

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

CORAM:

**YASHWANT SINGH CHOGAL
MEMBER (Law)-cum- CHAIRMAN.**

**SHASHI KANT JOSHI
MEMBER.**

In the matter of:-

Petition No.: 219 of 2025
Instituted on: 10.07.2025
Heard on: 10.03.2026
Decided on: 30.03.2026

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

.....**Petitioner**

Versus

M/s Swadeshi Distributors LLP,
One 1st Floor Building, Village Guganh,
Tehsil and Distt. Chamba, H.P-176314.

.....**Respondent**

**Review Petition under Regulation 70 of the HPERC (Conduct of
Business) Regulations, 2024 read with Section 94 (1) (f) of the
Electricity Act, 2003 for review of order dated 26.12.2024 in Petition No.
36 of 2023.**

Present:-

Sh. Kamlesh Saklani, Authorised Representative for the
Petitioner.

Ms. Sneha Bhimta, Ld. Counsel for the Respondent.

ALONGWITH

Petition No.: 220 of 2025
Instituted on: 30.08.2025
Heard on: 10.03.2026
Decided on: 30.03.2026

M/s Swadeshi Distributors LLP,
One 1st Floor Building, Village Guganh,
Tehsil and Distt. Chamba, H.P-176314.

.....**Petitioner**

Versus

The Directorate of Energy,
Government of Himachal Pradesh through its,
Director,
Shanti Bhawan, Sector-6, Phase-III,
New Shimla, Shimla, H.P.-171009.

.....**Respondent No. 1**

The Ministry of New and Renewable Energy,
(Small Hydro Power Division),
Government of India, Block No. 14,
CGO Complex, Lodhi Road,
New Delhi-110003.

.....**Respondent No. 2**

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

.....**Respondent No. 3**

Review Petition under Regulation 70 of the HPERC (Conduct of Business) Regulations, 2024 read with Section 94 (1) (f) of the Electricity Act, 2003 for review of order dated 26.12.2024 in Petition No. 36 of 2023.

Present:-

Ms. Sneha Bhimta, Ld. Counsel for the Petitioner.
Sh. Arvind Kumar, Legal Consultant for the Respondent No. 1.
Sh. Rajinder Thakur, Ld. Counsel for the Respondent No. 2.
Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 3.

ORDER

In the aforesaid two Review Petitions, review of order dated 26.12.2024 passed by the Commission in Petition No. 36 of 2023 has

been sought. Since, a common issue of the applicability of date of tariff is involved in both the Review Petitions, both the Review Petitions are being taken up together for adjudication and disposal by way of this order.

Review Petition No. 219 of 2025

2. This Review Petition has been filed by the Himachal Pradesh State Electricity Board Limited (HPSEBL for short) for review of order dated 26.12.2024 in Petition No. 36 of 2023 titled Swadeshi Distributors LLP versus the Directorate of Energy and others that the Petitioner/ HPSEBL is aggrieved by a clerical error as the Commission while revising the tariff of Salun Hydro Electric Project (9.0 MW) situated at Salun Khad, a tributary of Ravi river in District Chamba (Project for short) from Rs. 3.82 per kWh to Rs. 3.93 per kWh has made the tariff applicable from the Scheduled Commercial Operation Date (SCOD for short) which is 28.01.2020 instead of the date of long term PPA dated 01.10.2020.

3. It is averred that the Commission has erred in making the revised tariff applicable from 28.01.2020 i.e. the date of SCOD whereas, the Long Term Power Purchase Agreement (PPA for short) was executed between the parties on 01.12.2020 w.e.f. 01.10.2020 (Annexure P-2).

4. It is also averred that during the period of synchronization of the Project w.e.f. 18.11.2019 till 30.09.2020, the power of the Project was procured by the HPSEBL under a Short-term PPA dated 16.11.2019 executed under the Renewable Energy Certificate (REC) mechanism at Average Power Purchase Cost (APPC rate) which was not subject to any adjustment towards subsidy or incentives. Since the Long-term PPA under the generic levelled tariff was executed on 01.12.2020 with retrospective effect from 01.10.2020 and since the revised tariff of Rs. 3.93 per kWh has been determined after adjusting the admissible industrial subsidy, the same ought to have been allowed from 01.10.2020, being the effective date of PPA.

5. It is also averred that the Commission vide order dated 28.09.2022 in Petition No. 3 of 2022 determined the tariff of Rs. 3.82 per kWh after considering the admissible subsidies i.e. the industrial subsidy and MNRE subsidy but the date of applicability of tariff was not implemented from SCOD.

