BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

CMA No.:	**620 of 2025**
Instituted on:	17.12.2025
Heard on:	06.03.2026
Decided on:	**17.03.2026**

CORAM:

YASHWANT SINGH CHOGAL
MEMBER (Law)-cum-Chairman

SHASHI KANT JOSHI
MEMBER

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

M/s V.B. Hydro Projects Limited,
Shahil Plaza, Dalhousie Road, Pathankot
Punjab, India-0145001, through its,
Sh. Narender Kumar, Authorised Signatory. **…….Petitioner.**

Versus

1. The Himachal Pradesh State Electricity Board Ltd.
   Thro' its Chief Engineer (SO) Vidyut Bhawan, Shimla-04

2. The Department of Promotion of Industry & Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, Udyog Bhawan, New Delhi 110011.

3. The Directorate of Industries, Government of Himachal Pradesh, Majitha House, Chhota Shimla-171002.

…….**…Respondents**

Petition/Application under Regulation 75 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 read with Section 151 of the Code of Civil Procedure, 1908 in furtherance of Commission's Order dated 14.01.2025 in Petition No. 120 of 2024 for appropriate directions regarding denial of subsidy benefits under the Industrial Development Scheme, 2017 despite having the same been considered by the Commission during tariff determination of Kuwarsi Hydro Electric Project (9.90 MW) and grant/ allow the applicable tariff of Rs. 4.78 per kWh as per the 4th Control Period of the RE Regulations, 2017 after excluding the IDS amounting to Rs. 5.0 Crore.

Present:-

Sh. Ashok Verma, Ld. Counsel for the Petitioner.
Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 1.
Respondents No. 2 and 3: Ex-parte.

ORDER

This Petition has been filed by M/s V.B. Hydro Pvt. Ltd. (the Petitioner for short) under Regulation 75 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 (CBR, 2024 for short) read with Section 151 of the Code of Civil Procedure, 1908 in furtherance of the Commission's earlier order dated 14.01.2025 in Petition No. 120 of 2024, for appropriate tariff as per the 4th Control Period pursuant to the denial of subsidy benefits under the Industrial Development Scheme, 2017 (IDS, 2017 for short), having been considered by the Commission while allowing provisional tariff of Rs. 4.62 per kWh after taking into account the Industrial subsidy in respect of Kuwarsi Hydro Electric Project (9.90 MW) situated on Salun Khad, a tributary of river Ravi in District Chamba, Himachal Pradesh (Project for short).

2. It is averred that a Joint Petition being Petition No. 43 of 2023 was filed by the Petitioner and the Himachal Pradesh State Electricity Board Limited (the HPSEBL/ Respondent No. 1 for short) for the approval of Power Purchase Agreement in respect of the Project under the generic levellized tariff which was allowed by the Commission vide order dated

06.09.2023. The SCOD of the Project was 22.07.2025 which was in the 4th Control Period, as such, the provisional tariff of Rs. 4.49 per kWh was allowed to the Project which was as per the 3rd Control Period, as the tariff for the 4th Control Period was yet to be determined.

3. The Commission vide order dated 17.11.2023 in Suo Moto Petition No. 07 of 2023 determined the generic levellized for Small Hydro Projects above 100 kW to 25 MW under Regulation 14 of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Determination of Tariff) Regulations, 2017 (RE Regulations, 2017 for short) for the 4th Control Period (01.10.2023 to 31.03.2027). Though the SCOD of the Project was 22.07.2025, the Project was commissioned on 15.11.2024 which was before the date of SCOD. Thus, a further Joint Petition was filed by the Petitioner and the Respondent No. 1 being Petition No. 120 of 2024 which was decided by the Commission on 14.01.2025 allowing provisional tariff of Rs. 4.78 per kWh after adjustment of industrial subsidy of Rs. 5.00 Crore which was valid for a period of one year from the date of issuance of the order and the parties were given liberty to approach the Commission on actual release of subsidy or completion of one year, whichever is earlier.

4. Simultaneously, the Petitioner was directed to approach the Ministry of Commerce and Industry, Government of India (GoI for short)

for grant of subsidy and that the appropriate tariff will be worked out after decision of the Ministry of Commerce and Industry with respect to subsidy as per IDS, 2017.

