



29.03.2004

No.14/2003

Present for: M/s.Patikari Power Pvt.Ltd. :Shri Tarun Johri, Adv.
:Sh Rajinder Pirta, Pro.Manager.
M/s.Kathuria & Associates :Shri Naresh K Gupta, Adv.
M/s.Everest Power P.Ltd. :Sh K Seethayya,President
HPSEB :Shri R.C.Sharma, CE(bsp)
:Sh Sudhir Chander, Dir. (PSP)
Consumer Representative :Sh P.N.Bhardwaj
U/S 94(3) of EA 2003

Order

In response to the public notice inviting objections/suggestions from the various stake holders, only two parties namely M/s. Kathuria & Associates and M/s. Everest Power P.Ltd. have filed their suggestions.

Shri Tarun Johri, Ld. Counsel for the co-petitioner, M/s. Patikari Power Private Ltd. (hereinafter referred to as Company) while referring to the petition jointly filed by it; and HPSEB (hereinafter referred to as Board) for the approval of Power Purchase Agreement to be executed by the Board with the Company in respect of 16 MW Patikari Hydro Power Project, (hereinafter referred to as the Project) District Mandi submitted that the proposed PPA incorporates 35 out of 38 modifications (Sr. No.1 to 12, 14 to 22 and 24 to 37) of the Commission's Order dated 24.03.2004 and the review petition for 2 modifications Sr. No.13 and 23 have been separately filed with the Commission by the Board. Shri Johri explained the urgency of the filing, in that the project has to be commissioned by 1-11-2007 and the release of funds is held up for want of valid PPA. He pleaded for extending the provisions of Commission's orders dated 24-3-2003 and 12-1-2004 in respect of Model Power Purchase Agreement for Small Hydro Power Projects upto 5 MW to the projects above 5 MW and upto and including 25 MW also in accordance with the guidelines of MNES which categorise all the projects upto 25 MW under SHPPs. In respect of the Commission's order Nos.13 and 23 relating to the subsidy by GoHP and the rebate on payments made within due dates, he pleaded for extending the same to this Project also. He referred to paras 4, 5, 6, 7, 8 and 9 of the petition and clauses 10.7.1 (termination on account of a Board Event of Default), 15.18 (Tripartite Agreement) and 15.19 (Captive Use) and 16.2(iii) (liquidated damages) of the PPA and prayed for realigning and replicating the same along the Commission's orders of 24-3-2003 and 12-1-2004 in respect of projects upto 5 MW. In respect of Buy-out option where the parallel proceedings were in progress before the Commission, the decision of the Commission was prayed to be applied retrospectively to this Project as well. On Clause 10.7.1 (termination on account of Board Event of Default) he pleaded for making the provision equitable by issuing directions to the Board also to furnish bank guarantee @ Rs.20 lac per MW. With regard to the tariff of Rs.2.25/Kwh and 12% free power to the State of Himachal Pradesh as bilaterally settled between the Company and GoHP, he pleaded for retaining the same as per the provisions of Implementation Agreement.

Shri R.C.Sharma, Chief Engineer (PSP) appearing for Board submitted that the draft PPA had been mutually negotiated before signing the quashed PPA on 14-1-2002. He apposed the pleas of M/s. Patikari Power P.Ltd. with regard to the bank guarantee in the event of termination on account of Board's event of default.

EHV which is equivalent to Rs.2.70 at 33 KV level whereas Patikari power at 33 KV shall be available at Rs. 2.25 which is very highly attractive. The average present worth of this tariff discounted at 10% p.a. over the 40 years life of the project works to only Rs.0.66. He did not feel there shall be any necessity of any subsidy by GoHP in terms of order No.13 of 24-3-2003. He also prayed for realigning the various clauses of the PPA as per the orders of 24-3-2003 and 12-1-2004! He supported the prayer of the co-petitioner M/s. Patikari Power Ltd. and the interveners M/s. Kathuria & Associates as well as M/S Everest Power P. Ltd. on making the provision of clause 10.7.1 with regard to the Board event of default more equitable and level. He strongly supported the suggestion of Kathuria & Associates for setting up of a 'local area development fund'. In conclusion, he pleaded for retaining to the Commission the right to review and modify the provisions of PPA as more experience is gained in the implementation and performance of the specific PPAs in future as already ordered under order 38 of Commission's order dated 24-3-2003.

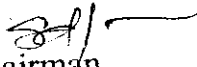
The Commission asked Shri Tarun Johri, Ld. Counsel for Petitioner to harmonise the provisions of clauses 15.18 and 15.19 of the PPA in line with Section 9 of the EA, 2003 and submit the legal version of such harmonised provisions for consideration by the Commission.

The Ld. Counsel for Kathuria & Associates submitted that he represented the interest of the financiers and lenders of Hydro Electric projects in the State of HP and provided Consultancy services to the entrepreneurs and IREDA. Mr. Seethayya submitted that Everest Power Pvt. Ltd. were executing 100 MW Malana Stage-II project and were contemplating investment in cascades of small projects in Himachal Pradesh. It had therefore, both the academic as well as investment interest in the petition.

After hearing the parties, the Commission orders as under:

- a) Extend provisions of the Commission's orders of 24-3-2003 and 12-1-2004 to all the small hydro power projects upto and including 25 MW except the provisions relating to the tariff and 12% free power wherever already settled bilaterally between the IPPs and the GoHP. However, the provisions relating to subsidy by GoHP as per Order No. 13 shall be deleted. Further no State Guarantee shall be provided for.
- b) The Commission does not wish to interfere with the provisions relating to tariff and the free power and herewith gives the unconditional acceptance to the tariff for the net saleable energy outlined in clause 6.2 of the PPA.
- c) The provision of clause 10.7.1 with regard to termination on account of Board's event of default shall be made equitable so as to provide level playing field.
- d) The decision of the Commission in the matter of review applications on Buy-out-option, as and when made, shall be made applicable retrospectively to all the PPA approved by the Commission.
- e) The Commission may consider advising the State Government under Section 86(2) with regard to setting-up Local Area Development Fund.
- f) The PPA shall be processed and Commission's consent accorded in 3 weeks time.

Dated: 29th March, 2004.


Chairman