6. According to the HPSEBL, the Hon'ble Appellate Tribunal for Electricity (APTEL for short) vide order dated 13.08.2024 in Appeal No. 765 of 2023 had remanded the matter to the Commission for reconsideration of issue of deemed MNRE subsidy but no direction was

issued to revise the tariff applicability date to SCOD and, therefore, the applicability of revised tariff from 28.01.2020 amounts to a substantive modification without basis in the pleadings or prior conduct of the parties.

7. Thus, a limited review has been sought for modifying the date of the revised tariff of Rs. 3.93 per kWh from 28.01.2020 to 01.10.2020.

REPLY OF THE RESPONDENT

8. The Petition has been resisted by the Respondent/ M/s Swadeshi Distributors LLP by filing reply that the Commission vide order dated 26.12.2024 in Petition No. 36 of 2023 has allowed the tariff of Rs. 3.93 per kWh but said tariff has been inadvertently made applicable from the SCOD of the Project w.e.f. 13.12.2019 and accordingly, the Respondent/ M/s Swadeshi Distributors LLP has also sought review by filing another Petition No. 220 of 2025 assailing the order dated 26.12.2024 that the tariff should have been made applicable from the date of passing of order dated 26.12.2024.

9. According to M/s Swadeshi Distributors LLP, the Commission has erred in making the tariff applicable from the date of SCOD but the tariff of Rs. 3.93 per kWh should have been allowed from the date of passing

of the order dated 26.12.2024 in Petition No. 36 of 2023 and not from the date of SCOD or 01.10.2020, as alleged by the Petitioner/ HPSEBL.

10. As per M/s Swadeshi Distributors LLP, the Project achieved commercial operation on 13.12.2019, much before the scheduled commissioning. However, it is not disputed that the Long-term PPA was not entered between the parties on 01.12.2020 w.e.f. 01.10.2020.

11. Further, a Joint Petition No. 72 of 2020 was filed by the Petitioner and the Respondent before the Commission for executing the Long-term PPA which was allowed by the Commission on 14.07.2021 allowing provisional tariff of Rs. 4.04 per kWh, subject to adjustment of financial assistance/ subsidy as per the applicable Renewable Energy Regulations and accordingly, the Supplementary Power Purchase Agreement (SPPA for short) was signed between the parties on 03.09.2021.

12. According to M/s Swadeshi Distributors LLP, due to inadvertence, the tariff of Rs. 3.93 per kWh has been made effective from the date of SCOD of the Project which is an error apparent on the face of record as tariff of Rs. 4.04 per kWh was allowed in Petition No. 72 of 2020 which was modified in Petition No. 03 of 2022 vide order dated 28.09.2022, whereby tariff a reduced to Rs. 3.82 per kWh was allowed after

adjusting the industrial subsidy of Rs. 5 Crores received from the Ministry of Commerce and Industry and also by taking into account the admissible MNRE subsidy and that the final order would be passed after acceptance or rejection of the MNRE subsidy.

13. It is averred that M/s Swadeshi Distributors LLP further filed Petition No. 36 of 2023 for allowing tariff of Rs. 3.93 per kWh but said Petition was disposed off vide order dated 26.07.2023, amended on 03.08.2023 rejecting the claim of M/s Swadeshi Distributors LLP for grant of tariff of Rs. 3.93 per kWh.

14. As per the Respondent/ M/s Swadeshi Distributors LLP, the order dated 26.07.2023 in Petition No. 36 of 2023, amended on 03.08.2023, was assailed before the Hon'ble APTEL in Appeal No. 765 of 2023 which was allowed vide order dated 13.08.2024, setting aside order dated 03.08.2023 (26.07.2023) remanding the matter back to the Commission. Meanwhile, the MNRE vide letter dated 25.10.2023 rejected the case of the Respondent that there was no subsidy scheme available for the Small Hydro Projects. Thus, the Commission vide order dated 26.12.2024 in Petition No. 36 of 2023 allowed final tariff of Rs. 3.93 per kWh.

15. It is averred that the 2nd SPPA was conditionally approved by the Commission on 28.09.2022 and thereafter tariff @ Rs. 3.93 per kWh, as determined vide order dated 26.12.2024, is to be made applicable prospectively from said date i.e. 26.12.2024 and not retrospectively from 13.12.2019 or 01.10.2020.

