

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 04 of 2020
Date of Order: 08.12.2020

In the matter of: Petition under Section 86 (1) (b) of the Electricity Act, 2003 read with Rule 8 of the Electricity Rules, 2005 and the Punjab State Electricity Regulatory Commission (Power Purchase and Procurement Process of Licensees) Regulations, 2012, Regulation 46 Of The Punjab State Electricity Regulatory Commission (Conduct Of Business) Regulations, 2005 and other applicable provisions for Approval of the Power Purchase Agreements (PPAs) and Procurement Process of Punjab State Power Corporation Limited related to the procurement of power from the Hydro and Nuclear Generating Stations

AND

Punjab State Power Corporation Ltd. (PSPCL),
The Mall, Patiala.

.....Petitioner

Present: Ms. Kusumjit Sidhu, Chairperson
Ms. Anjuli Chandra, Member

ORDER

1. PSPCL has filed the instant Petition for approval of its Power Purchase Agreements (PPAs) related to the procurement of power from Hydro and Nuclear Generating Stations. The submissions made in the petition are summarized as under:

- (a) The Petitioner, PSPCL is undertaking the generation and distribution of electricity in the State of Punjab and is a distribution licensee under the provisions of the Electricity Act, 2003.
- (b) PSPCL has been procuring power from various sources (apart from generating electricity itself at its generating stations) to meet the power supply requirements for maintaining the distribution and retail supply of electricity in the State of Punjab.
- (c) Prior to the reorganization and vesting of the distribution and retail supply functions in PSPCL, the erstwhile Punjab State Electricity Board was undertaking the procurement of power from third parties, besides generation of electricity by its own generating stations.
- (d) At present, PSPCL has long term power procurement agreement/arrangements with the Hydro and Nuclear Generating stations listed in Annexure 'A' to the present petition.
- (e) The present petition has been filed only in respect of the Hydro and Nuclear Based Generating stations for which PPA was entered into by PSEB/PSPCL during the period 7.03.2005 onwards i.e. when Regulations for the Power Purchase and Procurement Process of the Distribution Licensee were notified by the Commission.
- (f) PSPCL has given list of the Generating Stations which have achieved commissioning and from which PSPCL

is scheduling power along with details of the total capacity of the power stations, type of plant, share of PSPCL in the generating station, date on which the PPA was signed, duration of the PPAs, commercial operation date, tariff under the PPA including the scheduling of power from the said generating stations.

- (g) PSPCL submits that the Koldam, Nathpa Jhakri HEP, Parbati-II, Bursar, Pakadul HEP, Sewa-II, Uri-II, Tehri HEP, Chamera-III, Parbati-III, NAPP, Rapp- 3&4, Kishanganga HEP, Dulhasti, Kotlibhel -1A, Kotlibhel-1B, Kotlibhel-II, Rapp- 5 & 6, Vishnugarh Pipalkoti, Koteswar HEP, Tapovan Vishnugarh, Lata Tapovan, RKHEP, Subhansiri, Dauli Ganga Stage-1, Chamera-II, Bairasiul, Salal, Tanakpur, Chamera-I, Uri & Rampur HEP generation stations are owned by Central Govt. undertakings such as NTPC Limited, SJVN Limited NHPC Limited, THDC India Limited, Nuclear Power Corporation of India Limited etc. The capacity allocated from these Central Sector Generating Stations is by the Order of the Central Government i.e. the allocation of the capacity was decided by the Central Government in pursuance to the common demand of a number of States. And, the Tala Hydro Electric Project (1020 MW) is run-of-the-river project being managed by Tala Hydroelectric Project Authority (THPA) which is a Joint Project between India and Bhutan.
- (h) The rate and the quantum of power procured from such Generating Stations (as well as Malana II and Karcham

Wangtoo) during the FY 2018-19 has also been attached along with the quantum of power procured from these stations from FY 2005-06 to FY 2017-18.

- (i) PSPCL submits that the power purchase from the above generating stations being from the Central Government Generating Stations and/or those having a composite scheme, the tariff terms and conditions for the sale of electricity is determined by the Central Commission under the provisions of section 79 (1) (a) or (b) of the Electricity Act, 2003. Further, Rule 8 of the Electricity Rules, 2005 provides as under in regard to the generating stations whose tariff is determined by the Central Commission:

“8. Tariffs of generating companies under section 79.- The tariff determined by the Central Commission for generating companies under clause (a) or (b) of subsection (1) of section 79 of the Act shall not be subject to re-determination by the State Commission in exercise of functions under clauses (a) or (b) of sub-section (1) of section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission.”

