



नई दिल्ली
NEW DELHI

याचिका संख्या /Petition No.: 392/MP/2019

कोरम/Coram:

श्री पी. के. पुजारी, अध्यक्ष/Shri P. K. Pujari, Chairperson
डॉ. एम. के. अय्यर, सदस्य/ Dr. M.K. Iyer, Member
श्री आई. एस. झा, सदस्य/ Sh. I.S. Jha, Member

आदेश दिनांक /Date of Order: 23rd of December, 2019

IN THE MATTER OF:

Petition under Section 79(1)(a), 79(1)(f) read with Section 79(1)(k) of the Electricity Act, 2003 seeking directions of this Commission for pre-commissioning activities, synchronization and commissioning of Dhukwan Small Hydro Electric Project (3X8 MW) and also for the necessary directions in relation to the Tariff as provided under Article 5 of the Power Purchase Agreement dated 05.12.2016 executed between the Petitioner and the Respondent No. 1 and payment of tariff to the Petitioner in terms of Article 5 of the Power Purchase Agreement dated 05.12.2016.

AND IN THE MATTER OF

THDC India Limited
Bhagirathi Bhawan (Top Terrace),
Bhagirathipuram, Tehri, Garhwal,
Rishikesh,
Uttarakhand – 249201

...Petitioner

Versus

1. Uttar Pradesh Power Corporation Limited
Shakti Bhawan,
14, Ashok Marg,
Lucknow
Uttar Pradesh - 226 001
2. Uttar Pradesh State Load Dispatch Centre
Phase II, Vibhuti Khand,
Gomti Nagar, Lucknow,
Uttar Pradesh- 226001
3. Uttar Pradesh Transmission Corporation Limited
Shakti Bhawan,
14, Ashok Marg, Lucknow
Uttar Pradesh - 226 001

...Respondents

Parties present: Shri Biju Mattam, Advocate, THDC
Shri Tabrez Malawat, Advocate, THDC
Shri AbhisekhKumar, Advocate, UPPCL
Shri Aryaman Saxena, Advocate, UPPCL
Ms. Harneet Kaur, Advocate, UPPCL

आदेश/ ORDER

The Petitioner, THDC India Limited is a joint venture company of Government of India (hereinafter referred to as 'GOI') and Government of Uttar Pradesh, with GOI holding majority and controlling shares. The Petitioner has filed a petition under Section 79(1)(a), 79(1)(f) read with Section 79(1)(k) of the Electricity Act, 2003 seeking directions for pre-commissioning activities, synchronization and commissioning of Dhukwan Small Hydro Electric Project (3X8 MW) and also for necessary directions in relation to the Tariff as provided under Article 5 of the Power Purchase Agreement (hereinafter referred to as 'PPA') dated 05.12.2016.

2. The Respondent No.1, Uttar Pradesh Power Corporation Limited (hereinafter referred to as 'UPPCL'), is nodal agency for power management and planning for the State of Uttar Pradesh.
3. The Respondent No. 2, Uttar Pradesh State Load Dispatch Centre (hereinafter referred to as 'UPSLDC'), is the State Load Dispatch Centre for the State of Uttar Pradesh in terms of Section 2(26) read with Sections 31 and 32 of the Electricity Act, 2003.
4. The Respondent No. 3, Uttar Pradesh Power Transmission Corporation Limited (hereinafter referred to as 'UPPTCL'), is a State Transmission Utility within the meaning of Section 2(67) read with Section 39 of the Electricity Act, 2003. It undertakes transmission of electricity and planning and coordination of the intra-State transmission system with other utilities, generating companies and licensees.
5. The Petitioner has made following prayers:

(a) pass necessary orders in relation to the Tariff as provided under Article 5 of the Power Purchase Agreement dated 05.12.2016 and direct Respondent No.1 to make payment of the tariff to the Petitioner of Rs. 4.87 per Kwh in terms of the Article 5 of the Power Purchase Agreement dated 05.12.2016 post commissioning and synchronization of the 24 MW(3x8 MW) Dhukwan Small Hydro Electric Project of the Petitioner;

(b) direct the Respondents to allow synchronization and commissioning of the Dhukwan Hydro Electric Project of 24 MW (3x8 MW) of the Petitioner; and

(c) pass such other and further order or orders as this Commission deems appropriate under the facts and circumstances of the present case.