REJOINDER

16. In rejoinder, in Petition No. 219 of 2025, the contents of the reply have been denied and those of the Petition have been reaffirmed.

Review Petition No. 220 of 2025

17. This Review Petition has also been filed seeking review of order dated 26.12.2024 in Petition No. 36 of 2023 that in a Joint Petition No. 72 of 2020, the Commission vide order dated 14.07.2021 allowed tariff of Rs. 4.04 per kWh subject to adjustment of financial assistance/ subsidy and SPPA was accordingly signed on 03.09.2021 between the Petitioner and the HPSEBL (Respondent No. 3).

18. According to the Petitioner/ M/s Swadeshi Distributors LLP, Regulation 22-B of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 (RE Regulations, 2017 for short) (Fourth

Amendment) which came into effect w.e.f 01.04.2020 provides that the amount of any subsidy, received by the Project under the applicable policy of MNRE/ State Government/ Central Government shall be adjusted and consequential corrections in tariff may be carried out by the Commission in accordance as per the RE Regulations, 2020.

19. According to the M/s Swadeshi Distributors LLP, it availed the industrial subsidy of Rs. 5 Crore provided by the Ministry of Commerce and Industry through Himachal Pradesh State Industrial Development Corporation (HPSIDC) and accordingly, Petition No. 03 of 2022 was filed before the Commission for the approval of 2nd SPPA for adjusting the same in the tariff. The said Petition was allowed vide order dated 28.09.2022 allowing tariff of Rs. 3.82 per kWh after adjustment of central assistance/ industrial subsidy of Rs. 5.0 Crore being provided by the Ministry of Commerce and Industry and admissible MNRE subsidy by observing in Para 19 of the order that in case the subsidy being provided by the Ministry of New and Renewable Energy (MNRE for short) is denied in future, it would be open for the Petitioner/ M/s Swadeshi Distributors LLP to approach the Commission for the appropriate order.

20. Accordingly, the Petitioner approached the MNRE for releasing the subsidy but the case of the Petitioner was rejected by the MNRE vide letters dated 23.11.2022 and 29.11.2022 that no such scheme is existing for providing financial support to the Small Hydro Projects.

21. Thus, the Petitioner preferred Petition No. 36 of 2023 for the approval of tariff of Rs. 3.93 per kWh in view of denial of MNRE subsidy which was decided vide order dated 26.07.2023, amended on 03.08.2023 that there were no justifiable reasons for allowing tariff of Rs. 3.93 per kWh and directed the Respondent No. 2/ MNRE to revisit the case of the Petitioner.

22. The Petitioner assailed the order dated 26.07.2023, amended on 03.08.2023 before the Hon'ble APTEL in Appeal No. 765 of 2023 which was allowed vide order dated 13.08.2024 setting aside order dated 03.08.2023 and the matter was remanded back to the Commission. Therefore, the Commission after restoring the matter/ Petition in its original number i.e. 36 of 2023 allowed tariff of Rs. 3.93 per kWh w.e.f SCOD i.e. 13.12.2019.

23. The present review has been sought that allowing final tariff of Rs. 3.93 per kWh w.e.f the date of the SCOD vide order dated 26.12.2024 is an error apparent on the face of record as earlier tariff of Rs. 4.04 per

kWh allowed vide order dated 14.07.2021 in Petition No. 72 of 2020 is required to be continued till 26.12.2024 and the date of applicability of tariff of Rs. 3.93 per kWh should be prospectively from the date of order dated 26.12.2024 and not from the date of SCOD as has inadvertently been held by the Commission nor 01.10.2020 as claimed in review by the HPSEBL and that the tariff @ Rs. 3.93 per kWh is to be made applicable prospectively and not retrospectively, which would be detrimental to the Petitioner.

24. In the alternative, it is submitted that since the Commission vide order dated 26.12.2024, has upheld its decision dated 28.09.2022 whereby 2nd SPPA was duly approved by the Commission, the reduced of tariff to Rs. 3.93 per kWh ought to be made applicable w.e.f 28.09.2022 and not from the date of SCOD i.e. 13.12.2019.

REPLY OF THE RESPONDENT

25. The Review Petition No. 220 of 2025 has been resisted by the Respondent No. 3/ HPSEBL only by filing reply that the Review Petition is misconceived, devoid of merits and is liable to be dismissed in limine as the claim of the Review Petitioner/ M/s Swadeshi Distributors LLP to allow tariff of Rs. 3.93 per kWh from the date of order dated 26.12.2024 is factually incorrect and not legally sustainable.