- (j) That the procurement of power from these generating stations has been consistently mentioned in the tariff petition filed by PSPCL on a year to year basis in regard to the quantum of power to be procured and

PSPCL has also disclosed in the truing up petition the actual quantum of purchase from the generating stations and the quantum of tariff paid to the generating stations. The same has been approved by the Commission from time to time in the various tariff orders. The above is consistent with the requirements of Rule 8 of the Electricity Rules, 2005 read with section 86 (1) (b) of the Electricity Act for approving the procurement of power from these generating stations by the Commission.

- (k) In case of new generating stations whose tariff is determined by the Central Commission, as per the provisions of the Electricity Act, 2003, the generating companies will be filing a petition for determination of tariff in respect of these generating stations/generating units nearer the day of the commissioning of the generating units. PSPCL will thereafter file the necessary application under section 86 (1) (b) of the Electricity Act, 2003 read with Rule 8 of the Electricity Rules, 2005 before the Commission at the appropriate stage.
- (l) The Power Purchase Agreements in respect of NHPC Stations i.e. Sewa –II, Chamera –III , Uri –II and Parbati –III were for a period of 5 years from the respective commercial operation dates and have lapsed. Further, Power Purchase Agreement in respect of NHPC's Bairasuil station expired as the plant has completed its balance normative life. PSPCL has

however, continued to off-take power in terms of the PPAs. Bairasiul Power Station is under R&M work since 01.04.2017 and R&M works of 2 out of 3 units of Bairasiul Power Station have been completed so far. NHPC has written to PSPCL requesting for the renewal of the PPA in respect of Bairasiul Power Station from 01.04.2017 to completion date of R&M works of last unit as well as thereafter for 25 years from the date completion of R&M works of last unit. NHPC has also written to PSPCL requesting for extension of the PPAs in respect of Sewa –II, Chamera –III, Uri –II and Parbati –III for the balance life of the generating Stations i.e. upto 35 years from the COD, ranging from FY 2045-46 to FY 2048-49. The, WTDs of PSPCL in its 225th meeting dated 11.06.2019 has accorded approval to extend the PPAs from the date of expiry of initial PPA of Chamera-III, Sewa-II, Uri-II & Parbati-III for 35 years from COD and to sign the PPA/BPSA of Bairasiul Power Station for the intervening period from 1.4.2017 to completion date of R&M works of last unit as well as thereafter for 25 years from the date completion of R&M works of last unit. Further, WTDs also accorded approval to approach the Commission for grant of approval for extension/signing of PPAs in respect of said Power Stations of NHPC.

2. The Petition was listed for hearing on 15.07.2020. After hearing the arguments by the Counsel appearing on behalf of PSPCL, the Commission vide Order dated:

23.07.2020 asked for certain information. In response to thereof PSPCL filed its reply vide memo No. 5624 dated 24.08.2020. The additional information supplied by PSPCL is summarized as under:

(a) A Statement of the PPAs from which PSPCL is scheduling power along with the date of signing of the PPA, tariff provision, validity and applicable tariff along with the justifications for procuring power alongwith relevant extracts.

(b) Insofar as the Central Public Sector Undertakings (NHPC, THDC, SJVN and NPCIL) are concerned, the PPAs are entered into pursuant to the allocation done by the Central Government. The allocation of the Power to the beneficiaries by the Government of India in the Central Public Sector Generating Companies were being done as per the request and at the instance of the concerned State Governments who need the power. The State Governments act in consultation with the beneficiaries in the above process. Thus, the allocation of power in the generating stations of the Central Power sector Utilities stands on a different footing. Such allocation by the Central Government is a process of equitable distribution of capacity available in the Central Public Sector Stations amongst various States and are in furtherance of meeting the power requirement of different States/State Utilities. These are done by the Central Government in order to enable the State Utilities

to have a base load quantum of electricity for energy security.