Submissions of the Petitioner

6. The Petitioner has submitted that it has set up Dhukwan Small Hydro Electric Project of 24 MW (3x8 MW) on river Betwa located near village Sukhwan-Dukhwan in Tehsil-Babina in

District of Jhansi in the State of Uttar Pradesh (hereinafter referred to as 'Project'). It has entered into an Implementation Agreement with the Government of Uttar Pradesh for setting up of the Dhukwan Project.

7. The Petitioner has submitted that as per the Implementation Agreement dated 02.09.2009, the ownership of the plant is vested with it for the initial 35 years with the condition that the period may further be renewed, on specific request for another 10 years on the same terms and conditions contained in the Implementation Agreement. On the expiry of the said period, the project shall revert to the Government of Uttar Pradesh upon payment of take-over value ascertained on the depreciated book value or the realizable value of the structures whichever is less.
8. The Petitioner has submitted that in order to take necessary approval and for the purpose of implementation of the Project, it carried out necessary detailed survey and techno-economic studies of the Project and submitted a detailed report to Government of UP on 12.06.2009 with a remark that as per the power potential studies, the Project with an installed capacity of 24 MW was found to be commercially viable. Subsequently, a revised Detailed Project Report (hereinafter referred to as 'DPR') was submitted to Government of UP on 30.06.2010. On basis of the same, the Project has been established and set up .
9. The Petitioner has submitted that PPA dated 05.12.2016 for the Project was signed with the Respondent No. 1. As per Article 5 of the PPA, it has been agreed that the Respondent No.1 shall pay a fixed tariff of Rs. 4.87 per kWh or the levelized tariff to be declared by this Commission for the year of commissioning of the project, whichever is lower. Article 5 of the PPA is reproduced herein below:

“5.0 Tariff

*5.1 UPPCL shall pay a fixed tariff of Rs. 4.87 per Kwh or the levelized tariff to be declared by Hon'ble CERC for the year of commissioning of the project whichever is lower for the entire power to be supplied from Dukhwan SHP (24MW) for the entire project life of 35 years. Recovery of Income Tax and Foreign Exchange Rate Variation shall be governed as per order/ directions issued by CERC from time to time. THDCIL has given consent in respect to the tariff vide their letter dated 15-09-2016, which is enclosed as **Schedule-5.**”*

10. The Petitioner has submitted that in terms of Article 2.2 of the PPA, the Respondent No. 1 has agreed to purchase 100% power from the project on long-term irrevocable basis and the Petitioner has agreed to proceed with installation and setting up the Project on the basis of the said commitment of the Respondent No. 1. Further, in terms of Article 3.1 of PPA, the Respondent No. 1 has undertaken to make separate arrangement for wheeling of power and payment of wheeling charges and that the petitioner is not be obligated for the same in any manner.
11. The Petitioner has submitted that the Project has been ready for synchronization and commissioning since 29.09.2019. However, the same is pending on account of necessary steps and refusal on the part of the Respondents to grant necessary permissions relating to the same. The Respondents have delayed the permission for commissioning of the Project on account that the PPA has not been put before this Commission for necessary approval of the Tariff as provided under Article of 5 of the PPA.
12. The Petitioner has submitted that as such, in terms of the provisions and stipulation of the PPA dated 05.12.2016 and commercial accord reached amongst the parties, there is no such requirement of getting the directions and approval of this Commission by the Petitioner in relation to the tariff as provided under Article 5 of the PPA. The Petitioner is entitled for a fixed tariff of Rs. 4.87 / kwh or the levellised tariff declared by this Commission at the time of commissioning of the project, whichever is lower. The Commission vide its order dated 19.03.2019 passed in Petition No. 1/SM/2019 (Suo Moto) determined the levellised generic tariff for FY 2019-20 under Regulation 8 of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 (hereinafter referred to as 'RE Regulations 2017'). In the abovementioned order, the Commission has determined following tariffs for the Small Hydro Power Project (5MW – 25MW):

