

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

Case No. HERC/Petition no 12 of 2019

Date of Hearing : 23.02.2023

Date of Order : 06.04.2023

In the Matter of

Petition under Part VII Section 61, Section 62, Section 64 (5) and part X Section 86 (1) (b) of the Electricity Act, 2003, read with the Haryana Electricity Regulatory Commission Regulations and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 for the Determination of Tariff for Power supply from 36 MW (3x12 MW) Chanju-I Hydro Electric Project located on the Chanju Nallah in the Chamba district of Himachal Pradesh.

Petitioner

M/s. IA Hydro Energy Pvt. Ltd.

Respondent

Haryana Power Purchase Centre, Panchkula (HPPC)

Present on behalf of the Petitioner

1. Shri. S.K. Goyal, CEO
2. Shri. Sanjay Sharma
3. Sh. Vikas Kumar, Advocate
4. Sh. Manish Paliwal, Advocate
5. Sh. Ankit Aggarwal, Consultant

Present on behalf of the Respondent

1. Ms. Nikita Choukse, counsel, HPPC
2. Ms. Aabha, XEN/HPPC

Quorum

Shri R.K Pachnanda,	Chairman
Shri Naresh Sardana	Member

ORDER

1. The present petition has been filed on 13.02.2019 by M/s IA Hydro Energy Pvt. Ltd. for determination of tariff of its 36 MW Chanju-I Hydro Electric Power Station in Himachal Pradesh, in pursuant to the PPA approved by the Commission vide its Order dated 10.04.2018 in case no PRO-15 of 2016 with Rs.4.50/unit as ceiling tariff for 35 years approved by the Commission.

2. The details of the petition filed is reproduced as under:

1. Introduction

Project Overview

- 1.1. IA Hydro Energy Private Limited (hereinafter referred to as “IAHEPL” or “Generator” or “Petitioner” or “Applicant”) is a Company incorporated under the Companies Act, 2013 certificate of incorporation is annexed with the petition.
- 1.2. IAHEPL is a “generating company” falling within the definition of PART I Section 2 (28) of the Electricity Act, 2003 (hereinafter referred to as the “Act”) and has developed, owns and operates 36 MW (3 x 12MW) Chanju-I Hydro Electric Project (HEP) located on the the Chanju Nallah in the Chamba district of Himachal Pradesh (hereinafter referred to as “Project”).
- 1.3. On 20.12.2007, a Memorandum of Understanding (MOU) was signed between M/s Indo Arya Central Transport Limited, having registered office Indo Arya House, 147, Transport Centre, Rohtak Road (Punjabi Bag Chowk), New Delhi 110035 and Government of Himachal Pradesh (GoHP) to carry out detailed investigations, techno-economic studies, submission of a Detailed Project Report (DPR) for the implementation of Chanju-I HEP for tentative capacity of 25 MW.
- 1.4. M/s Indo Arya Central Transport Limited upon carrying out investigation found that the capacity of the Project is more than what was tentatively estimated and submitted a DPR for a capacity of 36 MW on 04.07.2008. The copy of the DPR is annexed.
- 1.5. On 12.06.2009, an Implementation Agreement (IA) was executed between M/s Indo Arya Central Transport Limited and GoHP for the implementation of Chanju-I HEP with installed capacity of 36 MW. The IA is also annexed with petition.
- 1.6. The said IA shall remain in force for a period of 40 years from the date of Schedule Commercial Operation Date (COD) of the Chanju-I HEP after which the Project shall revert to GoHP free of cost.
- 1.7. The techno-economic clearance on the DPR was provided on 24.04.2010. Subsequently, environmental and forest clearance was received on April 2011 and June 2011, respectively.
- 1.8. Immediately after receiving all clearances, contract for the first civil work for the project was awarded on 23.07.2011 with Scheduled Commercial Operation Date (SCOD) on 22.01.2015, 42 months from the award of contract for first civil work. The plant achieved COD on 26.07.2017. The project commissioning was delayed due to various Force Majeure events beyond the control of the Petitioner such as geological surprise, adverse weather conditions and unavailability of transmission capacity in the network of State Transmission Utility to evacuate power. The detailed reasoning for the delays has been elaborated in Chapter 3 of this petition.
- 1.9. According to clause 5.30.4 of the IA, M/s Indo Arya Central Transport Limited is permitted to incorporate a Special Purpose Vehicle (SPV) for implementation of the Project with its Registered Office in Himachal Pradesh. It was agreed that all rights

and obligations under the IA will be transferred to the SPV by entering into a Tripartite Agreement between the parent Company (M/s Indo Arya Central Transport Limited) and SPV and GoHP.

