.

(e) HPSEBL was in dire need of power as held by this Hon'ble Commission in Order dated 12.04.2024 (*Para 7 and 19*).

8. According to the Petitioner, the Respondent No. 1/ HPSEBL is liable to pay tariff to the HPPCL from the synchronization of the Project and for the power consumed as per the rate determined by the Commission as in the MoM dated 24.01.2024, the HPSEBL has agreed to purchase entire power generated from HPPCL's 32 MW Pekhubella Solar Project and that Regulation 8(1)(i) of the HPERC RE Tariff Regulations 2017 provides for sale / purchase of power from the date of synchronization of the Project which is binding on the parties and the Commission. Further, the supply of power by the HPPCL to the HPSEBL was a non-gratuitous act, the benefits whereof have been enjoyed by the HPSEBL and thus, the HPPCL is entitled to be restituted/ compensated under Section 70 of the Indian Contract Act 1872. According to it, the refusal on the part of the HPSEBL to execute

the PPA, whilst simultaneously consuming the power generated from the Project amounts to unjust enrichment and since, the Project is connected to the HPSEBL's grid and the HPSEBL has never disconnected the Project from the grid and continued to consume the power from the Project. Hence, the HPSEBL ought to be held liable to compensate the HPPCL for the power consumed from the Project for the period from 15.04.2024 to 26.12.2024 at the rate as determined by this Commission along with interest.

9. The detail of the Petition No. 17 of 2023 regarding the approval of procuring 250 MW Solar Power to the HPSEBL (Annexure P-2), Connection Agreement dated 31.07.2023 (Annexure P-3), notification No. MPP-F(10)-43/2023 (Annexure P-4), details of the draft PPA annexed to the Joint Petition No. 48 of 2024 (Annexure P-5), daily order dated 29.11.2023 in Petition No. 48 of 2024 (Annexure P-6), Minutes of Meeting dated 24.01.2024 (Annexure P-7), details of order dated 12.04.2024 in Joint Petition No. 48 of 2024 (Annexure P-8) have been given at paras 14 to 21 of the Petition.

10. It is averred that the HPSEBL has continued to schedule and consume power from the Project from 15.04.2024 till 26.12.2024, however, no payment has been made by HPSEBL for the same. A copy

of HPSEBL's letter dated 16.04.2024 certifying that the Project has been synchronized with HPSEBL's Grid on 15.04.2024 has been annexed herewith and marked as **Annexure P-9**. A copy of Govt. of Himachal Pradesh letter dated 04.05.2024 and HPSEBL letter dated 03.05.2024 with respect to commissioning of the Project have been annexed as **Annexure P-10 (Colly)**.

11. It is also averred that on 03.05.2024 **(Annexure P-11)**, the HPSEBL wrote to the HPPCL seeking consent for execution of PPA at the tariff of Rs. 2.90 per unit as approved by the Commission in Order dated 12.04.2024. On 09.05.2024 (Annexure P-12), the HPPCL wrote to the Commission, *inter alia,* stating that: -

> (a) The decision of signing of PPA with HPSEBL at the rate approved vide Order dated 12.04.2024 or selling of power from the Project on Power Exchange was under process;
> (b) The Project has been synchronized with the Grid on 15.04.2024 and in the meantime, HPPCL shall supply power from the Project to HPSEBL on the approved rates by this Hon'ble Commission; and
> (c) It was requested that the additional time of 2 months from 11.05.2024 up to 11.07.2024 for processing and finalization/ implementation of Order dated 12.04.2024 may be allowed.

12. On 09.05.2024 (**Annexure P-13)**, HPPCL wrote to HPSEBL *inter alia* stating that:-

> (a) HPPCL vide Letter dated 09.05.2024 has sought additional time of 2 months from 11.05.2024 to 11.07.2024 from this Hon'ble Commission for processing and finalization / implementation of Order dated 12.04.2024.
> (b) In the meantime, it was requested that, for the purpose of energy accounting, HPPCL shall supply the power generated from the Project to

HPSEBL on the approved rates by this Hon'ble Commission from synchronization of the Project.

13. On 28.05.2024, the HPPCL filed Petition No. 109 of 2024 before the Commission seeking additional time of 2 months from 11.05.2024 up to 11.07.2024 for processing and finalization / implementation of the Order dated 12.04.2024. The copy of Petition No. 109 of 2024 have been annexed as **Annexure P-14**.

14. As per the HPPCL, it has been issuing day ahead schedules to HPSEBL from 15.04.2024 onwards with respect to supply of power, however, the HP-ALDC from time to time has written to the HPPCL to not schedule power in the absence of PPA. A copy of Generation Schedules submitted by HPPCL have been annexed as Annexure **P-15 (Colly)** and copy of some of HP-ALDC's emails have been annexed as **Annexure P-16 (Colly)**.

15. On 01.07.2024, the HPPCL filed a Review Petition No. 110 of 2024 ("**Review Petition**") before this Commission seeking reconsideration of the tariff rate as determined by the Commission in Order dated 12.04.2024 passed in Petition No. 48 of 2024. A copy of Review Petition No. 110 of 2024 (unamended and as originally filed) has been annexed as **Annexure P-17**.

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16. On 08.07.2024 (Annexure P-18), the HPPCL wrote an email to HPSEBL stating that the HPPCL intended to discuss the sale of power at a tariff of Rs. 2.90/unit from synchronization of the Project upto the date of decision of the Commission in Review Petition No. 110 of 2024 and that the HPSEBL was requested to intimate a suitable venue, time and date for a meeting in this regard.

17. On 22.07.2024 and 20.08.2024 (Annexure P-19 Colly), the HPPCL wrote to the HPSEBL reiterating its request made vide letter dated 09.05.2024. However, no response was gathered.

18. On 24.08.2024, the Commission passed Order in Petition No. 109 of 2024 (**Annexure P-20**) and granted 15 days' time for implementation of Order dated 12.04.2024.

19. On 04.09.2024 (Annexure P-21), the HPPCL wrote to the HPSEBL seeking deputation of a representative from the HPSEBL for recording and signing of Joint Meter Reading and check meters installed in the Project in terms of Article 4.3 of the PPA approved vide Order dated 12.04.2024.

20. On 07.09.2024 (Annexure P-22), HPPCL wrote to HPSEBL and Himachal Pradesh Energy Management Centre (**HPEMC**), *inter alia*, stating that:

(a) HPPCL has decided to enter into an interim Short Term PPA with HPSEBL for one year from 15.04.2024 to 31.03.2025, as per the approved tariff in Order dated 12.04.2024, subject to final outcome of the Review Petition;

(b) This arrangement would also regularize and settle the energy accounting and billing of power generated from the Project for the period since Commercial Operation Date ("**COD**") i.e., 15.04.2024 onwards and which will be part of the final PPA subject to the approval of this Hon'ble Commission; and

(c) Accordingly, HPSEBL was requested to sign the interim Short Term PPA.

21. On 07.09.2024 (**Annexure P-23)**, the HPEMC in response to the HPPCL's letter dated 07.09.2024 requesting the HPPCL to take up the matter of signing of PPA for the Project with the HPSEBL. On 07.09.2024 (Annexure P-24), the HPPCL wrote to the Commission, *inter alia,* requesting for:-

(a) Time extension for signing of Short Term PPA till HPSEBL authorizes / designates an office for signing of the interim PPA as per approved rate of Rs. 2.90/unit vide Order dated 12.04.2024, subject to final outcome of the Review Petition.

(b) Directions be issued to HPSEBL for signing the interim PPA immediately and to settle the energy accounting and billing of energy generated for the Project since COD, i.e., 15.04.2024 onwards, which will be part of final PPA subject to the approval of this Hon'ble Commission.

22. On 16.09.2024 and 24.09.2024 **Annexure P-25 (Colly)**, the HPPCL wrote to the HPSEBL reiterating the request for signing of interim SPPA at the rate approved vide Order dated 12.04.2024. It was further stated that this arrangement would regularise and settle the energy accounting and billing of power generated from the Project for

the period since COD, i.e., 15.04.2024 onwards, which will be part of the final PPA.

23. On 24.09.2024 (Annexure P-26), the HPSEBL responded to the HPPCL's letter dated 16.09.2024, *inter alia,* stating that: -

(a) HPPCL's request to sign a short-term PPA for the Project was not in line with the Order dated 12.04.2024; and

(b) If HPPCL intended to execute the PPA in terms of Order dated 12.04.2024, it ought to approach HPSEBL along with necessary documents and authorization.