26. As per the Respondent No. 3, in the Joint Petition No. 03 of 2022, both the parties had informed the Commission that the Project has received industrial subsidy of Rs. 5.0 Crore on 10.09.2021 under the Industrial Development Scheme, 2017 (IDS, 2017 for short) and since, said incentive/ subsidy was to be adjusted against the provisional tariff of Rs. 4.04 per kWh, the tariff be determined after making the adjustment of said subsidy in tariff and the SPPA be approved accordingly. The copy of Joint Petition No. 03 of 2022 has been placed on record as Annexure R-1.

27. It is claimed that the net saleable energy from the Project is being procured w.e.f. 01.10.2020 as per the PPA dated 01.12.2020 at a provisional tariff of Rs. 4.04 per kWh as both the parties were in agreement that the tariff would be applicable retrospectively from 01.10.2020. Further, Clause 6.2 of the PPA dated 01.12.2020 provides that the HPSEBL shall pay for the net saleable energy at interconnection point at provisional rate with effect from the effective date of agreement i.e. 01.10.2020.

28. As per the HPSEBL, the Commission vide order dated 28.09.2022 in Petition No. 3 of 2022 allowed provisional tariff of Rs. 3.82 per kWh after taking into account the subsidy of Rs. 5.0 Crore under IDS, 2017

from the Ministry of Commerce and Industry (Industrial subsidy) and further additional adjustment of admissible subsidy of Rs. 5.0 Crore under the MNRE Scheme, 2014. Thus, tariff of Rs. 3.93 per kWh was after taking into account Industrial subsidy under IDS, 2017 and tariff of Rs. 3.82 per kWh was after taking into account the MNRE subsidy.

29. According to the Respondent/ HPSEBL, the Petitioner/ M/s Swadeshi Distributors LLP had sought limited review of order dated 28.09.2022 by filing Petition No. 36 of 2023 to the extent of non-adjustment of MNRE subsidy of Rs. 5.0 Crore, adjusted under the MNRE Scheme, 2014 and that the tariff of Rs. 3.93 per kWh be allowed by adjustment of Industrial subsidy of Rs. 5.0 Crore only under IDS, 2017 and no issue regarding date of applicability of tariff was raised. Said review was dismissed vide order dated 26.07.2023/ 03.08.2023 but the Petitioner was granted liberty to approach the MNRE for reconsideration of its order and release of said subsidy to M/s Swadeshi Distributors LLP.

30. It is averred that on Appeal of said order before the Hon'ble APTEL in Appeal No. 765 of 2023, the order dated 03.08.2023 passed by the Commission in Petition No. 36 of 2023 was set aside by remanding the matter back to the Commission and the Commission on

re-consideration of the matter after remand, determined the final tariff of Rs. 3.93 per kWh in respect of the Project by not taking into account the impact of MNRE subsidy, vide order dated 26.12.2024.

31. Further, in Joint Petition No. 3 of 2022, both the parties had categorically agreed that the effective date of tariff shall be from 01.10.2020 and provisional tariff of Rs. 4.04 per kWh paid since 01.10.2020 was explicitly subject to adjustment upon determination of final tariff. Thus, the final tariff of Rs. 3.93 per kWh was applicable w.e.f. 01.10.2020 but in the order dated 26.12.2024 in Petition No. 36 of 2023 the same has been inadvertently made applicable from the date of SCOD and a review Petition in this regard has already been filed by the HPSEBL.

32. According to the Respondent No. 3, the Petitioner is estopped from resiling from the earlier position taken in Joint Petition No. 3 of 2022 wherein both the parties have categorically agreed that the tariff shall be applicable from the effective date of PPA i.e. 01.10.2022.

REJOINDER

33. In rejoinder in Petition No. 220 of 2025, the contents of the reply have been denied and those of the Petition have been reaffirmed.

POINTS FOR CONSIDERATION

34. We have heard Sh. Kamlesh Saklani, Authorised Representative for the Review Petitioner in Review Petition No. 219 of 2025 and Respondent No. 3 in Review Petition No. 220 of 2025, Ms. Sneha Bhimta, Ld. Counsel for the Review Petitioner in Review Petition No. 220 of 2025 and Respondent in Review Petition No. 219 of 2025, Sh. Arvind Kumar, Legal Consultant for the Respondent No. 1 in Review Petition No. 220 of 2025 and Sh. Rajinder Thakur, Ld. Counsel for the Respondent No. 2 in Review Petition No. 220 of 2025 and carefully gone through the record. The following points arise for determination in the Petition:-

Point No. 1: Whether the date of applicability of tariff of Rs. 3.93 per kWh, as allowed vide order dated 26.12.2024 should be 01.10.2020 as per the PPA or the date of SCOD, as allowed vide order dated 26.12.2024?