- 1.10. Accordingly, on 18.06.2010, a SPV, M/s IA Energy (hereinafter referred to as the "Partnership Firm") with its office in D-17 Sector-1, Lane-1, New Shimla, Himachal Pradesh was registered under Partnership Act 1932. The partners included M/s Indo Arya Central Transport Limited held (51% share in profit & loss), Shri Bajrang Energy Private Limited (40% share) and Shri Bajrang Power & Ispat Limited (9% share). The Partnership Deed and the Supplementary Partnership Deed annexed with petition.
- 1.11. On 12.08.2010, a Supplementary Implementation Agreement (SIA) was executed between M/s Indo Arya Central Transport Limited and GoHP, which amended relevant clauses of IA and allowed that the SPV can be a firm registered under the Partnership Act, 1932. The SIA is annexed with petition.
- 1.12. Subsequently on 08.10.2010, a Tripartite Agreement was executed between M/s Indo Arya Central Transport Limited, M/s IA Energy and GoHP. In the Tripartite Agreement, it was agreed that M/s IA Energy will take over all the assets, responsibilities, obligations, rights, privileges, and benefits arising out of the Implementation Agreement dated 12.06.2009 and the Supplementary Implementation Agreement dated 12.08.2010. The Tripartite Agreement is annexed with petition.
- 1.13. On 16.02.2017, the Reconstituted Partnership Deed was signed between parties wherein fixed capital of the partnership M/s IA Energy was increased to Rs 10 crore from Rs 10 lakh earlier, M/s Indo Arya Central Transport Limited retired from the partnership and new partners were introduced. Share of partners in profit & loss of M/s IA Energy is provided in the Reconstituted Partnership Deed, which are annexed.
- 1.14. Subsequently, partners of the M/s IA Energy had agreed and decided that all the members as defined by section 366 of Companies Act, 2013 should register a Company under Part I of the Companies Act, 2013 for carrying on and continuing the business of M/s IA Energy uninterrupted. It was further decided that all the assets of M/s IA Energy should vest in the Company from its incorporation, free from all claims by the partners of M/s IA Energy. Similarly, all liabilities, claims obligations and debts including taxes and other statutory liabilities of M/s IA Energy where determined or undetermined shall be assumed and borne by the Company.
- 1.15. In line with the above, IA Hydro Energy Private Limited was incorporated on 23.03.2017 under the Companies Act, 2013 with its registered office in D-17, Sector-1, Lane-1, New Shimla, Himachal Pradesh, India, 171009. The Certificate of Incorporation annexed with petition.
- 1.16. It is relevant to note that according to the letter no. HPDOE/CE (Energy)/Chanju-I HEP/2017-2206-2213 dated 14.06.2017 of Directorate of Energy (DOE), GoHP, the Project is to provide 13.43% of the deliverable energy of the Project for the period starting from the date of synchronization of the first generating unit and extending up to 12 years from the date of Scheduled Commercial Operation Day (SCOD) of the Project. Thereafter, at 19.43% of Deliverable Energy of the Project for a period of next 18 years and at 31.43% of the Deliverable Energy for the balance agreement Period beyond 30 years. Refer to Installed Capacity and Saleable Design Energy for further details.