24. On 22.10.2024 (Annexure P-27), the HPPCL responded to the HPSEBL's letter dated 24.09.2024 and requested to execute the PPA on the approved rate as per Order dated 12.04.2024.

25. On 26.10.2024 (Annexure P-28), the HPSEBL responded to the HPPCL's letter dated 22.10.2024 *inter alia* stating that:-

(a) On 25.10.2024, during hearing in the Review Petition, this Hon'ble Commission observed that time granted for execution of the PPA had expired and parties were directed to file a fresh Joint Petition for execution of PPA;

(b) Therefore, further extension to be sought from this Hon'ble Commission for completion of PPA signing for the Project;

(c) PPA would be effective from the date of its signing and any power generated by the Project before this date will not be governed retrospectively by the PPA. Accordingly, certain clauses of the PPA have become redundant and require amendment as mentioned therein;

(d) Both parties to seek a revised order from this Hon'ble Commission concerning the effective date an already approved tariff of the PPA; and

(e) Accordingly, it was requested that a joint petition / application be prepared to seek additional time for PPA execution and proposed amendments from this Hon'ble Commission.

26. On 08.11.2024 (Annexure P-29), the HPPCL wrote to the HPSEBL in response to its letter dated 26.10.2024, *inter alia,* stating that:-

(a) HPPCL has repeatedly requested HPSEBL to convene a meeting to finalize the signing of the PPA at the rate approved by this Hon'ble Commission, effective from the synchronization of the Project, and for the accounting of energy generated by the Project;

(b) This Hon'ble Commission vide Order dated 24.08.2024 had directed that the PPA, as approved vide Order dated 12.04.2024 should be executed within 15 days (i.e., by 09.09.2024);

(c) In compliance, HPPCL vide Letter dated 07.09.2024 requested HPSEBL to sign an interim short term PPA on the already approved rate vide Order dated 12.04.2024 and terms and conditions of the PPA;

(d) However, vide letter dated 07.09.2024, HPSEBL informed that:-

(i) The matter of assigning authorization of signing various agreements on behalf of HPSEBL has been under active consideration with the GoHP; and

(ii) In accordance with directions issued vide letter dated 21.08.2024, by the Chief Secretary (Power), GoHP to HPSEBL, HPSEBL was requested to continue handling legal and statutory matters related to power purchase through a designated office under its administrative control, pending a final decision by the Governing body to prevent any delay in these critical tasks.

Accordingly, Chief Engineer (SO), HPSEBL had expressed inability for execution of the PPA for HPPCL's Project.

(e) HPSEBL vide letter dated 24.09.2024, informed HPPCL to approach its office for signing of the PPA as per the Order dated 12.04.2024. Accordingly, HPPCL submitted a copy of the PPA as approved vide Order dated 12.04.2024 and HPPCL's authorization as per letter dated 22.10.2024;

(f) Since this Hon'ble Commission had already approved the Joint Petition and the PPA, further amendments to the approved PPA would not only be unjustified but would also be contrary to the directions of this Hon'ble Commission; and

(g) However, as requested, a joint petition may be prepared solely for seeking an extension beyond 09.09.2024 for signing the PPA.

27. The details of CMA No. 311 of 2024 for amending the Review Petition No. 110 of 2024 (Annexure P-30), MA No. 294 of 2024 in Petition No. 48 of 2024 (Annexure P-31), reply to the MA No. 294 of 2024 in Petition No. 48 of 2024 (Annexure P-32), order dated 16.12.2024 in CMA No. 311 of 2024 (Annexure P-33), order dated 26.12.2024 in MA No. 294 of 2024 (Annexure P-34), in paras 41 to 45 of the Petition.

28. It is averred that on 26.12.2024 (Annexure P-35), the HPPCL and the HPSEBL executed the PPA as per Order dated 26.12.2024 for supply of power generated from the Project to the HPSEBL. It is averred that the effective date of the executed PPA commences from the actual date of execution, and the PPA does not include the energy supplied from the Project to the HPSEBL from date of synchronization/ COD, i.e., 15.04.2024 till the date of execution of execution of the PPA, i.e., 26.12.2024.

29. It is averred that owing to the infirm nature of solar power, which is dependent on solar irradiance, any hindrance/blockage in power injection at the Project would amount to wastage of natural resources and supply of clean power. In this context, the 'Must-Run' status of Solar Power Projects must be ensured. As per the HPPCL, the

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Respondent No. 1 having agreed to purchase the Project's entire generation, and having consumed the energy supplied by the HPPCL from 15.04.2024 to 26.12.2024, the HPSEBL cannot evade its liability to pay for energy consumed from HPPCL's Project.

30. It is also averred that the HPSEBL has arbitrarily not made payment for the power supplied by the HPPCL from the Project and consumed by the HPSEBL. Hence, the HPSEBL is mandated to make payment to the HPPCL for the energy consumed from the HPPCL's Project. Details of the power supplied and the corresponding tariff of Rs. 2.90/unit, and Rs. 3.49/unit, are as under:-

Period	Units Supplied (kWh)	Amount due considering Tariff @ Rs. 2.90/unit	Amount due considering Tariff @ Rs. 3.49/unit
15.04.2024 to 26.12.2024	**4,24,88,801**	**12,32,17,522**	**14,82,85,914**

31. It is further averred that supply of power by the HPPCL to the HPSEBL was a non-gratuitous act on behalf of the HPPCL, the benefits of which have been enjoyed by the HPSEBL and thus, the HPPCL is entitled to be restituted/ compensated under Section 70 of the Indian Contract Act which provides as under:-

> "***70. Obligation of person enjoying benefit of non-gratuitous act.-***
> *Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person*

enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

32. It is further averred that without prejudice to the foregoing submissions and even assuming, but not conceding, that there was no subsisting agreement between the parties for supply of power, it is submitted that the HPSEBL, at this stage, having consumed the power supplied from the HPPCL's Project, ought not to be permitted to withhold tariff. In this regard, reliance is placed upon the decision of the Hon'ble Tribunal in Judgment dated 24.01.2013 in Appeal No. 170 of 2012 titled ***Bangalore Electricity Supply Company Limited v. Reliance Infrastructure Ltd. & Ors.***, wherein it was held that where the Licensee has enjoyed the benefit of the energy that has gone into the system and has recovered tariff in respect of the same, the claim of the generator qua the charges for the power supplied cannot be said to be illegal.

33. It is further averred that the HPSEBL had agreed to purchase the power supplied from the Project at tariff of Rs. 3.50 per unit in terms of Minutes of Meeting dated 24.01.2024, and thus, the HPSEBL cannot refuse to accept the power supplied from the Project by HPPCL. Notably, the correspondence between the parties demonstrates that

HPSEBL is only seeking to avoid its payment liability for the power it has willingly consumed, and never objected to such consumption.

34. It is claimed that the HPERC RE Tariff Regulations, 2017 provide for payment of tariff from the date of synchronization of the Project. Regulation 2 (g), 2 (ac) and Regulation 8 (1) (i) have been reproduced as under:-

> *"(a) Regulation 2(g): 'Date of commencement of operation of the project' means the* ***date on which the first unit of the project is synchronized with the grid for the first time****;*
> *(b) Regulation 2(ac): 'Useful Life' in relation to a solar project shall mean the useful life of 25 years* ***from the date of commencement of operation of the Project****.*
> *(c) Regulation 8(1)(i): In case of the projects covered under these Regulations, the renewable energy generator or the distribution licensee may offer to sell/purchase power for the entire tariff period* ***starting from the date of commencement of operation of the project****."*

35. Further, the draft PPA mutually agreed between the parties, and approved by the Commission, provides for payment of tariff from the date of synchronization of the Project.

36. The provisional energy bills raised by the HPPCL on the HPSEBL from April 2024 onwards have been annexed as **Annexure P-37 (Colly.)**. A detailed month-wise account of the energy supplied from the HPPCL's Project to the HPSEBL along with computation of tariff have been annexed as **Annexure P-38**.