- (c) In regard to the validity of an allocation made by the Central Government, PSPCL has referred to the judgment dated 31.03.2017 passed by the Central Commission in Petition No. 182/MP/2015, where in the case of another Distribution Licensee, it was held that the parties are bound by the PPA unless the power stand re-allocated:

“16. Ministry of Power has submitted its reply on merits in its affidavit dated 8.1.2016. The Ministry has stated that allocation of power from the Central Sector Generating Stations, which have been set up considering the long-term PPAs entered into by the procurers, is made at the instance of the State Governments/Procurers. According to the Ministry, the procurers are not entitled to unilaterally terminate the PPAs, except in accordance with the provisions thereof. The Ministry has pointed out that the purported cancellation or termination of the PPAs by the Petitioner on unilateral basis was not contemplated at the time of allocation of power by the Central Government. The cancellation or termination of the PPAs executed based on allocation of power made by the Central Government seriously affects the scheme of investment in the infrastructure such as power generation by Central Public Sector Units (CPSUs). The Ministry pointed out that investments made by the CPSUs are to be serviced and that when a procurer decides to unilaterally terminate the PPAs, the CPSUs are seriously prejudiced. According to the Ministry, the Petitioner as the procurer has a right to the allocated capacity under the PPAs at all times and correspondingly, has the obligation to pay the fixed

charges for the power allocated even in case of non-scheduling of power of its own volition.....

18. Explaining the process of reallocation of power, the Ministry has stated that the Central Power Sector Units can approach it for reallocation to any other procurer in case the procurer to whom power has been allocated decides to surrender it at any time during the operation of the long-term PPA. It has been explained that release of the procurer from its obligations under the PPA would be subject to the Ministry being able to reallocate the power, fully or partially, to any other person and would be limited to the period for which reallocation fructifies. The Ministry has argued that the procurer who has surrendered power continues to be bound by the obligations incurred under the PPA till such time and to the extent other procurer undertakes to honour the obligations of the procurer surrendering power.....

26..... Seeking direction to the Central Government for reallocation of power in the petition filed by the Petitioner, a distribution licensee, is clearly outside the scope of clause (f) of subsection (1) of Section 79 of the Electricity Act. Therefore, relief on prayer (B) cannot be granted. However, the Petitioner is at liberty to approach the Ministry of Power, Government of India with its grievance for consideration and appropriate directions.”

- (d) The nature and status of the Central Government allocation has also been recognized by the Central Commission in its Order dated 9.03.2017 in the case of Kanti Bijlee Utpadan Nigam Limited Vs Central Transmission Utility and Ors (Petition No. 20/MP/2017) as under

“27..... Unless and until the allocation of power in favour of particular beneficiaries is rescinded by Ministry of Power, the PPAs shall subsist and the concerned beneficiaries shall be liable to comply with the provisions of the PPAs including their obligations to sign the LTA Agreement and liability to pay the transmission charges. The beneficiaries do not have any option to unilaterally abandon the PPAs and their obligations thereunder”

- (e) That the said issue was also raised before the Competition Commission of India in the context of NTPC Generating Stations and the validity of the long term PPAs was upheld by the Competition Commission of India on the ground that the tariff determination by the Central Commission and the remedy to surrender the allocated power sufficiently protects the interests of the consumers. Reference may be made to the judgment dated 12.10.2017 of the Competition Commission of India in Case No 20 of 2017 in the case of Tata Power Delhi Distribution Limited v NTPC Limited:

“32. In view of the foregoing, the Commission is of the opinion that even if it is assumed that the OP was in a dominant position in the relevant market as identified by the Informant, a prima facie case of abuse of dominance in terms of the provisions of Section 4(2)(a)(i) of the Act is not made out in the instant matter because, firstly, the Informant has entered into the PPAs with the OP being fully aware of the terms of the PPAs including the long term obligation stipulate thereunder; secondly, there is a rational basis for binding the Informant and other procurers in the long term PPAs as the generating companies invest in establishing the generating stations based on

allocation and the PPAs entered into with the parties (which are to be served through period agreed upon); and lastly, the Informant and other procurers have the option to approach the Central Government for reallocation of power allocated to them.”