Point No. 2: Whether the order dated 26.12.2024 has no retrospective application with regard to applicability of tariff and the tariff of Rs. 3.93 per kWh is applicable prospectively from the date of order dated 26.12.2024?

Point No. 3: **Final Order**

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

- Point No. 1:** Yes, the date of applicable tariff of Rs. 3.93 per kWh shall be w.e.f. 01.10.2020 and not the date of SCOD or the order dated 26.12.2024.
- Point No. 2:** No.
- Point No. 3:** Review Petition No. 219 of 2025 allowed and Review
(Final Order) Petition No. 220 of 2025 dismissed per operative part of the order.

REASONS FOR FINDINGS

Points No. 1 and 2:

36. Both these Points being interlinked and interconnected are taken up together for adjudication.

37. It is well settled law that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced at the time when the order was made. It may also be exercised where some mistake or error apparent on the face of the record is found but may not be exercised on the ground that the decision was erroneous on merits which is the domain of a court of

appeal. While exercising the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. In this regard, reliance may be placed in *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715 wherein it is held as under:-

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise.”

38. Similarly in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170 it has been held by the Hon’ble Supreme Court that the review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. Para 8 of the aforesaid law is reproduced as under:-

“8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389 : AIR 1979 SC 1047] , speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

“It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909] , there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct

grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

39. A similar view has been taken by the Hon'ble Supreme Court in Ram Sahu v. Vinod Kumar Rawat, (2021) 13 SCC 1.

40. It is the case of the Review Petitioner/ HPSEBL that the Project achieved SCOD on 28.01.2020. However, the Project had been synchronized within the grid on 18.11.2019 as apparent from the reply of M/s Swadeshi Distributors LLP.

41. The record shows that the long-term PPA has been signed on 01.12.2020 with retrospective effect as per interim order dated 16.12.2020 at a provisional tariff of Rs. 3.17 per kWh. On allowing Petition No. 72 of 2020 vide order dated 14.07.2021, provisional tariff of Rs. 4.04 per kWh was allowed and accordingly SPPA was signed.

42. The Petitioner/ M/s Swadeshi Distributors LLP synchronized the Project with grid on 18.11.2019 and accordingly, supplied the energy from the Project to the HPSEBL from 18.11.2019 to 30.09.2020 under the REC Mechanism and not under the generic levellized tariff, as

determined by the Commission and, as such, said period is not required to be counted with respect to the generic levelled tariff, as allowed vide orders dated 16.10.2020, 14.07.2021, 28.09.2022, 26.07.2023/ 03.08.2023 and 26.12.2024.

43. However, the HPSEBL has submitted that due to inadvertent error on the face of record, the Commission has allowed the generic levelled tariff of Rs. 3.93 per kWh w.e.f. the date of SCOD i.e. 28.01.2020 instead of the date of long term PPA i.e. 01.10.2020 vide order dated 26.12.2024 and, therefore, order dated 26.12.2024 is required to be reviewed making the tariff of Rs. 3.93 per kWh applicable on and w.e.f. 01.10.2020, from which date, the net saleable energy of the Project was supplied to the HPSEBL on the generic levelled tariff. It is also the case of the Petitioner/ HPSEBL that when Joint Petition No. 72 of 2020 for the approval of PPA was allowed, the adjustment of admissible subsidy of the MNRE and IDS, 2017 was not made in the applicable tariff and therefore, a provisional tariff of Rs. 4.04 per kWh was allowed to the Project vide order dated 14.07.2021 in Petition No. 72 of 2020 but said provisional tariff was subject to adjustment of subsidy.

44. M/s Swadeshi Distributors LLP, the developer of the Project which has filed Review Petition No. 220 of 2025 has claimed that the provisional tariff of Rs. 4.04 per kWh, as allowed vide order dated 14.07.2021 in Petition No. 72 of 2020, is not required to be disturbed and tariff of Rs. 3.93 per kWh, as allowed vide order dated 26.12.2024 be allowed to be availed prospectively from the date of order dated 26.12.2024 and the Commission has made an inadvertent error in allowing the tariff of Rs. 3.93 per kWh retrospectively which should neither be from the date of SCOD nor from 01.10.2020, as claimed by the HPSEBL.