5. The Petitioner took up the matter with the Ministry of Commerce and Industry, GoI vide letter dated 24.03.2025 (Annexure P-4). Further, a written letter/ representation dated 01.10.2024 was also sent/ written to the Directorate of Industries, Government of Himachal Pradesh (GoHP for short) (Respondent No. 3 for short) regarding status of subsidy but the Director of Industries vide letter dated 04.10.2025 (Annexure P-5) apprised that as on date, the status of subsidy on the portal of the Department of Promotion of Industry & Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India (GoI) (Respondent No. 2 for short) is reflected as closed. Further, pre-registration hasn't been granted by the DPIIT and thus, it was made clear that the Petitioner was not eligible for the grant of subsidy.

6. According to the Petitioner, reminders were also sent to the Ministry of Commerce and Industry on 28.05.2025, 15.09.2025 and 24.11.2025 (Annexure P-6 Colly) but no communication was gathered from the Ministry of Commerce and Industry.

7. It is averred that the Ministry of Commerce and Industry, GoI vide notification No. 2(2)/2018-SPS dated 23.04.2018 notified the Industrial Development Scheme for the States of 'Himachal Pradesh and

Uttarakhand (IDS, 2017 for short) providing Central Capital Investment Incentive for the access to credit (CCIIAC) @ 30% of the investment in plant & machinery (Industrial subsidy for short) with an upper limit of Rs. 5.00 Crores for new and existing industrial units which was in force till 31.03.2022. Accordingly, the Petitioner applied for the same vide Application No. IDS/HP/3040 dated 31.03.2022.

8. It is averred that as per the letter of Director Industries, GoHP, it has been made clear that incentive/ subsidy under IDS, 2017 were extended to the already registered units and no claims were entertained from the unregistered units.

9. According to the Petitioner, it is aggrieved of the subsidy amount which was adjusted by the Commission while allowing the provisional tariff but the grant of subsidy was beyond the control of the Petitioner who had completed all the formalities. As a result, the Petitioner has suffered huge financial loss due to non-grant of subsidy by the GoI. Also, the Commission has revised the tariff in a similar Petition titled as Gopal Hydrogen Pvt. Ltd. versus the HPSEBL and others in Petition No. 200 of 2025 decided on 29.10.2025 and thus, the tariff of Rs. 4.78 per kWh be made applicable to the Project of the Petitioner as per the generic levellized tariff for the 4th Control Period.

REPLIES OF THE RESPONDENTS

10. The Petition has been resisted by the Respondents by filing separate replies.

REPLY OF RESPONDENT NO. 1

11. The Petition has been resisted by the Respondent No. 1/ HPSEBL by filing reply that the parties had approached the Commission for approval of PPA by filing Petition No. 43 of 2022 whereby tariff of Rs. 4.49 per kWh for the 3rd Control Period was allowed as the tariff for the 4th Control Period was yet to be determined. Further, the Ministry of Commerce and Industry notified the financial assistance/ subsidy under the Industrial Development Scheme, 2017 on 23.04.2018.

12. The detail regarding signing of Implementation Agreements, filing of Joint Petitions, Orders dated 16.09.2023 and 14.01.2025 in Petition No. 43 of 2023 and Petition No. 120 of 2024 respectively allowing provisional tariff has not been disputed.

13. According to the Petitioner, the HPSEBL being a Distribution Licensee under the Electricity Act, 2003 is under an obligation to procure power in a manner that ensures financial prudence, cost effectiveness and least burden on the consumers.

14. It is averred that the Commission while approving the provisional tariff has rightly taken into account the industrial subsidy of Rs. 5.0

Crore under IDS, 2017 by considering the same as deemed availed in accordance with the provisions of the RE Regulations, 2017.

15. It is averred that the Director of Industries, GoHP vide communication dated 04.10.2024 (Annexure P-5) though, has shown the status of application of the Petitioner as closed since pre-registration has not been granted by the DPIIT meaning thereby that the Petitioner is not eligible for the grant of industrial subsidy but no specific reason has been given for not registering the Project for grant of subsidy under IDS, 2017.

16. It is averred that it was the responsibility of the Petitioner to fulfill the eligibility under IDS, 2017 and denial of subsidy may be arising on account of inaction of the Petitioner and cannot be a ground to revise the tariff.

17. Further, the regulatory mechanism under the RE Regulations, 2017 operates on the principle that project cost is reduced by the admissible subsidy regardless of whether the same is disbursed or not, so as to ensure that consumers are not burdened with inflated tariff arising from the avoidable costs. The admissibility of subsidy is thus a matter of regulatory recognition and not actual receipt and the Commission has already exercised its regulatory wisdom by factoring the same into the tariff of Kuwarsi HEP.