Brief Background

- 1.17. Upon commissioning the Project, on 29.06.2017 The Petitioner had signed a Power Purchase Agreement (PPA) with the Chhattisgarh State Power Distribution Company Limited (CSPDCL). The PPA was approved by the Hon'ble Chhattisgarh State Electricity Regulatory Commission (CSERC) by order dated 06.03.2018.
- 1.18. Aggrieved by the order of the Hon'ble CSERC dated 06.03.2018, the Petitioner submitted a review petition and prayed to allow cancellation of the PPA with CSPDCL dated 29.06.2017 and allow discontinuation of supply of power to CSPDCL with effect from 00.00 hrs of 01-06-2018.
- 1.19. Hon'ble CSERC in its order dated 18.05.2018 allowed the Petitioner to exit the PPA with CSPDCL dated 29.06.2017 without liability on either side and discontinuation of power supply by the Petitioner to CSPDCL with effect from 01.06.2018.
- 1.20. Earlier, on 08.04.2016, HPPC had applied to Hon'ble Haryana Electricity Regulatory Commission under Section 86(1)(b) of the Electricity Act, 2003 for the approval of the Hon'ble HERC for procuring power from the Project. Hon'ble HERC in its order dated 10.04.2018 (Case No. HERC/PRO-15 of 2016) approved HPPC to purchase power from the Project.
- 1.21. Upon receiving the order from Hon'ble CSERC dated 18.05.2018 for termination of PPA with CSPDCL, the Petitioner approached Haryana Power Purchase Centre (HPPC) for supply of power. HPPC and the Petitioner signed PPA dated 21.05.2018 and submitted to Hon'ble HERC for approval. HPPC issued Letter of Intent to the Petitioner on 23.05.2018 and directed to start scheduling power citing the Hon 'ble HERC order dated 10.04.2018. The relevant excerpt from the order dated 10.04.2018 is as follows:
 - (i) “
 - (ii) As tariff determination is a long exercise including public proceedings and the fact that the project has already attained CoD the Commission, as an interim measure, approves that in case energy drawl is resorted to from this source prior to determination of final tariff by the Commission the same may be paid for the APPC subject to adjustments vis-à-vis the final tariff as the case may be.”
- 1.22. In view of the above, the Petitioner has started supplying power to HPPC starting 01.06.2018.
- 1.23. Pursuant to the enactment of the Electricity Act, 2003, a generating company intending to sell power to the Distribution Licensee is required to file an application for the determination of tariff to the appropriate Commission. As the Petitioner intends to sell power to the distribution utilities of Haryana and in accordance with Section 64(5) of the Act, the appropriate Commission in this case is the Hon'ble Haryana Electricity Regulatory Commission (“HERC” or “Commission”).
- 1.24. It is further submitted that the proposed power procurement from Hydro Electric Project is not covered under compulsory competitive bidding requirement as

mandated by the Tariff Policy dated 28th January, 2016 notified by the Ministry of Power, Government of India, since the National Tariff Policy, 2016 exempts Hydro Power projects from competitive bidding and rather the same is covered under clause no. 5.6 of National Tariff Policy, 2016. Clause no. 5.6 of the policy bestows an option on the project developers to get the tariff determined by the Appropriate Commission for the power to be sold through long term PPA on the basis of cost plus under Section 62 of the Act.

- 1.25. Accordingly, Hon'ble HERC, vide its Order dated 10.04.2018 in Case No. HERC/PRO-15 of 2016 approved the procurement of power from the Project by Haryana Power Purchase Center (HPPC) and directed the Petitioner to file a tariff petition for determination of generation tariff. Para 10 (Page No. 43) of the Order is reproduced below:

".....Taking all the above discussions into consideration, the Commission approve procurement of power from the Chanju Hydro Electric Project, throughout the year, at the tariff to be determined by the Commission on separate petition to be filed by the generator with Rs. 4.50/kwh being the ceiling tariff."

- 1.26. In view of the above background, the Petitioner is filing the Petition for approval of the capital cost and determination of generation tariff of its 36 MW Chanju-I HEP before the Hon'ble Commission.

Regulatory Provisions for Tariff Determination

- 1.27. The Hon'ble HERC had notified the HERC (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012 (or hereafter referred as "HERC Tariff Regulations 2012") on 05.12.2012.
- 1.28. It is pertinent to note that the first Control period as per HERC Tariff Regulations 2012 was from FY 2014-15 to 2016-17. The Hon'ble Commission, vide its order dated 07.11.2016, had extended the Control period until FY 2017-18.
- 1.29. Further, the Hon'ble Commission, vide its order dated 31.10.2018 had extended the Control period until FY 2019-20. In view of the extension of the Control period, the instant Petition is being filed in accordance with HERC Tariff Regulations 2012.
- 1.30. As per Section 61 of the Electricity Act, 2003,

"The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely: -

- a) *the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;*

..."