<i>Generic Tariff for RE Technologies for FY 2019-20</i>	
<i>Particulars</i>	<i>Levellised Total Tariff (FY 2019-20) (Rs./kWh)</i>
<i>Small Hydro Power Project</i>	
<i>HP, Uttarakhand, WB and NE States (Below 5 MW)</i>	5.27

<i>HP, Uttarakhand, WB and NE States (5 MW to 25 MW)</i>	<i>4.44</i>
<i>Other States (Below 5 MW)</i>	<i>6.23</i>
<i>Other States (5 MW to 25 MW)</i>	<i>5.21</i>

13. The Petitioner has submitted that since the fixed tariff agreed by the parties is lower than the generic tariff determined by the Commission, the parties are bound to adopt the fixed tariff of Rs. 4.87 per Kwh as per Article 5 of PPA. The parties are obligated to adhere by Article 5 of PPA to govern the transaction. The Petitioner was allowed to inject power into the grid only for about one hour for the purpose of synchronization of Unit-1 of the project and subsequently was denied to perform other Pre-COD activities on the Unit.
14. The Petitioner has submitted that the Respondents have not granted necessary permission for undertaking the trial runs post synchronization of Unit-1 which are necessary for the purpose of demonstrating the commissioning of the Unit and the performance of the same. Various commissioning tests are required to be performed on the machine before putting 72 hours trial run for demonstration of the performance of the Project. However, the Petitioner has been denied to inject power into the network for carrying out synchronization and trial run of the Unit 2 & 3 for the commissioning of the project.
15. The Petitioner has submitted that it has requested the Respondents on several occasions including on 28.09.2019 to allow it to inject power for commissioning activities in order to have timely commissioning of the Project and initiating commercial supply of the power to the Respondent No. 1. However, the Respondents have refused to allow the Petitioner to commission and declare COD of the Project leading to irreparable loss including loss of generating capacity and revenue which in effect leads to loss for the general public as the Petitioner is a public sector entity.
16. The Petitioner has submitted that in view of such circumstances, it is left with no other option but to approach the Commission to seek necessary directions in relation to the PPA dated 05.12.2016 for purpose of achieving commissioning of the Project and payment of the tariff as provided under Article 5 of the PPA after commissioning of the Project.

17. The Petitioner has submitted that the Commission has jurisdiction under Section 79 (1) (a) and Section 79 (1) (k) of the Electricity Act. Further, this Commission also has the exclusive jurisdiction to adjudicate upon the issues raised herein under Section 79(1)(f) of the Electricity Act in terms of the Article 8.1 of the PPA which provides

“8.0 ARBITRATION

8.1 All questions, differences or dispute between parties arising out of or in connection with this Agreement shall be adjudication under Section 79 (1) (f) of the Electricity Act, 2003 and accordingly shall be by the Central Electricity Regulatory Commission.”

Written Submissions filed by Petitioner

18. The Petitioner has filed the written submissions on 28.11.2019 vide which the Petitioner has reiterated the submissions already mentioned in the petition as such the same are not reproduced herewith for the sake of brevity. Additionally the Petitioner has submitted that:

- a) During the course of the hearing on 19.11.2019, the Respondent No.1 (UPPCL) has submitted that since UPPCL has already allowed the synchronization and commissioning activities to the Petitioner’s Project, therefore, the prayer (b) of the Petition has become infructuous. In view of the same, the Commission directed the Petitioner to confirm the submissions made by UPPCL regarding the Petitioner’s Project having already been allowed to undertake the synchronization and commissioning activities.
- b) The Petitioner has received a copy of the letter dated 21.11.2019, written by UPPCL to UPSLDC informing that the Petitioner may be allowed to undertake Pre-Commissioning activities (hereinafter referred to as ‘Permission for Pre-COD Activities’)
- c) The permission for Pre-COD Activities granted only on 21.11.2019 is contrary to the submissions made by the UPPCL before the Commission on 19.11.2019 that *“UPPCL has already allowed the synchronization and commissioning activities.”*
- d) The Petitioner has not been allowed by UPSLDC to conduct pre-COD activities on the units of Dhukwan SHP which is again contrary to the submissions and the letter issued by the UPPCL.