45. A careful perusal of the record reveals that both the HPSEBL and M/s Swadeshi Distributors LLP filed a Joint Petition No. 72 of 2020 before the Commission for the approval of PPA on which interim provisional tariff of Rs. 3.17 per kWh vide interim order dated 16.10.2020, was allowed and accordingly, PPA dated 01.12.2020 was signed by the parties. Said Petition No. 72 of 2020 was finally disposed off vide order dated 14.07.2021, allowing a provisional tariff of Rs. 4.04 per kWh for a period of one year only primarily because no adjustment of admissible Industrial or MNRE subsidy was made. Paras 5 and 6 of order dated 14.07.2021 are reproduced as under:-

“5. The Commission vide letter No. HPERC-Pet-72/2020/Salun-586-92 dated 11.06.2021 has sought the following information to be furnished with fifteen days relating to financial assistance available to the SHP from the MNRE, Government of India :-

- (i) Reason/ground for non-payment of the Central Assistance/ Subsidy to the project even though the project was/is eligible for availing such benefit under the aforesaid scheme and had applied for the same well in time.*
- (ii) The cut-off date upto which the applications for the grant of Central Assistance/Subsidy were considered in the old scheme applicable upto 31.03.2017.*

6. Since the HPSEBL communicated on 13.07.2021 that it may take some more time to furnish the information as sought by the Commission vide letter dated 11.06.2021, the Commission, under sub-section (1) (b) of Section 86 of the Electricity Act, 2003, allows a provisional tariff of Rs. 4.04 (Rupee four and four paise only) per kWh, which shall be subject to adjustment on account of the financial assistance/subsidy, as per the provisions of applicable renewable energy regulations. The following conditions shall apply in this regard:-

- (i) Issue relating to adjustment of financial assistance/subsidy under the various Government schemes mentioned in para-3 & 4 of this order are yet to be resolved by the Company and HPSEBL as per the provisions of applicable HPERC Renewable Energy regulations, so this provisional rate shall be applicable for 1 (one) year from the issuance of this Order.*
- (ii) The petitioners shall approach the Commission after completion of one year or immediately after the settlement of such adjustment, whichever is earlier, for continuation of this tariff or for any other tariff as may become applicable to the project.*
- (iii) The Company shall intimate, to HPSEBL, 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 Company which shall also form a part of the PPA.*
- (iv) The matter regarding adjustment of financial assistance/subsidy shall be governed as per the orders as may be issued by the Commission after receipt of petition as per item (ii) of this para.*
- (v) The clause 6.2 of PPA shall be modified to the extent that the levellised provisional tariff of 4.04 (Rupee four and four paise only) per kWh shall be subject to further adjustment as per the orders as*

may be issued by the Commission after receipt of petition as per item (ii) of this para.”

46. Accordingly, the parties signed the SPPA on provisional tariff of Rs. 4.04 per kWh on 03.09.2021. It is, therefore, apparent that the provisional tariff of Rs. 4.04 per kWh was applicable only for a period of one year and not till 26.12.2024, as claimed by the Review Petitioner/ M/s Swadeshi Distributors LLP in Review Petition No. 220 of 2025.

47. The record further shows that subsequently, a further Joint Petition No. 03 of 2022 was made by the parties i.e. the HPSEBL and M/s Swadeshi Distributors LLP. In said Petition, both the parties jointly submitted that the Project Developer i.e. M/s Swadeshi Distributors LLP has already availed the Industrial Subsidy of Rs. 5.0 Crore being provided by the Ministry of Commerce and Industry which is required to be adjusted in the tariff and generic levelled tariff be allowed after adjustment of the industrial subsidy, being a Renewable Energy Hydro Project. The said Petition was disposed off vide order dated 28.09.2022 allowing tariff of Rs. 3.82 per kWh after adjusting the industrial subsidy of Rs. 5.0 Crore and admissible MNRE subsidy of Rs. 5.0 Crore. Paras 16 to 19 of the order are reproduced as under:-

“16. The Petition is duly supported by the affidavit of Joint Petitioners. Therefore, taking into consideration the aforesaid and the powers vested in the Commission under Section 86 (1)(b) of the Electricity Act, read with

Regulations 50 and 50-A of the HPERC (Conduct of Business) Regulations, 2005, the Joint Petitioners have made out a case for approval of Second Supplementary Power Purchase Agreement. Hence, the Petition succeeds and allowed with tariff as under:-

- (i) The Applicable Tariff without considering the subsidy under Generic levellised tariff of 2nd Control Period was Rs.4.04 per unit.
- (ii) Considering the adjustment of Rs. 5.00 Crore Central Assistance/Subsidy as received from the Ministry of Commerce & Industry (MCI), the tariff comes to Rs. 3.93 per unit.
- (iii) After adjustment of the admissible subsidy/Financial assistance of MNRE, the interim tariff of the Project of the Joint Petitioner No. 2 comes to Rs. 3.82 per unit.