(f) Insofar as the Central Public Sector Undertakings, Dulhasti (NHPC) RAPP- 5 &6 (NPCIL), Koteshwer HEP (THDC), Dauli Ganga Stage-1 (NHPC), Chamera –II (NHPC), Bairasuil (NHPC), Salal (NHPC), Tanakpur (NHPC) Chamera – I (NHPC) Uri (NHPC) Rampur HEP (SJVN) and Sewa –II (NHPC) Uri-II (NHPC), Chamera- III (NHPC) & Parbati- III (NHPC) are concerned, the PPAs entered into are pursuant to the allocation done by the Central Government. Therefore, PSPCL is a deemed allocatee of the power from the Central Public Sector Units by the decision of the Central Government. The Central Government retains the power to allot the surrendered capacity by any procurer, as and when the Central Government is able to firm an allocation of such capacity to any other procurer and till then, the existing allottee is bound by and is required to implement the procurement of power. Thus, there is no discretion on the Procurer to terminate/avoid the procurement of electricity allocated to them by the Central Government.

(g) In respect of the generating station of Tala Hydro Electric Power Plant, while PSPCL has entered into a Power Purchase Agreement with PTC Energy on 26.09.2006, the same was pursuant to the allocation by the Ministry of Power, Government of India on 7.07.2006. The

Government of India and the Royal Government of Bhutan by Agreement dated 05.03.1996 had agreed that the Royal Government of Bhutan shall sell the surplus power available from the Tala Hydro Plant to the Government through Tala Hydroelectric Project Authority- an autonomous body set up for the construction, operation & maintenance of the project and for the evacuation of surplus power from the project. On 28.07.2006, the Government of India and the Royal Government of Bhutan have authorized PTC India Ltd. and Department of Energy as the designated nodal agencies in India and Bhutan respectively for inter-country transfer of power, to enter into a Power Purchase Agreement for sale and purchase of the said surplus power available.

3. In the hearing dated 26.08.2020, the Commission observed that the justification of entering into PPA viz-a-viz power requirement with respect to each PPA alongwith reasonability of the tariff as required by the Commission was not provided in the reply submitted by PSPCL. The Commission vide Order dated 02.09.2020 directed PSPCL to provide the same within three weeks.
4. PSPCL vide its letter dated 28.09.2020, while reiterating its earlier submissions, submitted as under:
 - (a) In response to the question raised in the Lok Sabha regarding the allocation of power from CPSUs, it was clarified by the Minister of Power as under:

“Power from Central Generating Stations to beneficiary States/Union Territories is allocated in accordance with formula for allocation of power being treated as guidelines from April, 2000. As per these guidelines, allocation of power is made to the States/UTs in two parts, namely firm allocation of 85% and 15% unallocated power for allocation by Government of India for meeting short term requirement to bridge their deficit. The firm allocation includes allocation of 12% free power to the project States and 1% for local area development in case of Hydro Power Stations and 10% (not free) power to the home State in case of Thermal and Nuclear Power Stations. The balance 72%/75% power is distributed amongst the States / UTs of the region in accordance with the pattern of central plan assistance and energy consumption during the previous five years, both factors having equal weightage. Central plan assistance is determined in accordance with the Gadgil formula, in which population of the states is also taken into consideration. State-wise details of allocation from Central Generating Stations are enclosed at Annex.

.....

Wherever firm allocation of power has already been done, it may be reallocated to some other State in case power is surrendered by the State owning the share. However, the unallocated power of Central Generating Stations (CGS) is allocated / revised by the Central Government from time to time to the beneficiary States, generally keeping in view, factors like emergent and seasonal nature of the requirement, relative power supply position, utilization of existing generation and other power sources, operational and payment performance of the States/UTs of the region.”

- (b) In respect of the Central Public Sector Utilities, the PPAs entered into are pursuant to the allocation done by the

Central Government. Therefore, PSPCL is an allottee of the power from the Central Public Sector Units by the decision of the Central Government and is bound to avail the said power. The Central Government retains the power to allot the capacity surrendered by any procurer to another procurer and till then, the existing allottee of the share in the Generating Station is bound by and is required to implement the terms & conditions of the PPA. Thus, there is no discretion with the Procurer to unilaterally terminate/avoid the procurement of electricity allocated to them by the Central Government.

(c) In the facts and circumstances mentioned above, the Commission may approve the PPAs and procurement of electricity from the generating stations listed with a cumulative contracted capacity of 709 MW.

5. During the hearing on 30.09.2020 it was submitted that PSPCL is not scheduling any power from Teesta Power Station and accordingly approval of the PPA pertaining to the said power station is not required. The Commission observed that PSPCL was directed vide Order dated 02.09.2020 to provide justification of entering into PPA viz-a-viz power requirement with respect to each PPA along with reasonability of the tariff. The information submitted by PSPCL in this regard in the additional affidavit is incomplete. Thus, the Commission vide Order dated 06.10.2020, directed PSPCL to submit the information depicting the justification for additional power procurement on long term basis within two weeks. Further, PSPCL was also directed to submit the

year-wise quantum, price and the Average rate of short term power purchase made by its from FY 2005-06 onwards to meet the demand.