[Emphasis Added]

1.31. The Petitioner would also like to bring to the notice of the Hon'ble Commission the following judgments passed by the Hon'ble APTEL:

- i. In the Lanco Amarkantak Power Limited vs Haryana Electricity Regulatory Commission, in Appeal No. 65 of 2013 dated 3rd Jan 2014, the Hon'ble APTEL ruled that

"...where no specific operational or financial norms have been specified in the State Commission's Tariff Regulations, the provisions of Central Commission's Regulations of 2009 would be considered for such parameters".

- ii. In the Haryana Power Generation Corporation Ltd vs Haryana Electricity Regulatory Commission, in Appeal No. 131 of 2011 dated 1st March 2012, the judgement stated that

"Section 61 of the Act mandates the State Commissions to frame Regulations fixing terms and conditions for determination of tariff and in doing so it is to be guided by the principles and methodology specified by the Central Commission, the National Electricity Policy and Tariff Policy etc. Once the State Commission has framed the Regulations, it shall determine tariff in accordance with its own Regulations".

1.32. Hence, in view of the above, it is submitted that the instant Petition reference to the norms and provisions specified in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 has also been appropriately referred wherever no specific operational or financial norms have been specified in the HERC Tariff Regulations 2012.

II. Installed Capacity and Saleable Design Energy

Installed Capacity

2.1 The Chanju-I HEP has three (3) units each of capacity 12 MW with a total installed capacity of 36 MW having provision of 117% continuous over rating as per design, however 110% continuous over rating consider while approval of TEC by GoHP.

2.2 Design Energy

III. The approved Design Energy of Chanju-I HEP is 157.84 MU. It is pertinent to mention that the water availability is excellent, and the plant is capable of providing load factor of 50.05%.

Table 1: Month-wise design energy of Chanju-I HEP

Month	10 Daily		Design Energy (MUs)
Jun	10	I	6.39
	10	II	7.62
	10	III	8.10
Jul	10	I	8.21

Month	10 Daily		Design Energy (MUs)
	10	II	8.21
	11	III	9.03
Aug	10	I	8.21
	10	II	8.21
	11	III	8.66
Sep	10	I	7.54
	10	II	5.81
	10	III	4.66
Oct	10	I	3.76
	10	II	3.25
	11	III	3.08
Nov	10	I	2.35
	10	II	2.14
	10	III	1.95
Dec	10	I	1.82
	10	II	1.73
	11	III	1.84
Jan	10	I	1.67
	10	II	1.60
	11	III	1.69
Feb	10	I	1.70
	10	II	1.86
	8	III	2.22

Month	10 Daily		Design Energy (MUs)
Mar	10	I	2.94
	10	II	3.07
	11	III	3.41
Apr	10	I	3.01
	10	II	3.28
	10	III	4.17
May	10	I	4.89
	10	II	4.58
	11	III	5.18
Total (MU)			157.84

Free Power to Government of Himachal Pradesh (GoHP)

- 2.3 As per clause 5.4.1 of the IA, the royalty in the shape of free power shall be levied at 15 % of the deliverable energy of the Project for the period starting from the date of synchronization of the first generating unit and extending up to 12 years from the date of Scheduled Commercial Operation Day (SCOD) of the Project. Thereafter, at 21% of Deliverable Energy of the Project for a period of next 18 years and at 33% of the Deliverable Energy for the balance agreement Period beyond 30 years.
- 2.4 Subsequent to this, according to Notification dated 07-07-2012 Policy of Government of Himachal Pradesh, in the Second Supplementary Implementation Agreement (SSIA), the free power to be provided to GoHP was updated. According to SSIA, 12 % of the deliverable energy of the Project for the period starting from the date of synchronization of the first generating unit and extending up to 12 years from the date of Scheduled Commercial Operation Day (SCOD) of the Project. Thereafter, at 18% of Deliverable Energy of the Project for a period of next 18 years and at 30% of the Deliverable Energy for the balance agreement Period beyond 30 years.
- 2.5 Further it was stipulated in the SSIA that additional free power at 3% of the deliverable energy corresponding to the increased capacity beyond the allotted capacity in lieu of enhancement of capacity from 25 MW to 36 MW. According to methodology depicted in the Notification No. MPP-F(10)-24/2011 dated 07.07.2012 of Department of MPP & Power of GoHP, additional free power on the total deliverable energy will be 0.43%.
- 2.6 Moreover, additional free power at 1% of the deliverable energy is to be provided towards Local Area Development Fund (LADF).