19. The Petitioner has submitted that UPSLDC is insisting THDC to install station service transformer to be connected to 132kV system. Presently, the station services are being fed from 11/0.415kV transformer, fed by 11kV feeder from Babina Substation of UPPCL. In addition, DG sets (2X250 kVA) of adequate capacities are installed as standby to ensure uninterrupted supply to station auxiliaries. Similar arrangement exists even in major Tehri HPP 1000 MW and Koteshwar HEP 400 MW Hydro stations being operated by THDC. UPSLDC has imposed arbitrary conditions which run contrary to logic and reasons. The same being erroneous needs to be strongly deprecated by the Commission.
20. The Petitioner has submitted that UPPCL while granting permission for Pre-COD Activities to the Petitioner vide its letter dated 21.11.2019 has directed the Petitioner to get clarity from the Commission in relation to the rate of infirm power injected during the pre-COD phase. There is no clarity required in relation to the same. As in terms of the PPA dated 05.12.2016, the Petitioner is required to receive tariff in terms of the Article 5 of the same for the entire power to be supplied by it.
21. The Petitioner has submitted that in view of the above, it is apparent that the PPA dated 05.12.2016 is clear and unambiguous with respect to the tariff entitlement. Therefore, there is no need for UPPCL to create unnecessary confusion to wriggle out of its obligation to pay for the infirm power. The PPA clearly stipulates that UPPCL shall pay a fixed tariff of Rs.4.87/kWh for the entire power to be supplied from Dhukwan SHP and does not differentiate or impose any obligation on UPPCL to not pay tariff or pay different tariff for the infirm power injected during Pre-COD or commissioning stage.
22. The Petitioner has submitted that the Commission may kindly take note of above submissions and direct the Respondents to:
- (A) *Pay tariff to the Petitioner in terms of the Article 5 of the PPA dated 05.12.2016 for both firm and infirm power and*
- (B) *Allow synchronization, commissioning and Commercial Operation of the Dhukwan Hydro Electric Project of 24 MW (3x8MW) of the Petitioner.*

Submissions of the Respondent No.1 (UPPCL)

23. The Respondent No.1 has submitted that it is filing the present reply in terms of directive issued by this Commission vide its Record of Proceedings for the hearing dated 19.11.2019.
24. The Respondent No.1 has submitted that the Petitioner is in advanced stages of synchronisation and commissioning activities. The PPA executed between parties provides for a fixed tariff of Rs. 4.87/kWh or the levelled tariff to be declared by the Commission for the year of commissioning of the project whichever is lower. The Commission vide its Renewable Energy Tariff Order dated 28.03.2019 has declared the levelled tariff of Rs. 5.07/kWh for the year 2018-19. The said tariff is higher than Rs. 4.87/kWh and accordingly the tariff of Rs. 4.87/kWh will be applicable in terms of Article 5 of the PPA.
25. The Respondent No.1 has submitted that it has never submitted that it is not agreeable to honour the terms of the PPA or is shying away from its obligations under the PPA. It wanted a regulatory certainty regarding the tariff to be paid by it from the Commission as the project falls within the jurisdiction of the Commission in terms of Sections 79(1)(a) of the Electricity Act, 2003.
26. The Respondent No.1 has submitted that it has already submitted before the Commission in the hearing dated 19.11.2019, that the permission has been given to the Petitioner to conduct Pre- COD activities and in line with the same letter dated 21.11.2019 issued by it to UPSLDC, so as to permit the Petitioner to carry out Pre-COD activities. The Petitioner has, in its response dated 28.11.2019 before the Commission submitted as follows:
- “7. It is further submitted that although UPPCL has granted permission for pre-COD activities vide letter dated 21.11.2019 but till the time of filing this reply, the Petitioner has not been allowed by UPSLDC i.e. Respondent No.2, to conduct pre-COD activities on the units of Dhukwan SHP. It is submitted that the same runs contrary to the submissions and the letter issued by the UPPCL.”*
27. The Respondent No.1 has submitted that no such submissions/representations have been made by it which is neither in contrast to the letter dated 21.11.2019 nor has in any manner caused any harm or injury to the Petitioner.