17. Thus, the provisional tariff which shall be applicable to the project of Petitioner comes to **Rs. 3.82** per unit. Therefore, the Second Supplementary PPA is ordered to be approved accordingly subject to the following conditions:-

- (i) The Company shall intimate to the joint Petitioner No. 1 i.e. HPSEBL, about the receipt of financial assistance/subsidy released to the Project by the Ministry of New and Renewable Energy, within 15 days of the receipt of the same and an affidavit to this effect shall be furnished by the Company i.e. joint Petitioner No. 2 which shall form part of the PPA.
- (ii) The provisional tariff shall be valid for a period of two years or immediately after the settlement of such adjustment as per item (i) above, whichever is earlier, for continuation of this tariff or for any other tariff as may become applicable to the Project.
- (iii) The matter regarding adjustment of financial assistance/subsidy shall be governed as per the orders as may be issued by the Commission after receipt of Petition as per item (ii) of this para.
- (iv) The clause 6.2 of PPA shall be modified to the extent that the levellised provisional tariff shall be subject to further adjustment as per the order(s) as may be issued by the Commission after receipt of Petition as per item (ii) of this para.

18. We trust and believe that the MNRE shall consider the case of the Joint Petitioner No. 2 sympathetically and shall allow the subsidy of Rs. 5.00 Crores under the MNRE Subsidy Scheme in the interest of Public/Consumers as discussed in para 14 above.

19. In case the subsidy/financial assistance is denied by the MNRE by rejecting the application of Joint Petitioner No. 2 for valid reasons, it shall

be open to the Joint Petitioner No. 2/Joint Petitioners to approach the Commission for appropriate order.”

48. As directed vide order dated 28.09.2022, the Petitioner/ M/s Swadeshi Distributors LLP approached the MNRE but the request of M/s Swadeshi Distributors LLP was not acceded to and accordingly, M/s Swadeshi Distributors LLP filed Petition No. 36 of 2023 before the Commission for allowing the generic levelled tariff without considering the MNRE subsidy of Rs. 5.0 Crore. However, the Commission did not accede to the prayer of M/s Swadeshi Distributors LLP and dismissed the Petition No. 36 of 2023 vide order dated 28.07.2023, further amended vide order dated 03.08.2023 giving M/s Swadeshi Distributors LLP liberty to approach the Commission, if the MNRE subsidy is denied by the MNRE.

49. A careful perusal of the record further reveals that M/s Swadeshi Distributors LLP assailed the order dated 28.07.2023, amended vide order dated 03.08.2023 before the Hon'ble APTEL in Appeal No. 765 of 2023 which was allowed by the Hon'ble APTEL vide order dated 13.08.2024 setting aside the order of the Commission dated 03.08.2023 and remanding the matter back to the Commission. Accordingly, the Petition No. 36 of 2023 was registered in its original number and upon reconsideration of the matter, generic levelled tariff of Rs. 3.93 per

kWh was allowed vide order dated 26.12.2024 by not taking into account the MNRE subsidy of Rs. 5.0 Crore which was made applicable from the date of SCOD i.e. 28.01.2020.

50. As mentioned above, though M/s Swadeshi Distributors LLP, also supplied the energy from the Project to the HPSEBL from 18.11.2019 to 30.09.2020 but said energy supply upto 30.09.2020 was under the REC Mechanism and not under the generic levelized tariff. Therefore, said period upto 30.09.2020 was inconsequential.

51. The Long-term PPA as per interim order dated 16.10.2020 in Petition No. 72 of 2020 was signed on 01.12.2020 w.e.f. 01.10.2020 meaning thereby that the Net Saleable Energy has been supplied by M/s Swadeshi Distributors LLP to the HPSEBL from 01.10.2020 onwards. Further, the SPPA dated 03.09.2021 on provisional tariff of Rs. 4.04 per kWh was signed pursuant to order dated 14.07.2021 in Joint Petition No. 72 of 2020 after said Petition was finally disposed off. The said provisional tariff of Rs. 4.04 per kWh was applicable only for a period of one year and was subject to adjustment in final tariff. In the circumstances, the order dated 26.12.2024 allowing final tariff of Rs. 3.93 per kWh was required to be made effective w.e.f. 01.10.2020 and not from the date of SCOD i.e. 28.01.2020. As such, there is error

apparent on the face of record to this extent in order dated 26.12.2024 in Petition No. 36 of 2023.