6. PSPCL submitted its reply vide memo No. 5003 dated 20.10.2020. However, the same was incomplete and not as per the given format. During the hearing on 21.10.2020, the Commission while observing that there are some discrepancies in the information given now viz a viz the information submitted previously, directed PSPCL vide Order dated 23.10.2020 to submit complete information in respect of all PPAs in the given format after due re-conciliation by 02.11.2020. PSPCL filed the requisite information vide memo No. 5118 dated 03.11.2020. The petition was taken up for hearing on 11.11.2020 and after hearing the matter, Order was reserved.

7. Findings and Decision of the Commission

The Commission has examined the submissions made by PSPCL in the petition, information submitted during the course of hearings and has heard the counsel for PSPCL. PSPCL vide memo No. 5849 dated 28.09.2020 filed the details of 16 Hydro/Nuclear PPAs entered/renewed after 07.03.2005 i.e. after the notification of the PSERC Conduct of Business Regulations 2005 with prayer to approve the same with a cumulative contracted capacity of 709 MW. The details of the same along with the normative cost for FY 2018-19 is tabulated below:

Table: 1

Sr. No.	Name of the project	PSPCL share (MW)	Date of scheduling	PPA		Normative Cost (Rs. / Unit) FY2018-19
				Date of signing	Expiry date	
1.	Bairasuil (NHPC)	84	01.04.1992	23.10.2012 (renewed)	31.03.2017	1.51
2.	Tankapur (NHPC)	17	01.04.1993		31.03.2028	3.09
3.	Chamera-I (NHPC)	55	01.05.1994		30.04.2029	1.46
4.	Salal (NHPC)	184	01.04.1995		31.03.2030	2.20
5.	Uri (NHPC)	66	01.06.1997		30.05.2032	1.92
6.	Chamera-2 (NHPC)	30	31.03.2004	6.12.2011 (renewed)	30.03.2039	1.57
7.	Dauli Ganga-I (NHPC)	28	01.11.2005		31.10.2040	1.76
8.	Tala (THPA)	30	26.09.2006	26.9.2006	30.07.2041	2.16
9.	Dulhasti (NHPC)	32	07.04.2007	9.03.2006	06.04.2042	4.48
10.	RAPP 5&6 (NPCIL)	46	04.02.2010	21.12.2006	21.12.2021	4.06
11.	SEWA-2 (NHPC)	10	24.07.2010	27.12.2002	23.07.2015*	3.48
12.	Koteshwar (THDC)	25	01.04.2011	16.02.2008	31.03.2047	3.26
13.	Chamera-3 (NHPC)	18	04.07.2012	07.05.2004	03.07.2017*	3.31
14.	Uri-2 (NHPC)	20	03.02.2014	27.12.2002	02.02.2019*	4.84
15.	Rampur (SJVN)	23	14.05.2014	14.05.2014	6.11.2049	2.51
16.	Parbati-3 (NHPC)	41	07.06.2014	07.05.2004	06.06.2019*	3.28
	Total	709				

*In case PSPCL continue to receive power, terms and conditions of agreement will continue to operate.

7.1 The Commission refers to the Electricity Act, 2003, which specifies as under:

Section 86(1)(b) of the Electricity Act, 2003

86. Functions of State Commission-

(1) The State Commission shall discharge the following functions, namely:-

(a)

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

As per the above provision, the Commission is mandated to regulate electricity purchase and procurement process of the distribution licensee including the price at which electricity shall be procured from the generating companies or from other sources through agreements for distribution and supply of Electricity in the State. Accordingly, the Commission specified the provisions for regulating the Power Purchase and procurement process of the Licensee in the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations 2005, notified on 7.03.2005. The relevant provisions are reproduced here under:

“46. Power Procurement and Purchase

(1) In accordance with the provisions of the Act and the licence conditions, every Distribution Licensee shall purchase and procure electricity required for the Licensed Business of the Distribution Licensee in an economical and efficient manner and under a transparent power purchase and procurement process and generally based on the principles of purchase of electricity at the least cost.