28. The Respondent No.1 has submitted that based on the request of the Petitioner vide its letter dated 22.10.2019, it had requested Respondent No.2 to permit the Petitioner to carry out the Pre-COD activities, however with the condition that payment will be made subject to the outcome of the present Petition. Further, there was no concept of in-firm power under the PPA, therefore, the clarity from this Commission regarding the payment of in-firm power injected by the Petitioner before the commissioning of its Project is required. Accordingly, it requested the Petitioner to seek clarity regarding in-firm power tariff from this Commission. If this Commission had to hold that even for the power supplied/injected before the commercial operation, the Respondent No.1 had to pay a tariff of Rs. 4.87/kWh the same has never been disputed by the Respondent No.1.
29. The Respondent No.1 has submitted that UPSLDC is the nodal agency empowered to grant permission/approval to the Petitioner to perform Pre-COD activities required for commissioning its project. Any issue pertaining to permission for Pre-COD activities is now between the Petitioner and Respondent No.2. Accordingly, Respondent No.1 cannot be alleged or held responsible for denying the permission required by the Petitioner for undertaking Pre- COD activities.
30. The Respondent No.1 has submitted that that this Commission may approve the requisite tariff/PPA and clarify the tariff to be payable for in-firm power injected/supplied by the Petitioner Project before the commissioning of its Project.

Rejoinder filed by the Petitioner on 06.12.2019

31. The Petitioner has filed the Rejoinder dated 06.12.2019 vide which it has reiterated the submissions already made in the petition and written submissions as such the same have not been reproduced herewith for the sake of brevity. Additionally, the Petitioner has submitted that the Respondent No.1 in its reply dated 03.12.2019 has admitted and agreed that it has already given permission and allowed the Petitioner to undertake synchronization and commissioning of the Project and that the Petitioner is entitled to the tariff in terms of the

Article 5 of the PPA and same shall make payment of the tariff of Rs. 4.87 per kWh. In view of the above the Commission may pass the final order directing the Respondents to:

- a) *Pay tariff to the Petitioner in terms of the Article 5 of the PPA dated 05.12.2016 for both firm and infirm power and*
- b) *Allow synchronization, commissioning and Commercial Operation of the Dhukwan Hydro Electric Project of 24 MW (3x8MW) of the Petitioner.*

Analysis and Decision

32. The Petitioner has filed the petition on 08.11.2019. The Petition was admitted and reserved for Orders on 19.11.2019. We have heard the learned counsels for the Petitioners and the Respondents and have carefully perused the records. The brief facts of the case are as under:
33. The Petitioner, THDC India Limited is a joint venture company of Government of India and Government of Uttar Pradesh, with GOI holding majority and controlling shares. The Petitioner has set up Dhukwan Small Hydro Electric Project of 24 MW (3x8 MW) on river Betwa District of Jhansi in the State of Uttar Pradesh. It has entered into an Implementation Agreement with the Government of Uttar Pradesh for setting up of a Dhukwan Project. The Petitioner has carried out necessary detailed survey and techno-economic studies of the Project and submitted a detailed report to Government of UP on 12.06.2009 which was found to be commercially viable. Subsequently, a revised Detailed Project Report was submitted to Government of UP on 30.06.2010. On basis of the same, the Project has been established and set up and PPA dated 05.12.2016 was executed with the Respondent No. 1.
34. The Petitioner has submitted that as per Article 5 of the PPA, it has been agreed between the Petitioner and Respondent No.1 that the Respondent No.1 shall pay a fixed tariff of Rs. 4.87 / kWh or the levelized tariff to be declared by this Commission at the time of commissioning of the project, whichever is less. ***Per contra***, the Respondent No.1 has submitted that it is agreeable to honour the terms of the PPA subject to regulatory certainty from the Commission regarding the tariff to be paid by it as the project falls within the jurisdiction of the Commission in terms of Sections 79(1)(a) of the Electricity Act, 2003. Further, there is no concept of infirm power under the PPA, therefore, the clarity regarding the payment of infirm

power injected by the Petitioner before the commissioning of its Project is required from the Commission.