37. It is further averred that the delay in execution of the PPA is not attributable to the HPPCL. However, despite the Project being

synchronised with the grid on 15.04.2024, and despite extensions in time being granted by the Commission for executing the PPA, the HPSEBL refused to execute the PPA which was in contravention of the Commission's directions, as the PPA already stood approved at a tariff of Rs. 2.90 per unit and the parties were directed to execute the PPA.

38. It is averred that without prejudice, the Commission in Order dated 24.03.2023 in Petition No. 77 of 2022 titled ***M/s Sai Engineering Foundation v. HPSEBL & Anr.*** has held that even in case where the Petitioner was precluded from filing the joint petition for PPA approval in time due to reasons beyond its control, but had been supplying power to the HPSEBL, it was entitled to be compensated at the generic levellised tariff.

39. Basis the foregoing, it is submitted that despite HPPCL's repeated requests, HPSEBL refused to execute the PPA, in violation of this Commission's Order dated 12.04.2024. The HPPCL cannot be held liable for the delay in execution of the PPA as the same occurred due to reasons either beyond the HPPCL's control and are attributable to the HPSEBL. It is averred that the HPPCL cannot be disentitled from recovery tariff for the units supplied from 15.04.2024 to 26.12.2024 to the HPSEBL from the Project with interest.

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REPLY OF THE RESPONDENTS

40. The Petition has been contested by the Respondents by filing separate replies.

REPLY OF RESPONDENT NO. 1

41. The HPSEBL in its reply has submitted that the Petition is not maintainable as it seeks tariff determination for a period during which no valid Power Purchase Agreement (PPA) was in place. Further submitted that it is a settled principle under the Act and the regulations framed by the Commission that power procurement by a distribution licensee can only take place pursuant to a legally binding contract and in the absence of a duly executed PPA, there exists no enforceable right for the Petitioner/ HPPCL to claim tariff from the Respondent/ HPSEBL. It is further submitted that the execution of the PPA is a fundamental prerequisite for any power transaction between a generating company and a distribution licensee. However, in the present case, the Petitioner/ HPPCL is seeking tariff from the commissioning date of the project in April 2024, despite the fact that the PPA has been executed after a lapse of 6-7 months after the commissioning of the Project. During this period, neither the Respondent No. 1/ HPSEBL had any contractual obligation to procure

power from the Petitioner/ HPPCL, nor did it take any steps towards such procurement. Therefore, Petitioner/HPPCL's claim is legally and contractually unsustainable.

42. It is also submitted that as per well-established principles of contract law, contractual obligations arise only from a valid and enforceable agreement between the parties and since no PPA existed between the Respondent No. 1/HPSEBL and the Petitioner/HPPCL for the period in question, there was no legal privity between the parties regarding power procurement.

43. It is also submitted that the electricity scheduling is a crucial prerequisite for power procurement, as mandated by the Electricity Act, 2003, and the Regulations governing the field. Further, all power transactions must be scheduled through the Respondent No.2/State Load Dispatch Centre (SLDC) to ensure grid discipline, reliability, and economic efficiency. Since the Respondent/HPSEBL had no PPA with the Petitioner/HPPCL for the disputed period, it did not schedule any power from the project. Thus, in the absence of scheduling, no procurement of power has taken place, and consequently, no liability for payment can arise against the Respondent/HPSEBL.

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44. It is further submitted that the Respondent No. 2/SLDC plays a statutory role in the scheduling and dispatch of electricity under Section 32 of the Electricity Act, 2003. The respondent No.2/SLDC is responsible for ensuring that power scheduling occurs in accordance with contracts between generators and licensees and responsible for carrying out real time operations for grid control and despatch of electricity within the state through secure and economic operation of the state grid. Further, the HPSLDC shall keep accounts of the quantity of electricity transmitted through the state grid. In the present case, the Respondent/HPSEBL has never requested for scheduling of power from Petitioner/HPPCL prior to the execution of the PPA. Therefore, the unilateral injection of power by the Petitioner/HPPCL, if any, was without the consent or authorization of the Respondent/HPSEBL and, as such, the claim for payment of energy injected lacks legal foundation.

45. Further averred that the Respondent No. 1/HPSEBL has not scheduled the power from the project and the HPSEBL cannot be held liable for any payments related to the period prior to the PPA execution. Further, any injection of power by the Petitioner/ HPPCL into the grid

was at its own risk and cannot be retrospectively converted into a contractual obligation for the Respondent/ HPSEBL.

46. Further, submitted that Under Section 86(1)(b) of the Electricity Act, 2003, all power procurement must take place through legally approved PPAs and any deviation from this requirement would disrupt the regulatory framework and undermine transparency in the electricity market.

47. As per the Replying Respondent, in the absence of scheduling, any injected power is treated as unscheduled interchange under the Deviation Settlement Mechanism (DSM) which is designed to address power injections which occur outside the contractual framework. If the Petitioner/HPPCL has injected power into the grid before the execution of the PPA, its remedy, if any, lies in the DSM mechanism and not in a claim for retrospective payment of tariff for the energy supplied from 15-04-2024 to 26-12-2024 against the Respondent/HPSEBL. It is further submitted that the Petitioner/HPPCL cannot invoke the doctrine of estoppel to claim that Respondent/HPSEBL implicitly accepted the power injection as it is a well-settled legal principle that estoppel cannot override statutory provisions.

48. It is further submitted that the Respondent/HPSEBL, being a distribution licensee, has a statutory duty to procure power through transparent, cost-effective mechanisms which protect the consumer interests and the retrospective imposition of tariff liability without contractual backing would disrupt financial planning and lead to unjustified burdens on the electricity consumers. Therefore, such claims are liable to be rejected to maintain financial prudence and regulatory integrity.

49. It is denied that the Respondent/HPSEBL has been unjustly enriched by the alleged power injection and any such injection, if it occurred, was done unilaterally by the Petitioner/HPPCL and without the Respondent/HPSEBL's consent. Hence, the Respondent/HPSEBL cannot be compelled to pay for the power, neither requested nor contracted. Further, the principle of unjust enrichment is inapplicable in the cases where no legal or contractual obligation exists. Therefore, the Petition is not maintainable and deserves dismissal in the interest of justice and fair play.

50. Controverting para wise contents, it is averred that the Petitioner has misinterpreted the scope of the liberty granted by the Commission vide Orders dated 16.12.2024 and 26.12.2024 as the said orders do not

confer an absolute right upon the Petitioner/HPPCL but were subject to compliance with relevant contractual and regulatory provisions.

51. It is reiterated that the claim made by Petitioner/HPPCL for payment of tariff for the period from 15-04-2024 to 26-12-2024 is not legally sustainable. As per the HPSEBL, the Petitioner has synchronized the project on 15-04-2024 at its own volition, without ensuring the execution of a PPA in accordance with the Commission's order dated 12-04-2024, which was issued before the synchronization and is a precondition for tariff applicability. The Respondent/HPSEBL is not obligated to make payments for power injected into the grid without a PPA and the injection as made is deemed inadvertent and cannot be considered a commercial transaction. Furthermore, the demand for interest on a compounding basis is untenable and contrary to the regulatory provisions. Further, in the absence of a contractual agreement during the claimed period, no financial liability can be imposed upon the Respondent/HPSEBL.

52. It is denied that there was any binding agreement between the parties that power supply from the Project would commence from the date of synchronization. The Minutes of Meeting (MoM) dated 24-01-2024, referred to by the Petitioner/HPPCL, were regarding the

negotiation between the parties as per the directives of the Commission to arrive at a cost nearer to the National Average Cost determined by SECI. It does not have the legal sanctity of a concluded contract, nor does it create an obligation on the Respondent/HPSEBL to purchase power in the absence of an executed PPA. Further submitted that the Joint Petition No. 48 of 2024 was filed before the Commission for the approval of the PPA and determination of tariff in respect of Pekhubella SPP (32MWac) and the final order had been issued by the Commission on 12.04.2024 at a tariff of Rs. 2.90 per unit. It is averred that the Petitioner had synchronized the Project on 15-04-2024 i.e. after the issuance of above order to execute the PPA within 30 days. Accordingly, the Respondent/HPSEBL vide its letter dated 03-05-2024 requested the Petitioner/HPPCL to convey their consent in this regard but the Petitioner/HPPCL has not responded to the same till 11-05-2024. Therefore, the delay in complying with the Commission’s order was deliberate, as the petitioner was fully aware of the relevant directions and procedures. Therefore, the alleged "mutually agreed PPA" submitted before the Hon’ble Commission in Petition No. 48 of 2024 was never formally executed and holds no legal validity in governing the transaction in question. Also averred that until the