(2)

(3) The Commission may, from time to time, issue guidelines, practice directions and orders governing the short term purchases and long term purchases which the Distribution Licensee can undertake for the purpose of the Licensed Business.

(4) a. The Distribution Licensee shall satisfy the Commission as to the need for additional power procurement on a long term basis

b. The Distribution Licensee shall not enter into a binding or enforceable contractual commitment of such long term power purchase till the Commission by

a general or special order approves the procurement of electricity by the Distribution Licensee.

(5) Unless otherwise approved by the Commission by a general or special order, a long term power purchase or procurement by the Distribution Licensee shall be done through a competitive procurement process approved by the Commission.

(6) (a) The Distribution Licensee shall satisfy the Commission that the electricity procured under long term power purchase otherwise than through a competitive bidding process or any short term power purchase is economical in the prevalent circumstances and that the Distribution Licensee has made prudent and best efforts to minimise the cost of purchase.

(b) The Commission may not permit any such long term purchase if the manner or method proposed for such procurement of electricity is not conducive to the objective of least cost purchase or for any other reason the purchase is not economical or efficient.

.....”

The Commission further prepared a comprehensive Regulation, the Punjab State Electricity Regulatory Commission (Power Purchase and Procurement Process of Licensee) Regulations 2012 notified on 23.10.2012. The relevant provisions are given below:

“10 Criterion for Power Purchases

(i)The Distribution Licensee(s) shall effect power purchase or enter into long term or short-term power purchase agreements or arrangements in accordance

with the Power Procurement Plan approved by the Commission;

(ii) While effecting power purchase, the Distribution Licensee(s) shall adhere to the principle of least cost plan (least financial cost to the Distribution Licensee), the ultimate objective being to make available secure and reliable power supply at economically viable tariffs to all consumers while satisfying power supply planning and security standards.

13. Power Purchase Arrangements or Agreements

Any new long term power purchase arrangement or agreement and amendments to existing PPA entered into by Distribution Licensee(s), shall be subject to prior approval of the Commission under section 86 of the Act, in respect of:-

- (i) Necessity;*
- (ii) Reasonability of cost;*
- (iii) Promoting efficiency, economy, equitability and competition ;*
- (iv) Conformity with regulations for investment approval;*
- (v) Conformity with requirements of quality, continuity and reliability of supply;*
- (vi) Conformity with safety and environmental standards;*
- (vii) Conformity with criterion of power purchase as laid down by the Commission;*
- (viii) Conformity with policy directives of the State Government and policies issued by the Government of India viz. National Electricity Policy, Tariff Policy, long term and short term power procurement guidelines.”*

The above provisions of the PSERC Regulations mandates that the long term power purchase arrangement of the distribution licensee shall be subject to the specific/prior approval of the Commission in respect of need/necessity and reasonability of cost with the objective being to make available secure and reliable power supply at economically viable tariffs.

7.2 PSPCL has averred that the procurement of power from the said generating stations have been consistently mentioned in the tariff petitions filed by PSPCL on a year to year basis. The same has been approved by the Commission from time to time in the various tariff orders and is consistent with the requirements of Rule 8 of the Electricity Rules, 2005 read with section 86 (1) (b) of the Electricity Act for approving the procurement of power from these generating stations by the Commission.

The Commission observes that the said submission by PSPCL is divergent to the stand earlier taken by it in Petition No. 41 of 2018 stating that consideration of power procurement from a generating plant in the ARR of a particular year in the Tariff Order cannot be treated as an approval as per Section 86 (1) (b) of the Electricity Act, 2003 read with Rule 8 of the Electricity Rules, 2005.

The criterion for approval of Power Purchase and Procurement of the Distribution Licensee was first specified in the PSERC (Conduct of Business) Regulations, 2005 and then in the PSERC (Power Purchase and Procurement Process of Licensee) Regulations, 2012. Accordingly, for

obtaining approval of its long term Power Purchase arrangement PSPCL was required to file a specific petition containing a clear and concise statement of the facts with material particulars justifying the need/necessity, reasonability of cost and economic viability of the same as per the provisions of these Regulations, as done now vide the instant petition.