35. From the submissions of the parties, the following issues arise before this Commission:

Issue No. 1: Whether the Respondent No.1 shall be directed to pay Tariff of Rs 4.87 per kWh to the Petitioner as provided under Article 5 of the Power Purchase Agreement dated 05.12.2016 post commissioning of the 24 MW(3x8 MW) Dhukwan Small Hydro Electric Project of the Petitioner?

Issue No. 2: Whether the Respondent No.1 can be directed to pay Tariff of Rs 4.87 per kWh to the Petitioner for the infirm power as per Power Purchase Agreement dated 05.12.2016 post synchronization and pre commissioning and of the 24 MW(3x8 MW) Dhukwan Small Hydro Electric Project of the Petitioner?

Issue No. 3: Whether the Respondents should be directed to allow synchronization and commissioning of the Dhukwan Hydro Electric Project of 24 MW (3x8 MW) of the Petitioner?

36. No other issue was pressed or claimed.

37. We now discuss other issues one by one:

Issue No. 1: Whether the Respondent No.1 shall be directed to pay Tariff of Rs 4.87 per kWh to the Petitioner as provided under Article 5 of the Power Purchase Agreement dated 05.12.2016 post commissioning of the 24 MW(3x8 MW) Dhukwan Small Hydro Electric Project of the Petitioner?

38. The Petitioner has submitted that as per Article 5 of the PPA, it has been agreed between the Petitioner and Respondent No.1 that the Respondent No.1 shall pay a fixed tariff of Rs. 4.87 or the levelized tariff to be declared by this Commission at the time of commissioning of the project. *Per contra*, the Respondent No.1 has submitted that it is agreeable to honour the terms of the PPA subject to regulatory certainty from the Commission regarding the tariff to be paid by it as the project falls within the jurisdiction of the Commission in terms of Sections 79(1)(a) of the Electricity Act, 2003.

39. The Commission observes that the Electricity Act, 2003 stipulates as under:

Section 79. (Functions of Central Commission):- (1)The Central Commission shall discharge the following functions, namely:-

- a) to regulate the tariff of generating companies owned or controlled by the Central Government;*
- b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;*
- c) to regulate the inter-State transmission of electricity ;*
- d) to determine tariff for inter-State transmission of electricity;*
- e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;*
- f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;*
- g) to levy fees for the purposes of this Act;*
- h) to specify Grid Code having regard to Grid Standards;*
- i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;*
- j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;*
- k) to discharge such other functions as may be assigned under this Act.*

40. The Commission observes that the relevant provisions of the PPA stipulate as under:

“5.0 TARIFF

5.1 UPPCL shall pay a fixed tariff of Rs. 4.87 per Kwh or the levelised tariff to be declared by Hon'ble CERC for the year of commissioning of project whichever is lower for the entire power to be supplied from Dhukwan SHP (24 MW) for the entire project life of 35 years. Recovery of Income Tax and Foreign Exchange Rate Variation shall be governed as per orders/directions issued by CERC from time to time. THOCIL has given consent in respect of tariff vide their letter dated 15-09-2016, which is enclosed as Schedule-5.

5.2 In addition to the energy tariff set out, UPPCL shall also be liable to pay to THDCIL in accordance with any law in force, all payments made or payable by it on account of taxes, duties, cess including environmental cess, levy, fees or other imposition etc. levied or to be levied in future by the Government or other authority in respect of generation, transmission and supply of energy including activities incidental and ancillary thereto”

“8.0 ARBITRATION

8.1 All questions, differences or disputes between the parties arising out of or In connection with this Agreement shall be subject to adjudication under Section 79 (1)(f) of the Electricity Act, 2003 and accordingly shall be by the Central Electricity Regulatory Commission.