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execution of the PPA on 26-12-2024, there was no valid contractual arrangement between the parties which could obligate the Respondent/ HPSEBL to make the payments. It is further submitted that the Petitioners claim of supplying the power and consumption thereof by the Respondent/ HPSEBL is misleading, misconceived and baseless. It is submitted that injecting power into the electricity grid without proper scheduling can disrupt the delicate balance between demand and supply, resulting in frequency deviations and posing a risk to grid stability. Not only this, it also impedes effective congestion management by overloading certain transmission corridors, thereby forcing load dispatch centers to take remedial actions such as curtailment or load shedding. Furthermore, unscheduled injections expose generators or responsible entities to financial liabilities under the Deviation Settlement Mechanism, which imposes penalty rates to discourage such behavior and ensure adherence to schedules. Further submitted that from a market standpoint, unauthorized injections distort price signals, hinder accurate price discovery, and undermine operational planning for the system operator, who relies on forecast-based scheduling to maintain spinning reserves and allocate ancillary services. Consequently, generators injecting power without scheduling often face regulatory repercussions, including possible disconnection and penalties, making it imperative to follow established scheduling protocols for the overall reliability and efficiency of the grid.

53. It is averred that the Petitioner/HPPCL has failed to comply the order dated 12.04.2024 within the stipulated timeframe and even the subsequent extension of 15 days granted by the Commission vide order dated 24.08.2024. However, despite the extension the Petitioner/ HPPCL, instead of signing the PPA in compliance to above said orders, the Petitioner had proposed an alternative proposal vide its letter dated 07-09-2024 for signing an interim short-term PPA for one year, at the tariff approved by Commission in its order dated 12-04-2024 subject to the decision of Review Petition. It is averred that the alternate proposal proposed of the Petitioner/HPPCL was not in line with the orders passed by Commission and the Respondent/HPSEBL vide letter dated 24-09-2024 (Annexure R-1), intimated the Petitioner/HPPCL that the said proposal (alternate proposal) was not in line with the HPERC Order and cannot be honoured/ accepted. However, if they intend to proceed with the PPA in accordance with the Commission order dated 12-04-2024, they should approach the Respondent/HPSEBL for its immediate execution.

54. It is averred that pursuant to directions in order dated 12.04.2024, the Respondent/HPSEBL vide letter No. DIS/549136-38/2024 dated 03-05-2024 requested the Petitioner/HPPCL to convey their consent for executing the PPA and also provided the soft copy of the draft PPA, in line with the aforementioned order of the Commission. However, the Petitioner/HPPCL did not respond to the above communication. Thereafter, on 09-05-2024, Respondent/HPSEBL received a copy of letter issued by the Petitioner/HPPCL addressing the Chairman, HPERC wherein the Petitioner/HPPCL had requested the Commission to grant additional time of two (2) months from 11-05-2024 (i.e. upto 11-07-2024) for processing and finalizing/implementation of the above order dated 12.04.2024. On request of the same, the Respondent/HPSEBL vide letter dated Respondent/HPSEBL/ CE(SO)/PSP- Pekhubella (32MW)/2024-25-911-13 dated 09-05-2024 intimated the Commission that the Respondent/HPSEBL will proceed with further action as may be approved by the Commission. Consequently, Petition No. 109 of 2024 was filed and additional time was granted. Still the PPA was not signed.

55. Further averred that the Commission, vide letter dated 25-09-2024 **(AnnexureR-3)**, also notified the Petitioner/HPPCL that their

decision to enter into a short-term PPA with Respondent/HPSEBL was in complete derogation of its judicial order dated 12-04-2024. In the aforesaid letter, the Commission also informed the Petitioner/HPPCL that their proposal of signing PPA @₹2.90/- per kWh for 25 years subject to the condition of decision of review petition was not in line with the order dated 12-04-2024. Further, the Petitioner/HPPCL vide letter dated 22-10-2024 **(Annexure R-4),** submitted a draft of the signed PPA for the Pekhubella SPP (32 MW) in accordance with the HPERC order dated 12-04-2024. Prior to this, the Petitioner/ HPPCL had not approached the Respondent/ HPSEBL to sign the PPA in compliance with the orders dated 12-04-2024 and 24-08-2024. Upon scrutiny by the HPSEBL, it was observed that several clauses in the PPA approved by Commission in order dated 12-04-2024 have become redundant due to the expiration of the time granted for signing the PPA vide Commission's order dated 24-08-2024. Accordingly, the same was communicated to the Petitioner/HPPCL through the Respondent No. 1/ HPSEBL 's letter dated 26-10-2024 **(Annexure R-5),** along with the amendments required in the PPA clauses.

56. It is denied that the Respondent had refused to execute the PPA and rather, the PPA was delayed due to inaction on part of the

Petitioner. According to the Replying Respondent, the Petitioner/HPPCL in its response dated 08-11-2024 **(Annexure R-6)** had come out with a stand that amending the approved PPA would be unjustified and contrary to the Commission's directions and requested the Respondent/HPSEBL to prepare a joint petition solely for seeking an extension beyond 09-09-2024 for signing the PPA. It is submitted that as a regulated entity, Respondent No. 1/HPSEBL is mandated to seek the Commission's approval for executing any PPA with a power producer. Additionally, Respondent/HPSEBL cannot retrospectively account for energy from the Pekhubella SPP without a valid PPA and that the Respondent/HPSEBL, through its letter dated 19-11-2024 **(Annexure R-7),** shared a draft joint petition with Petitioner/HPPCL, but in vain.

57. It is further submitted that in order to expedite the resolution of the matter, the Respondent/HPSEBL has independently filed a petition before the Commission which, in fact, should have been filed jointly by both parties. According to the Respondent No. 1/ HPSEBL, a Miscellaneous Application 294 of 2024 was filed with the Commission on 02-12-2024 by the Respondent/HPSEBL and heard on 07-12-2024. During the hearing, the Commission enquired whether the

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Petitioner/HPPCL is ready and willing to sign the PPA. While Petitioner/HPPCL expressed their willingness to proceed, it emphasized that the PPA should be based on the draft approved by the Commission in its order dated 12-04-2024, effective from the date of synchronization. Considering these opposing submissions, the matter was adjourned to 16-12-2024.On 16-12-2024, Petitioner/HPPCL requested additional time, citing that Review Petition 110 of 2024 was still pending and that MA 294 of 2024, filed by Respondent/HPSEBL, should be heard alongside their Review Petition 110 of 2024. Further, on 21-11-2024, Petitioner/HPPCL filed an Application for Amendment in Review Petition 110 of 2024, wherein it was prayed as under:-

1. *That the review petition may kindly be allowed.*
2. *The petition for determining for the Pekhubella Solar Power Plant was initially filed with the Hon'ble HPERC. This petition was a result of negotiations between Petitioner/HPPCL and Respondent/HPSEBL, where both parties agreed upon a tariff of Rs. 3.50/- per unit despite this mutual concurrence, HPERC has granted a tariff of Rs. 2.90/- per Unit its final order. As such it is prayed that, HPERC consider its decision and allow the tariff of Rs. 3.50/- per unit alongwith transmission line cost and cost of land, if levied in future by the Govt.*

2a. ***Direct Respondent/HPSEBL to compensate Petitioner/HPPCL for the power consumed from the project for the period from the COD, i.e. 15-04-2024 onwards, at the rate as determined by this Hon'ble Commission, along with interest.***

3. *To condone any delay/error/omission and to give opportunity to modify, rectify the same;*

4. *To pass any other order as the Hon'ble Commission may deem fit and appropriate under the circumstances of the case and in the interest of the justice.*

58. It is averred that the Respondent/HPSEBL submitted that executing the PPA at the tariff of Rs. 2.90/- per unit, as determined by the Commission, aligns with the organization's interest. However, the Petitioner/HPPCL 's request at Point No. (2a) above, to compensate for power consumed since COD (15-04-2024) without a signed PPA is neither justified nor legally permissible. The Commission, issued an order on 16-12-2024 in Application for Amendments in Review Petition 110 of 2024, partially accepted the Petitioner/HPPCL 's amendment application. However, the Commission clarified in the ibid order that Petitioner/HPPCL's ***retrospective justification for power supply without a valid PPA introduces new facts beyond the scope of the original joint petition and cannot be addressed in a review petition.*** Subsequently, on dated 26-12-2024 the Commission issued final order in MA 294 of 2024 wherein both the parties have been directed to execute the PPA within three days positively and permitted the Petitioner/HPPCL to raise dispute regarding the supply of energy without signing the PPA separately after signing the PPA. Further, power injected into the grid before PPA execution cannot be considered

a valid commercial transaction, and the Respondent/HPSEBL has no legal or contractual obligation to make payments for the period from 15-04-2024 to 26-12-2024. The claim for retrospective tariff payment is untenable and liable to be rejected.