REPLY OF RESPONDENT NO. 2

18. The Respondent No. 2 (DPIIT) in its separate reply has denied the averments made in the Petition that the Department of Promotion and Industry and Internal Trade (DPIIT), Ministry of Commerce & Industry, Government of India, notified Industrial Development Scheme, 2017 for State of Himachal Pradesh and Uttrakhand on 23.04.2018, effective from 01.04.2017 to 31.03.2022 (Annexure-1). In the 11th Empowered Committee Meeting (Annexure-2), it was observed that committed liabilities exceeded the original financial outlay of Rs. 131.90 Crores, therefore, it was decided to issue Provisional Registration until additional funds were made available. Further, a formal communication was issued on 08.09.2021 (Annexure-3) in the shape of provisional certificate highlighting clause 7.3 of the scheme Notification clarifying that claims will be entertained only after conversion of provisional registrations to final registrations upon augmentation/approval of financial resources and units shall be eligible for submitting their Claim only after conversion of Provisional registration into final registration.

19. According to the Respondent No. 2, due to high number of applications, the committed financial liability surpassed the initial budget allocated under the IDS, 2017 and, therefore, a considered policy decision was taken and an additional outlay of Rs. 1164.53 crores was approved vide Cabinet decision dated 06.09.2023 for 774 units

approved till the 11th Empowered Committee Meetings held on 04.08.2021, and in coherence to the decision, the letters dated 09.11.2023 (Annexure-4) and 30.07.2024 (Annexure-5) were issued.

20. According to Respondent No. 2, no meeting of the Empowered Committee has been held after 04.08.2021 and that the unit of the Petitioner was an unregistered one and incoherence to the decision of Cabinet, the application of the Petitioner is closed and cannot be considered by the Department.

REPLY OF RESPONDENT NO. 3

21. The Respondent No. 3 in its separate reply has raised preliminary submissions that neither any legal nor any fundamental right of Petitioner has been infringed by the Replying Respondent and, as such, no cause of action has accrued to the Petitioner against Respondent. According to the Replying Respondent, the final decision on the application for grant a subsidy to Petitioner was to be taken by the Respondent No. 2, under IDS, 2017 and answering Respondent had a very limited role of processing the online application(s) subject to eligible criteria. The application of the Petitioner was received in the office of General Manager, District Industries Centre, Chamba on 31.03.2022 for pre-registration vide IDS/HP/3040 which was referred to the Petitioner for compliance of observations as depicted in (Annexure R-3/I). The same was referred back to the Petitioner for certain

clarifications/observations raised by the District Industries Centre, Chamba (Annexure R-3/II). According to Respondent 3, the Commission may consider the fact that the application was to be forwarded to the Government of India by the Respondent No.3 through online portal only after ensuring eligibility criteria and submission of requisite documents and thus, the Petition is liable to be dismissed.

22. On merits, contents have been denied reiterating the averments made by of the preliminarily submissions. It is averred that the scheme remained in force till 31.03.2022 and during the currency of the Scheme, it was obligatory upon the Petitioner to submit the requisite documents in order to facilitate the Replying Respondent to forward the same through online portal.

REJOINDERS

23. By way of separate rejoinders, the content of the replies have been denied and those of the Petition have been reaffirmed.

POINTS FOR DETERMINATION

24. We have heard Sh. Ashok Kumar Verma, Ld. Counsel for the Petitioner and Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 1 and perused the entire case file carefully. On the basis of the Pleadings, the following points arise for determination in the present Petition:-

Point No. 1: Whether the Industrial subsidy has not been provided to the Petitioner despite submission of application in time and no adjustment on account of Industrial subsidy is required to be made, while allowing the final tariff in respect of project?

Point No. 2: **Final Order**

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

Point No. 1: Yes

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

REASONS FOR FINDINGS

Point No. 1

26. It is a simple case of the Petitioner that it had applied for the grant of Industrial subsidy under IDS, 2017 on 31.03.2022 as the Scheme was valid from 01.04.2017 to 31.03.2022 and the project of the Petitioner was also duly registered on the portal of DPIIT. It is also the case of Petitioner that on enquiry about the status of the Industrial subsidy, no positive response was given by the Respondents No. 2 and 3. However, the Petitioner was informed vide letter dated 04.10.2024 by District Industries Centre, Chamba that the status of the application is reflected as closed on the DPIIT portal and hence, the project is not eligible for grant of Industrial subsidy.