8.2 Notwithstanding the existence of any question, disputes and differences referred to adjudication, arbitration, unless otherwise directed by the Central Commission the parties hereto shall continue to perform their respective obligations under this Agreement.”

41. The Commission notes that the Petitioner, THDC India Limited is a joint venture company of Government of India and Government of Uttar Pradesh, with Government of India holding majority and controlling shares. From Section 79(1)(a) read with 79(1)(f) of the Electricity Act, 2003 it is observed that the Central Commission has power and jurisdiction inter-alia to regulate the tariff of generating companies owned or controlled by the Central Government and to adjudicate upon disputes in the related matters and to refer any dispute for arbitration. Further, as per Article 8 of the PPA all questions, differences or disputes between the parties arising out of the PPA shall be subject to adjudication by this Commission. Hence the Commission has the jurisdiction to adjudicate in the matter.
42. The Commission observes that the Petitioner has invoked the jurisdiction of the Commission and has requested to adjudicate upon the dispute of payment of Tariff of Rs 4.87 per kWh as provided under Article 5 of the Power Purchase Agreement dated 05.12.2016 post commissioning and synchronization of the 24 MW (3x8 MW) Dhukwan Small Hydro Electric Project of the Petitioner. Article 5 of the PPA stipulates that UPPCL shall pay a fixed tariff of Rs. 4.87 per Kwh or the levelised tariff to be declared by the Commission for the year of commissioning of project whichever is lower for the entire power to be supplied from Dhukwan SHP (24 MW) for the entire project life of 35 years. Recovery of Income Tax and Foreign Exchange Rate Variation will be governed as per orders/directions issued by the Commission from time to time. The Petitioner has given consent in respect of tariff vide their letter dated 15-09-2016.
43. The Commission vide its order dated 19.03.2019 passed in Petition No. 1/SM/2019 determined the levelled generic tariff for FY 2019-20 under Regulation 8 of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from

Renewable Energy Sources) Regulations, 2017. In the abovementioned order, the Commission has determined following tariffs for the Small Hydro Power Project (5 MW – 25 MW):

Generic Tariff for RE Technologies for FY 2019-20	
Particulars	Levelling Total Tariff (FY 2019-20) (Rs./kWh)
Small Hydro Power Project	
<i>HP, Uttarakhand, WB and NE States (Below 5 MW)</i>	5.27
<i>HP, Uttarakhand, WB and NE States (5 MW to 25 MW)</i>	4.44
<i>Other States (Below 5 MW)</i>	6.23
<i>Other States (5 MW to 25 MW)</i>	5.21

44. From the above it is observed that the Generic Tariff for RE Technologies for FY 2019-20 for Small Hydro Power Project for other States excluding HP, Uttarakhand, WB and NE States (5 MW to 25 MW) as given by the Commission is Rs. 5.21 per kWh whereas the Article 5 of the PPA stipulates a fixed tariff of Rs. 4.87 per kWh for the entire project life of 35 years. Ostensibly, the tariff of Rs. 4.87 per kWh mentioned in the Article 5 of the PPA is less than the Generic Tariff of Rs. 5.21 per kWh given by the Commission. Therefore in view of Article 8 of the PPA read with Article 5 of the PPA, the Commission directs the Respondent No.1 to pay Tariff of Rs 4.87 per kWh to the Petitioner post commissioning and synchronization of the 24 MW(3x8 MW) Dhukwan Small Hydro Electric Project. It is worth mentioning that the Respondent No. 1 is agreeable to this tariff and has no objection in this regard.

Issue No. 2: Whether the Respondent No.1 can be directed to pay Tariff of Rs 4.87 per kWh to the Petitioner for the infirm power as per Power Purchase Agreement dated 05.12.2016 post synchronization and pre commissioning and of the 24 MW(3x8 MW) Dhukwan Small Hydro Electric Project of the Petitioner?

45. The Respondent no.1 has submitted that there is no concept of infirm power under the PPA, therefore, the clarity regarding the Tariff related to infirm power injected by the Petitioner before the commissioning of its Project is required from the Commission. Per Contra, the Petitioner has submitted that the Respondent No.1 may be directed to pay tariff to the

Petitioner in terms of the Article 5 of the PPA dated 05.12.2016 for both firm and infirm power.