59. It is also submitted that the provisions of the Must Run Rules, Indian Electricity Grid Code, and HPERC RE Tariff Regulations do not override the fundamental requirement of a validly executed PPA for commercial transactions. The alleged mutual agreement and the MoM dated 24-01-2024 do not substitute a legally binding contract. Further, the GoHP notification dated 21-09-2023 does not exempt the project from executing a PPA before claiming tariff payments.

60. It is denied that any liability to pay tariff from the date of synchronization in the absence of an executed PPA. The Respondent/ HPSEBL never requested or accepted power supply in the absence of a contractual arrangement and the Respondent/HPSEBL vide emails dated 15-06-2024, 20-07-2024, 22-08-2024, 07-09-2024, 22-10-2024, 08-11-2024 and 04-12-2024 **(Annexure R-8)** have intimated the Petitioner/HPPCL that the Power injected into the grid from their Project has not been scheduled by the Respondent/HPSEBL in the absence of PPA. Further, the HPSLDC vide its Letter dated 25-06-2024 **(Annexure**

R-9) had also intimated the Petitioner/HPPCL regarding the same. Therefore, power injected into the grid before PPA execution is deemed inadvertent and does not establish a payment obligation. The judgments cited by Petitioner/HPPCL pertain to specific factual circumstances and do not apply universally.

61. It is averred that the consumer interest necessitates adherence to due process, preventing unwarranted financial liability on the Respondent/ HPSEBL, therefore, the Petitioner's claim for compensation and interest lacks merit and liable to be rejected.

62. It is submitted that the Project is a 'Must-Run' plant and mandated to supply power from the date of synchronization. However, Respondent/HPSEBL's obligation to procure power was dependent on the execution of a valid Power Purchase Agreement (PPA). The delay in executing the PPA was due to Petitioner/HPPCL's failure to fulfill necessary formalities.

63. As per the Respondent, in accordance with the procedure for executing the PPA, joint petitions are filed before the Commission for approval and tariff determination, after which the agreement is executed between the parties for solar power projects set to be synchronized in the future. The Respondent/HPSEBL had filed the petition for the

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Project with this intention. The project was synchronized with the grid on 15-04-2024, i.e. two days after the issuance of the final order dated 12-04-2024 in the joint petition. However, the Petitioner/HPPCL never approached the Respondent/HPSEBL for the execution of the PPA for this project. Hence, it is reiterated that the Petitioner's request for payment for energy injected into the grid from 15-04-2024 to 26-12-2024 is untenable and cannot be considered in the absence of a valid agreement between the parties.

64. With regard to the case of M/s Sai Engineering Foundation (IPP) Petition No. 77 of 2022 it is submitted that the same is totally different from the present case for the reason that the M/s Sai Engineering Foundation was supplying power to the HPSEBL continuously under the REC mechanism since 19-08-2015 and the power was being totally scheduled under the terms of PPA (REC Mechanism) which had expired on 31-03-2021. Further, the Commission in said case has observed that the IPP was not at fault, as it had approached HPSEBL well within time for the approval of a long-term PPA under the Generic Levelized Tariff with AD benefits through an application dated 13-01-2021. The delay in processing the matter was primarily due to financial evaluations and circumstances beyond the control of both the IPP and

HPSEBL, particularly due to lockdown imposed under Covid-19 pandemic. Consequently, the Joint Petition could not be filed on time, leading to the order taking effect from the filing date of the petition (27-09-2021), despite uninterrupted power supply from 01-04-2021 to 26-09-2021, as both parties were engaged in a short-term PPA before this period. Thus, the delay in filing the petition was unintentional and resulted from unforeseen circumstances. However, in the present case, the delay in executing the PPA for Pekhubella SPP (32MWac) is entirely attributable to the Petitioner/HPPCL. Therefore, the petitioner cannot claim parity with the aforementioned case.

65. It is also submitted that the HPSEBL has never refused to execute the PPA and that the HPSEBL was willing to finalize the agreement in compliance with the Commission’s order dated 12-04-2024 and 24-08-2024. Therefore, Petitioner/HPPCL’s reliance on the MoM dated 29-06-2022 to claim payment obligations is unfounded and should be rejected.

REPLY OF RESPONDENT NO. 2

66. The Himachal Pradesh State Load Despatch Centre in its reply has submitted that the present Petition is not maintainable against the Replying Respondent and that the Replying Respondent has been

dragged into the unwarranted litigation. As such, the petition deserves to be dismissed with heavy costs qua for the Replying Respondent.

67. It is averred that the HPPCL, through its E-mail dated: 30.08.2024 (enclosed as Annexure: R- 2/1), had requested HPSLDC for verification of energy injected in the 132 kV Grid wef 15.04 2024 to 11.06 2024 by the 32 MWac Solar Power Plant of HPPCL at Pekhubella in Distt. Una (HP) on the basis of energy data supplied by the HPPCL as an attachment to the above referred E-mail towards the gross generation data recorded in the special energy meter (ie CMRI data) of Secure make ABT Energy meters installed at 33 KV outgoing Transformer Panel (till 24.08.2024), and the net generation data (ie. CMRI data) of ABT meters installed at 132 KV Line 1 (Pekhubela- Rakkar) and 132KV Line 2 (Pekhubela-Talhiwal).

68. Further, the HPSLDC vide letter No HPLDA/SLDC/DSM/ Regulation-18 (Vol.23)/2024-25-4920-22, dated: 02.09.2024, had replied to the above referred E-mail of HPPCL that as per Clause No. 4.2 (Metering) and clause No. 4.3 (Energy Accounting) of the draft PPA jointly signed by the HPPCL and HPSEBL, the verification of the energy generated by the 32 MWac Pekhubella SPP is to be carried out by the authorized representative(s) of the HPSEBL and HPPCL jointly on the

basis of monthly joint meter reading (JMR) reports. Further, as per clause No. 4.3.1 of the said PPA, if the representative of the HPSEBL not attend to the verifications and certification of the statement, the certificate of HPPCL alone shall be considered sufficient for release of the payment in the interim. A copy of the letter No. 4920-22, dated 02.09.2024 has been annexed as Annexure R-2/2.

69. It is submitted that the provision for automatic transmission of data of energy meters installed at Pekhubella Solar Power Plant to the Central Collection System (CDCS) of the HPSLDC at Totu, Shimla has not been made by the HPPCL till date. As such, the energy generated by the said plant and injected into the Grid cannot be verified/ ascertained by the Replying Respondent.

SUBMISSIONS OF THE PARTIES

70. Sh. Pratyush Singh, Ld. Counsel for the Petitioner has submitted that the Project has been synchronized with the HPSEBL's grid on 15.04.2024 in terms of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 and since then the energy from the Project has continuously been supplied to the Respondent No. 1 without any

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objection till 26.12.2024 but still the payment of the energy supplied has not been made despite requests. According to him, there were no reasons for the HPSEBL to withheld or deny the payment without any justification. According to him, though the PPA has been signed after a gap of few months from the date of synchronization yet the Petitioner and the Respondent No. 1 had mutually agreed for sale and purchase of power from the Project in a meeting held on 24.01.2024 and on account of said mutual understanding, the Project was synchronized with the HPSEBL grid on 15.04.2024 and, therefore, mere non-execution of PPA does not empower the Respondent No. 1 to deny the payment of the energy which has been utilized by the Respondent No. 1/ Distribution Licensee for meeting its demand. He has also submitted that the power injected into the HPSEBL grid after synchronization of the Project is a firm power and the Respondent No. 1, being a Distribution Licensee is liable to pay for such power from the date of synchronization as held by Hon'ble Supreme Court in Civil Appeal No. 5700 of 2014 dated 16.12.2015 titled Tamil Nadu Generation and Distribution Corporation Limited v. Penna Electricity Limited wherein it was observed that even in the absence of the approved PPA, the Distribution Company is liable to pay the tariff from the date of

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synchronization especially when Regulations provide that the date of synchronization is COD of the Project and the date of synchronization has been duly certified by the Distribution Company. He also submitted that the HPSEBL is mandated to pay for the power supplied by the Petitioner to it in terms of Section 70 of the Indian Contract Act, as the Respondent No. 1 has enjoyed the benefits of non gratuitous act done by the Petitioner and thereby the Respondent No. 1 is bound to compensate/ restitute the Petitioner for the same. He has relied upon the law laid down by the judgement rendered by the Hon'ble APTEL dated 24.01.2013 in Appeal No. 170 of 2012 titled Bangalore Electricity Supply Company Limited v. Reliance Infrastructure Limited and Ors., Hon'ble APTEL Judgment dated 04.07.2025 in Appeal No. 192 of 2020 titled Power Company of Karnataka Limited and Ors. v. Athani Sugars Limited and Anr.

71. Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 1 has submitted that the obligation of the Respondent No. 1 to procure the power and make payment arises only upon execution of a valid PPA and since there was no valid PPA between the Petitioner and the Respondent No. 1 for procuring the power from the Project w.e.f. 15.04.2024 to 26.12.2024, the HPSEBL is not liable to

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make the payment for such unscheduled power. According to him, the MoM dated 24.01.2024, as relied upon by the Petitioner do not amount to a concluded contract or create any binding obligation to make the payment of the power. He has also submitted that the Commission vide order dated 12.04.2024 in Petition No. 48 of 2024 had granted a period of only 30 days for the execution of the PPA and though, the Petitioner has synchronized the Project on 15.04.2024 yet the Petitioner has failed to execute the PPA within the stipulated time period despite requests and even after seeking extension and the delay is clearly attributable to the Petitioner. According to him, the HPSEBL was in a state of uncertainty whether or not the Petitioner was willing to execute the PPA, as the Petitioner appeared to be dissatisfied with the tariff of Rs. 2.90 per kWh, as allowed by the Commission in respect of the Project. He has also submitted that without signing the PPA, the Petitioner has unilaterally commenced the injection of power into the grid w.e.f. 15.04.2024 without any formal consent form the HPSEBL which was unlawful and prejudicial to the grid discipline and, therefore, such power cannot be regularized in the absence of the PPA which was executed only on 26.12.2024. He has also submitted that the ratio of law relied upon by the Petitioner is not applicable to the facts and circumstances of the present case. He has also submitted that the acceptance of the request of the Petitioner would be against the sanctity of the PPA and timelines fixed by the Commission and would encourage other generators to inject the power without the PPA and later seek retrospective tariff.

72. Sh. Surinder Saklani, Ld. Counsel for the Respondent No. 2 on the other hand has submitted that no relief has been claimed against the Respondent No. 2 and, thus, the Petition is liable to be dismissed qua the Respondent No. 2. It is also submitted that the Project is not registered with the HPSLDC and is not eligible for any open access as per the prevailing HPERC Regulations and no scheduling of the power from the Project was being made by the HPSLDC.

POINTS FOR DETERMINATION

73. We have carefully gone through the submissions of the parties including the written submissions submitted on behalf of the Petitioner and the Respondent No. 1 and perused the entire record carefully. On the basis of pleadings and record, the following points arise for determination in the present Petition:

Point No. 1: Whether the Project of the Petitioner was synchronized with the HPSEBL's grid on 15.04.2024 without objection or disconnection?

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<u>Point No. 2</u>: Whether the power generated from the Project w.e.f. 15.04.2024 till 26.12.2024 was neither sold under open access nor scheduled by the State Load Despatch Centre (SLDC) and was actually utilized by the HPSEBL/ Respondent No. 1 for meeting its demand and the Respondent No. 1/ HPSEBL is liable to make payment of such power/ energy alongwith interest on compounding basis?

<u>Point No. 3</u>: **Final Order**

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

Point No. 1: Yes.

Point No. 2: Partly Yes.

<u>Point No. 3:</u> (Final Order) The Petition partly allowed per operative part of the Order.

<u>REASONS FOR FINDINGS</u>

<u>Points No. 1 and 2</u>

75. Being interlinked and interconnected, Points No. 1 and 2 are taken up together for adjudication.

76. Before we advert to the merits of the case, it is relevant to mention that though the Petitioner and the Respondent No. 1 in a meeting held on 24.01.2024 had agreed for sale and purchase of power from the Project at a minimum tariff of Rs. 3.50 per kWh but the

Commission vide detailed order dated 12.04.2024 in Petition No. 48 of 2024 has allowed a tariff of Rs. 2.90 per kWh only and directed the parties to sign the PPA within 30 days failing which the permission shall be deemed to have been denied. Para 19 of order dated 12.04.2024 in Petition No. 48 of 2024 is reproduced as under:-

> *"19. The Joint Petitioner No. 1 is in dire need of power procurement. Since a Joint Petition has been filed that the procurement shall be on the rate approved by the Commission, the Petitioners have made out a case for the approval of PPA. In the circumstances, the PPA is ordered to be approved on the aforesaid rate of Rs. 2.90 per unit. In case said rate is acceptable to the Joint Petitioners, the PPA may be signed on said rate within 15 days. In any case, said rate is not acceptable, the Joint Petitioner No. 2 shall be open to sell the same in open market through power exchanges. The decision of signing the PPA be taken within 30 days, failing which, the permission shall be deemed to have been denied."*

77. However, to the utter surprise and dismay of the Commission the PPA was not signed as directed. Though, the Petitioner has claimed that the PPA could not be signed due to the conduct of the Respondent No. 1/ HPSEBL but a careful perusal of the record reveals that the Petitioner was dissatisfied with the tariff of Rs. 2.90 per kWh and even requested the HPSEBL to enter into an interim Short Term PPA for one year which request was not acceded to by the Respondent No. 1, obviously for the reasons that no procurement of power is permissible by the HPSEBL, a Distribution Licensee, without the approval of the Commission.

78. Still surprising, despite seeking exemption for execution of the PPA, which was allowed vide order dated 24.08.2024 in Petition No. 109 of 2024, the PPA was not signed by the Petitioner within the stipulated period with the HPSEBL/ Respondent No. 1. Ultimately, an application was filed by the Respondent No. 1 on 02.12.2024 before the Commission seeking further direction of the Commission for the execution of PPA as both the Petitioner and the Respondent No. 1 are the instrumentalities of the State of H.P. and pursuant to order dated 26.12.2024 in MA No. 294 of 2024, the PPA was executed on 26.12.2024.

79. Being a generating company, the HPPCL/ Petitioner was required to maintain a financial discipline. The record suggests that the Commission vide order dated 12.04.2024 in Petition No. 48 of 2024 directed the parties to execute the PPA in respect of the Project @ Rs. 2.90 per kWh. However, ignoring the directions of the Commission, the PPA was not executed and rather, the Project was synchronized with the grid on 15.04.2024 as evident form letter dated 16.04.2024. The Petitioner has tried to shift the onus on the Respondent No. 1 for not signing the PPA, as directed by the Commission vide order dated 12.04.2024 in Petition No. 48 of 2024 but said stand of the Petitioner is

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contrary to the record which suggest that the Petitioner was not satisfied with the approved tariff of Rs. 2.90 per kWh and rather insisted for mutually agreed tariff of Rs. 3.50 per kwh, which was not allowed/ approved by the Commission. The Petitioner also filed a Review Petition No. 110 of 2024 after order dated 12.04.2024 in Petition No. 48 of 2024 which was disallowed vide order dated 17.03.2025. In fact, there is nothing on record suggesting that the HPSEBL ever refused to honour the order of the Commission dated 12.04.2024 at any juncture. Hence, such contention of the Petitioner is without any basis. So much so, the record suggests that even after the extension sought by the Petitioner for executing the PPA, the PPA was not executed and rather, the HPPCL/ Petitioner vide letters dated 07.09.2024 (Annexure P-22), 16.09.2024 (Annexure P-25) and 24.09.2024 (Annexure P-25) asked the HPSEBL to sign the interim Short Term PPA for one year, pending outcome of the Review Petition. However, the HPSEBL vide letter dated 24.09.2024 (Annexure R-1) refused to execute the PPA mentioning that the same will not be in line with the order of the Commission, but the Long Term PPA as approved by the Commission may be executed. Therefore, the contention of the Petitioner that the draft signed PPA, as submitted with the Petition No. 48 of 2024 is to be construed as legal and valid document is untenable for the reason that the Petitioner had disobeyed the orders of the Commission with impunity and the PPA was signed only after a Miscellaneous Application No. 294 of 2024 was filed by the HPSEBL and allowed by the Commission on 26.12.2024. Certainly, the Petitioner was not expected to request the HPSEBL to sign the Short Term PPA despite order dated 12.04.2024 which clearly suggests that the Petitioner had no sanctity for the order passed by the Commission for the reasons best known to it.