27. Though the Respondents No. 1 and 3 in their reply have mentioned that the subsidy could not be granted by the Respondent No. 2 on account of inaction of the part of the Petitioner in not furnishing requisite information/ documents but the reply of the Respondent No. 2 nowhere suggests that there was any irregularity in the application submitted by the Petitioner or that subsidy has been denied due to some defects or insufficient documents. The entire reply of the Respondent No. 2 is silent that the application of the Petitioner was not received on 31.03.2022 on the portal of DPIIT. Sh. Ashok Kumar Verma, Ld. Counsel for the Petitioner has submitted that the application submitted by the Petitioner was complete in all respect and no communication in writing was sent to the Petitioner of any deficiency.

28. A careful perusal of the reply of the Respondent No. 2 shows that keeping in view the fact that committed financial liability surpassed the initial budget allocated under IDS, 2017, a policy decision was taken that the allocation be made only in respect of already registered 774 units approved till the 11th empowered Committee Meeting held on 04.08.2021 meaning thereby that no registration of new units was made after 04.08.2021. Thus, it is evident that the Respondent No. 2 has allowed the subsidy only to the units which were registered uptill 04.08.2021 and thereafter, no registration of any unit(s) was made. Thus, all the units which submitted applications after 04.08.2021 and

before 31.03.2022 were not covered. In the circumstances, as evident from the reply of the Respondent No. 2 that in view of the decision taken in the Empowered Committee meeting held on 04.08.2021, the application of the Petitioner was closed. Since the Petitioner had submitted the application for Industrial subsidy on 31.03.2022, within the validity of the IDS, 2017, which was valid uptill 31.03.2022, no fault can be attributed to the Petitioner as the registration to Industrial unit(s) after 04.08.2021 has not been considered, because the outlay of Rs. 1164.53 Crore only was approved to the unit(s) registered upto 04.08.2021.

29. The Commission while approving the provisional generic levellized tariff of Rs. 4.62 per kWh for the Project vide order dated 14.01.2025 in Petition No. 120 of 2024 has taken into account the Industrial subsidy of Rs. 5.00 Crore. Since the said Industrial subsidy has not been granted, no adjustment on account thereof is required to be made in the final tariff to be provided to the Project of the Petitioner.

APPLICABLE TARIFF

30. The Petitioner in the present Petition has submitted that Petitioner is entitled for the enhanced tariff of Rs. 4.78 per kWh by not taking into account the Industrial subsidy of Rs. 5.00 Crore. A careful perusal of the order dated 14.01.2025 in Petition No. 120 of 2024 shows that the Commission has taken into account the impact of subsidy of Rs. 5.00

Crore towards Industrial Subsidy while allowing the tariff of Rs. 4.62 per kWh.

31. Since, the Applicant/ Petitioner had submitted the application in time and no industrial subsidy has been made available to the Project, no adjustment on account of industrial subsidy is required to be made and the tariff is required to be worked out without taking into account the industrial subsidy of Rs. 5.00 Crore which had been factored into earlier, being deemed availed, while determining the provisional tariff of Rs. 4.62 per kWh. Hence, after not taking into account the industrial subsidy of Rs. 5.00 Crore, a tariff of Rs. 4.78 per kWh is applicable to the Project of the Petitioner from the date of commissioning of the Project. Point No. 1 is accordingly, decided in favour of the Petitioner.

Final Order

32. In view of our aforesaid discussion and findings, the Petition succeeds and allowed. A tariff of Rs. 4.78 per kWh is granted to the Project from the date of the commissioning of the Project after excluding the Industrial Subsidy of Rs. 5.00 Crore.

33. The parties are accordingly directed to execute the 2nd Supplementary Power Purchase Agreement (SPPA) as per the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017, as amended

within a period of 30 days from the date of this Order after making necessary additions and alterations. Three copies of the executed SPPA be submitted to the Commission for record.

34. It is made clear that in future, if any subsidy/ incentive is released to the Project by the GoI, the Petitioner shall intimate the same to the HPSEBL and consequent deduction in tariff shall be made with the approval of the Commission.

35. Significantly, the Petitioner has deposited only a fee of Rs. 40,000/- whereas, the Petitioner is required to deposit fee for the execution of SPPA as per the Schedule appended to the HPERC (Conduct of Business) Regulations, 2024. Thus, the Petitioner is directed to deposit the deficient court fee within a period of ten (10) days from the date of the receipt of the order failing which the Petition shall be deemed to have been dismissed.

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

The Petition is disposed off accordingly. The file after needful be consigned to records.

<u>Announced</u>
17.03.2026

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