52. In the circumstances, the contention of M/s Swadeshi Distributors LLP in Review Petition No. 220 of 2025 that said tariff of Rs. 3.93 per kWh should have been made applicable prospectively from 26.12.2024 and not retrospectively and that provisional tariff of Rs. 4.04 per kWh should be applicable till 26.12.2024 is without any basis. As observed above, the provisional tariff of Rs. 4.04 per kWh was applicable only for a period of one year and was subject to adjustment of Industrial subsidy and MNRE subsidy as evident from order dated 14.07.2021. Since, the industrial subsidy of Rs. 5.0 Crore was availed by M/s Swadeshi Distributors LLP, the adjustment thereof was required to be made in the tariff and thus, after adjustment of the same, the final tariff of Rs. 3.93 per kWh was allowed vide order dated 26.12.2024 which is applicable from the effective date of Long-term PPA i.e. 01.10.2020, executed on 01.12.2020.

53. The Petitioner/ M/s Swadeshi Distributors LLP cannot be allowed to approbate and reprobate as in Joint Petition No. 3 of 2022, the parties had clearly averred that the provisional tariff of Rs. 4.04 per kWh as mentioned in the PPA dated 01.12.2020 read with SPPA dated

03.09.2021 of Salun HEP is required to be revised with final tariff, as may be determined by the Commission after making suitable adjustment on account of availed subsidy amounting to Rs. 5.00 Crore by the Petitioner/ M/s Swadeshi Distributors LLP in respect of Salun HEP 9.0 MW. Since, the Petitioner/ M/s Swadeshi Distributors LLP had availed a higher provisional tariff of Rs. 4.04 per kWh, without adjustment of subsidy, said tariff cannot be allowed to be continued uptill 26.12.2024 as after adjustment of the Industrial subsidy, the tariff of Rs. 3.93 per kWh was allowed for the Project which is applicable on and w.e.f. 01.10.2020 i.e. the effective date of long term PPA dated 01.12.2020.

54. Even the alternate claim of M/s Swadeshi Distributors LLP that such final tariff of Rs. 3.93 per kWh is to be made applicable from 28.09.2022 i.e. the date when the 2nd SPPA was approved by the Commission is also not tenable, as the provisional tariff of Rs. 4.04 per kWh was subject to adjustment of subsidy and final tariff of Rs. 3.93 per kWh as allowed vide order dated 26.12.2024 after adjustment of industrial subsidy of Rs. 5.0 Crore is to be made applicable from 01.10.2020.

55. Thus, there are no errors apparent on the face of record as claimed by M/s Swadeshi Distributors LLP in the order under review in Review Petition No. 220 of 2025.

56. Therefore, it is established by the HPSEBL that there is error apparent on the face of record in the order dated 26.12.2024 that the date of applicability of tariff of Rs. 3.93 per kWh, as allowed vide order dated 26.12.2024 should be 01.10.2020 as per the PPA dated 01.12.2020 and not from the date of SCOD, as allowed vide order dated 26.12.2024. M/s Swadeshi Distributors LLP on the other hand has failed to establish on record that the order dated 26.12.2024 has no retrospective application with regard to applicability of tariff or that the tariff of Rs. 3.93 per kWh is applicable prospectively from the date of order dated 26.12.2024. Hence, Point No. 1 is decided in favour of the HPSEBL and against M/s Swadeshi Distributors LLP. Point No. 2 on the other hand is decided against M/s Swadeshi Distributors LLP.

Final Order

57. In view of the aforesaid discussions and findings, the Review Petition No. 219 of 2025 is allowed. On the other hand, the Review Petition No. 220 of 2025 is dismissed.

58. It is made clear that the tariff of Rs. 3.93 per kWh shall be applicable w.e.f 01.10.2020 and not from the date of SCOD.

59. The pending applications, if any, are also deemed to have been disposed off.

60. The file after completion be tagged to Petition No. 36 of 2023 for record.

Announced
30.03.2026

-Sd-
(Shashi Kant Joshi)
Member

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