80. Undisputedly, the Project has been synchronized with the HPSEBL's Grid on 15.04.2024, as evident from letter dated 16.04.2024 (Annexure P-9) that in view of successful commissioning of the Project, the same is recommended for trial run w.e.f. 15.04.2024 and for subsequent commercial operation after successful completion of 15 days of trial run. It has not been disputed by the HPSEBL that the trial run was not successful or that the Project has not achieved commercial operation. Further, there is nothing on record to show that the HPSEBL has raised an objection for not synchronizing the Project or discontinued the injection at any time. Hence, it is established on record that the Project was synchronized by the HPSEBL with its grid on 15.04.2024.

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81. As per the Petitioner, the Project is a Must Run Power Plant in terms of Rule 3(1) of the Must Run Rules, 2021, Regulations 5.2(u) and 6.5(11) of the Indian Electricity Grid Code, 2010 and Regulation 49(1)(f) (3) of the Indian Electricity Grid Code, 2023 and hence, the HPPCL was mandated to generate power from the date of synchronization. Further, Regulation 8(2) and 13(5) of HPERC RE Tariff Regulations 2017 provide for filing of a Joint Petition for the approval of the mutually agreed PPA between the parties and that the HPSEBL and HPPCL had mutually agreed the terms and conditions of the PPA and filed it before Hon'ble HPERC for its approval and the PPA was approved vide Order dated 12.04.2024. Also, the mutually agreed and approved PPA provides for commencement of power supply from synchronization of the Project which was binding on both the parties read with MoM dated 24.01.2024, whereby the HPSEBL agreed to purchase entire power generated from the HPPCL's 32 MW Pekhubella Solar Project and thus, the Project was synchronized with the grid. Though, it has been projected by the Petitioner that the HPSEBL unilaterally sought to introduce amendments to the PPA, as approved by the Commission and, as a result, neither the PPA was executed till 26.12.2024 nor the HPSEBL has made the payment for the power supplied by the HPPCL.

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However, the record suggests that it is the Petitioner which has not executed the PPA and, therefore, the draft PPA as submitted with Petition No. 48 of 2024 was certainly required to be modified with respect to the date and the clauses which had become redundant with lapse of time etc. Hence, the request of the HPSEBL in this regard was justified.

82. It has been claimed in the Petition that the HPSEBL having utilized the power from the Project from the date of its synchronization is liable to pay the charges to the Petitioner and the refusal on the part of the HPSEBL is without any basis. The record shows that the Petitioner vide email dated 30.08.2024 (enclosed as Annexure: R- 2/1), had requested the HPSLDC/ Respondent No. 2 for verification of the energy injected in the 132 kV Grid wef 15.04 2024 to 11.06 2024 by the 32 MWac Solar Power Plant of HPPCL at Pekhubella in Distt. Una (HP) on the basis of energy data supplied by the HPPCL as an attachment to the above referred E-mail towards the gross generation data recorded in the special energy meter (i.e. CMRI data) of Secure make ABT Energy meters installed at 33 KV outgoing Transformer Panel and the net generation data (i.e. CMRI data) of ABT meters installed at 132 KV Line 1 (Pekhubela- Rakkar) and 132KV Line 2 (Pekhubela-Talhiwal).

Further, the HPSLDC vide letter No HPLDA/SLDC/DSM/ Regulation-18 (Vol.23)/2024-25-4920-22, dated 02.09.2024 (Annexure R-2/2), had replied to the above referred E-mail of HPPCL that as per Clause No. 4.2 (Metering) and Clause No. 4.3 (Energy Accounting) of the draft PPA jointly signed by the HPPCL and HPSEBL, the verification of the energy generated by the 32 MWac Pekhubella SPP is to be carried out by the authorized representative(s) of the HPSEBL and HPPCL jointly on the basis of monthly joint meter reading (JMR) reports. Further, as per Clause No. 4.3.1 of the PPA, if the representative of the HPSEBL do not attend to the verifications and certification of the statement, the certificate of HPPCL alone shall be considered sufficient for release of the payment in the interim. A careful perusal of Clause 4.3.1 of the PPA dated 26.12.2024 shows that on the failure of the authorised representative of the HPSEBL to attend the verification and certification of statement, the certificate of the HPPCL shall alone be considered sufficient for release of payment since the HPSEBL's representative has failed to attend the verification of joint meter reading and certification, there are no reasons to dispute or deny the meter reading (Annexure P-15 Colly) or the bills (Annexure P-37).

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83. As per the Petitioner, it has been issuing the day ahead schedules to HPSEBL from 15.04.2024 onwards with respect to supply of power, however, the HP-ALDC from time to time has written to the HPPCL for not scheduling the power in the absence of PPA. However, as observed above, the Respondent No. 1/ HPSEBL has neither placed any material on record nor produced any documentary evidence to demonstrate that at any point in time, the Petitioner's plant was disconnected from the grid or that any objection was raised with respect to such grid connectivity. The continued physical connectivity of a generating station with the distribution licensee's grid, without objection, disconnection, or regulatory intervention, is a clear indicator that power was being injected into the HPSEBL's grid without any interruption. It is also undisputed that connectivity was under the operational control of the Distribution Licensee/ HPSEBL. Hence, in the absence of any contemporaneous objection or disconnection by the HPSEBL, the injection of power by the Petitioner into the HPSEBL grid stood impliedly accepted by the Distribution Licensee/ Respondent No. 1.

84. The HPSEBL in its detailed reply has claimed that the power procurement by it can take place only through a legally binding contract and in the absence of the duly executed PPA, the power could not have

been scheduled. Further, in the absence of scheduling, no procurement of power has taken place and thus, the HPSEBL is not liable to make the payment of unscheduled energy. According to the HPSEBL, the Respondent No. 2/SLDC plays a statutory role in the scheduling and dispatch of electricity under Section 32 of the Electricity Act, 2003. It is further mentioned by the HPSEBL in its reply that the Respondent No.2/ SLDC is responsible for ensuring that power scheduling occurs in accordance with the contracts between generators and licensees for carrying out real time operations for grid control and despatch of electricity within the state through secure and economic operation of the State grid. Further, the HPSLDC keeps accounts of the quantity of electricity transmitted through the State grid. According to the HPSEBL, in the present case, the Respondent/ HPSEBL has never requested for scheduling of power from the Petitioner/ HPPCL prior to the execution of the PPA and thus, the unilateral injection of power by the Petitioner/ HPPCL, if any, was without the consent or authorization of the Respondent/ HPSEBL and, as such, the claim for payment of energy injected lacks legal foundation.

85. Thus, the HPSEBL has tried to project that in the absence of scheduling, any injected power is treated as unscheduled interchange

under the Deviation Settlement Mechanism (DSM) which is designed to address power injections which occur outside the contractual framework. The HPSEBL has further claimed that the Petitioner/HPPCL having injected power into the grid before the execution of the PPA, the remedy, if any, lies under the DSM mechanism and not in claiming retrospective payment of tariff for the energy supplied from 15-04-2024 to 26-12-2024 against the Respondent/HPSEBL.