46. The Commission observes that the relevant provisions of the PPA stipulate as under:

“2.0 INSTALLED CAPACITY & ALLOCATION OF POWER

2.2 UPPCL has agreed to purchase 100% power from the project on a long term irrevocable basis and THDC has agreed to proceed with the installation and commissioning of the Power Project on the above commitment of UPPCL.”

“4.0 ACCOUNTING OF ENERGY

4.1 THDCIL shall supply 100% power from the project to GOUP reckoned at Generating station switch yard/Bus bar after excluding auxiliary consumption and transformation losses (Net energy.)

4.2 The quantum of energy sold to UPPCL shall be the energy as indicated in the Energy Accounts as issued by SLDC, Uttar Pradesh The Energy Account including amendments, if any, as issued by SLDC, Uttar Pradesh shall form the basis for billing purposes and shall be binding on both the parties.”

“5.0 TARIFF

5.1 UPPCL shall pay a fixed tariff of Rs. 4.87 per Kwh or the levelised tariff to be declared by Hon'ble CERC for the year of commissioning of project whichever is lower for the entire power to be supplied from Dhukwan SHP (24 MW) for the entire project life of 35 years. Recovery of Income Tax and Foreign Exchange Rate Variation shall be governed as per orders/directions issued by CERC from time to time. THOCIL has given consent in respect of tariff vide their letter dated 15-09-2016, which is enclosed as Schedule-5.”

47. From the above the Commission observes that UPPCL has agreed to purchase 100% power from the project on a long term irrevocable basis and the Petitioner has agreed to proceed with the installation and commissioning of the Power Project on the above commitment of UPPCL. The Petitioner has to supply 100% power from the project to GOUP reckoned at Generating station switch yard/Bus bar after excluding auxiliary consumption and transformation losses (Net energy). The quantum of energy sold to UPPCL shall be the energy as indicated in the Energy Accounts as issued by UPSLDC. UPPCL has to pay a fixed tariff for the entire power to be supplied from the project for entire project life of 35 years.

48. The Commission notes that there is no provision in PPA regarding infirm power nor do CERC Regulations provide for treatment of infirm power in case of Renewable Energy (RE) projects. The practice is that the procurer is liable to pay the tariff determined or adopted by the Appropriate Commission from the date of Commercial Operation (COD) of a project. Prior to COD, any infirm power injected by the generating station cannot be scheduled and as such, there is no liability or prohibition for the procurer to take and pay for that power. Such infirm power prior to COD can be sold by the generating station by any of the recognized methods of sale under the Act read with relevant provisions of the Regulations of the Appropriate Commission. In the event of such injection of infirm power, with the permission of the System Operator, the System Operator pays the generators from the DSM pool at rates specified in the Regulations. The generator is also free to sell the power under Short Term Open Access. It also has the option of selling such power to the original beneficiary/ procurer at a mutually agreed price. Accordingly, the infirm power injected by the Petitioner prior to the COD, in the instant case will be on terms as may be mutually agreed between the Petitioner and any other entity including the Respondent No.1 subject to technical and operational feasibility and necessary permission of the System Operator (RLDC/SLDC as the case may be). The issue is decided accordingly.

Issue No. 3: Whether the Respondents should be directed to allow synchronization and commissioning of the Dhukwan Hydro Electric Project of 24 MW (3x8 MW) of the Petitioner?

49. The Commission observes that that during the course of the hearing on 19.11.2019, the Respondent No.1 (UPPCL) submitted that since UPPCL has already allowed the synchronization and commissioning activities to the Petitioner's Project, therefore, the prayer (b) of the Petition has become infructuous. The fact has been confirmed by the Petitioner in its rejoinder dated 06.12.2019. In view of above the issue stands disposed off.

50. Accordingly, the Petition No. 392/MP/2019 is disposed of in terms of the above.

Sd/-	Sd/-	Sd/-
आई. एस. झा	डॉ एम. के. अय्यर	पी. के. पुजारी
सदस्य	सदस्य	अध्यक्ष