86. However, the aforesaid contention of the HPSEBL is without any basis. It is admitted case that the power has not been scheduled by the HPSLDC/ Respondent No. 2. Here, it is relevant to refer to Regulation 6.3 A(a) and (b) of the Himachal Pradesh Electricity Regulatory Commission Grid Code, 2008 (HPERC Grid Code, 2008 for short) which reads as under:-

> *"6.3 A Definitions (a) "State Entity" means such person who is in the SLDC control area and whose metering and energy accounting is done at the state level. Explanation:- The sellers selling power to a person forming State Entity, including distribution licensee, on regular basis shall not be considered as separate State Entity in relation to such sale of power under regular arrangement and the availability of power from the such sources shall be accounted for by the State Entity purchasing such power for all intents and purposes. However, in case only a part of the total energy sales by a seller is being sold under regular arrangement and balance part is sold to any other person, not forming a State Entity of the State, such seller shall be considered as a separate State Entity in relation to sale of such balance portion. Accordingly the generating stations selling the entire saleable energy to the distribution licensee shall not be treated as State Entities for the purpose of scheduling and despatching etc.*

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(b) "State Sector Generating Stations (SSGS)" means generating stations connected with the State Power Grid. However, for the purpose of scheduling / dispatching such generating stations as are selling entire saleable energy to the distribution licensee and are not considered as separate State Entities, shall not be considered as SSGS. Such generating stations shall submit their projections/estimates and other online and offline data as may be required by ALDC so as to enable the ALDC to prepare consolidated schedule of the distribution licensee and also to keep SLDC updated on the information relating to the distribution licensee, including such generating stations."

87. Apparently, in order to supply the power to third party through open access being Intra State Power Project, schedule is required to be submitted to the HPSLDC. However, as evident from the record, neither the Petitioner was registered as separate entity with the HPSLDC nor open access was allowed nor scheduling was being done through the HPSLDC which conclusively establishes that the power generated by the Petitioner was not injected into the grid for any third-party sale or any other external transaction and rather, the same has been utilized by the HPSEBL for meeting its requirement as Distribution Licensee. As evident from Regulation 6.3A(a) and (b), of the HPERC Grid Code, 2008 (as amended), a State Entity is defined as any person in the HPSLDC control area whose metering and energy accounting is done at the state level. The explanation to Regulation 6.3 A(a) specifically carves out an exception that sellers selling the entire saleable energy to the distribution licensee shall not be treated as separate State Entities

for the purpose of scheduling and despatch, and the availability of power from such sources shall be accounted for by the State Entity purchasing such power for all intents and purposes. Therefore, the power generated from the Project is squarely covered under Regulation 6.3 (A) (b) of the HPERC Grid Code, 2008, as amended from time to time. Hence, the plea of the HPSEBL is not tenable for the reasons that it has not scheduled the power from the Project, as the project was operating like other embedded generators for which HPSEBL do not draw up separate schedules.

88. Though, the HPSEBL on the one hand has denied that it has not scheduled the power from the Project yet on the other hand it has not been disputed by the HPSEBL that it has not utilized the power supplied from the Project. The simple contention of the HPSEBL is that it is not liable to make the payment for power injected into the grid without PPA and any power injected in the absence of the PPA cannot be considered a commercial transaction which is also contrary to the regulatory provisions.

89. In fact, in order to deny the claim, the Respondent No. 1/ HPSEBL was required to provide sufficient documentary evidence on record that the Project was not synchronized to the grid and the power has not

flowed to its grid w.e.f. 15.02.2024 and was not being utilized by it. The entire reply in this regard is silent. Once, the Project has been successfully synchronized with the grid as evident from letter dated 16.04.2024 (Annexure P-9). certainly the power is flowing to the system of the HPSEBL and is being utilized by it and merely because no scheduling has been made or PPA was not signed, the HPSEBL cannot deny the genuine payment to the HPPCL. In this regard, reliance may be placed in judgment of the Hon'ble APTEL dated 24.01.2013 in Civil Appeal No. 170 of 2012 titled Bangalore Electricity Supply Company Limited v. Reliance Infrastructure Limited and Ors. Paras 9, 19 and 23 are reproduced as under:-

> *"9. In the context of these rival contentions, the following question would arise for consideration:*
>
> > ***"Whether RInfra who had injected the power from its Wind Energy Generator into the Grid which had been consumed by the Appellant without having any valid PPA or Wheeling and Banking Agreement during the said period in the light of the present facts of the case, is entitled for any compensation from the Appellant?***
>
> *19. Now the question is whether the RInfra would be entitled to get that amount in the light of the admitted facts even though during that period there was no schedule or there was no agreement between the parties.*
>
> *23. It is an admitted fact that the Appellant has enjoyed the benefit of energy that has gone into the system and which could not be regulated. It is also an admitted fact that the Appellant has derived benefit from the same and recovered tariff in respect of the same. Therefore, the claim of the RInfra for the required charges for the power injected into the Grid cannot be said to be illegal."*

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90. It has also been held by the Hon'ble Supreme Court in judgment dated 16.12.2025 in Civil Appeal No. 5700 of 2014 titled Tamil Nadu Generation and Distribution Corporation Limited v. M/s Penna Electricity Limited that the COD of a project should be the date on which the plant is synchronized with the grid and the Distribution Company shall be liable to pay the tariff for such power generated from the date of synchronization.

91. In the circumstances, after the synchronization, the power flowing to the system of the Distribution Licensee/ HPSEBL is to be considered as firm power and even if the PPA has been delayed for want of appropriate decision at right time by both the Petitioner and the Respondent No. 1, being instrumentalities of the State of H.P., the power which has flowed to its system has been utilized by the HPSEBL for meeting its requirement and having enjoyed the benefit of the energy injected into the system, the HPSEBL cannot say at this stage that in the absence of the PPA, the Petitioner is not entitled for the payment of tariff of the same. Otherwise also, Section 70 of the Indian Contract Act provides that the party who has enjoyed the benefit of the non-gratuitous act of the other party is bound to compensate/ restitute

the party which has done this act. Thus, the HPSEBL is liable to pay for the energy which has been received by it from the Project.

92. Now the question arises as to what should be the rate of the power as injected by the Petitioner into the HPSEBL's grid. It is evident from the record, as annexed with the Petition that the Project has injected continuous power w.e.f. from 15.04.2024 to 26.12.2024 into HPSEBL's grid. There was no objection for the connectivity or injection from the HPSEBL. The injection of power from the Project has met the demand of the HPSEBL as the energy was accounted for alongwith HPSEBL schedule in line with other embedded grid connected generators for which no specific schedule is drawn in terms of Regulation 6.3A (a) and (b) of the HPERC Grid Code, 2008 (as amended). Therefore, the Petitioner cannot be denied the payment of electricity supplied by it to the DISCOM/ HPSEBL, which was further sold by the HPSEBL to the consumers and has already recovered the cost thereof. Therefore, it can be safely concluded that power injection from Project was firm power and needs to be treated accordingly and merely on the basis of non-signing of PPA, the rightful dues of the Petitioner cannot be denied especially when neither connectivity nor power injection has been objected to or denied by the Respondent No.

1. In this regard, the Commission has allowed tariff of Rs. 2.90 per kWh pursuant to order dated 12.04.2024 in Petition No. 48 of 2024 in respect of the Project. In the circumstances, it would be in the interest of the consumers and the parties that the power from 15.04.2024 to 26.12.2024 to the Respondent No. 1 which has been utilized by the Respondent No. 1/ HPSEBL shall be treated to be supplied @ Rs. 2.90 per kWh. The HPSEBL shall accordingly make the payment of the energy supplied to it from the Project within a period of 03 (three) months from the date of the order.

93. The Petitioner has also claimed interest on compounding basis on the amount due. However, as observed above, the Petitioner has not adhered to the financial and regulatory discipline and even tried to persuade the HPSEBL for signing the Short Term PPA, contrary to the direction of the Commission. Had the PPA been signed as directed by the Commission vide order dated 12.04.2024 in Petition No. 48 of 2024, such innocuous situation would not have arisen. In the circumstances, it would not be in the interest of justice and fair play to award any interest on the amount due as claimed by the Petitioner.

94. In view of the above, Points No. 1 is decided in favour of the Petitioner. Point No. 2, however, is decided partly in favour of the Petitioner and partly against it.

FINAL ORDER

95. In view of the aforesaid discussion and findings, the Petition succeeds and allowed in part. The Respondent No. 1/ HPSEBL is directed to make the payment of the energy supplied by the Petitioner from its Project to the HPSEBL w.e.f. 15.04.2024 to 26.12.2024 within a period of 03 (three) months from the date of the order on verification of the bills submitted by the Petitioner. However, no interest as claimed shall be payable to the Petitioner on said amount.

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

The file after needful be consigned to records.

Announced
07.02.2026

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

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