The petition for ARR and determination of Tariff is dealt by the Commission under the relevant PSERC Tariff Regulations, which are distinct from the above referred 'Conduct of Business Regulations 2005' and 'Power Purchase & Procurement Process of Licensee Regulations 2012'. The information in respect power procurement submitted by the licensee in the ARR petition is considered only for the purpose of Energy balance and determination of cost of power for the consideration year, and cannot be considered as approval of the power procurement on long term basis as intended in Section 86(1)(b) of the Electricity Act read with Electricity Rule 8 and PSERC (Conduct and Business) Regulations 2005 or PSERC (Power Purchase and Procurement Process of Licensee) Regulations, 2012.

7.3 PSPCL has further averred that, in respect of the Central Generating Stations (CGSs) the PPAs entered into are pursuant to the allocation done by the Central Government. And, PSPCL being an allottee of the power from the CGSs by the decision of the Central Government is bound to avail the said power. PSPCL also referred to various judgments of the Hon'ble Courts regarding the liability to comply with

the provisions of the PPAs including their obligations to sign the LTA Agreement and liability to pay the transmission charges.

The Commission observes that, the allocation by Central Government is based on the demand raised by States/Union Territories at the instance of their utilities. And, this allocation gets confirmed/implemented only on signing of the PPA by the beneficiary. Also, the liability as enjoined in the various judgments of the Hon'ble Courts referred by PSPCL comes into force only after signing of the PPA.

7.4 Accordingly, as mandated under the Electricity Act, 2003 read with Electricity Rules, 2005 and provisions specified in PSERC Regulations, the Commission proceeds to consider the grant of approval on the criteria of its need/necessity and whether the same has reasonable cost and is economical or efficient in the prevalent circumstances:

a) ★ Need/Necessity for procurement on long term basis:

PSPCL has averred that the generation pattern from hydro power stations particularly situated in J&K and Himachal Pradesh almost matches the demand pattern of Punjab i.e. the generation from these hydropower stations is available at almost full capacity round the clock during May to September of each year for meeting the peak season demand of summer/paddy. And, during the months of October to April, Sewa-II, Chamera-III, Bairasiul & Parbati-III Power Stations generate energy during the morning and evening peak hours for a total duration of 3 hrs at least. Energy generation from these Power Stations helps in bridging the energy gap of

Punjab during peak hours so that PSPCL does not need to depend upon volatile short term power market to meet the State's peak energy demand.

The Commission observes that, PSPCL had a peak demand of 12638 MW in 2018-19, which it met from its own sources and through procurement from generating plants outside the state through long term and short term contracts. The Report submitted by PSPCL on Demand and Availability of power in Punjab for the period 2019-20 to 2035-36 indicates that that generation capacity during the FY 2018-19 was 13431.31 MW with Hydro capacity (including under consideration in the instant petition) constituting about only about 26% of the total capacity. Break up of the same is as under:

Table: 2

Sr. No.	Power Sources	Capacity (MW) FY 2018-19
1.	Own Thermal	1760
2.	Own Hydro (including BBMB)	2149.25
3.	EPPL & Karcham Wangtoo HEPs	300
4.	IPPs (TSPL, NPL & GVK)	3920
5.	PEDA & NRSE Projects	1240.87
6.	Central and other Hydro long term PPAs	1024
7.	Central and other Thermal long term PPAs	2840.39
8.	Nuclear	196.8
Total installed Capacity		13431.31

The Commission notes that Punjab is an agrarian State and the power demand is at its maximum during the 4 months (June to September) of the paddy season (12638 MW in 2018-19). During the remaining eight months of the year, the average peak demand hovers at about 55% of peak demand of the paddy season (i.e. about 6900 MW in 2018-19). Keeping in view the nature of the demand in the State, which has a huge

variation of demand between the paddy and non-paddy season and also between the day and night of the non-paddy season, the Commission is inclined to agree with PSPCL that the generation profile of the above mentioned hydro stations matches the demand profile of the State. Thus, it would be prudent for PSPCL to meet its demand during peak/paddy season from these hydro resources.

b) Whether power purchase from the Hydro & Nuclear Power stations is reasonable in cost, economical or efficient:

PSPCL has submitted that as per the latest Regulations notified by the Central Commission on dated 08.03.2019, the useful life of hydro power plants has been increased to 40 years from the existing 35 years which will benefit it in getting the power for another 5 years at the reduced tariff and will also facilitate reduction of tariff from the 13th year onwards (i.e. after loan repayment obligations are fulfilled) as the rate of depreciation will be reduced to about 1.07% from the existing rate of about 1.30%. Further, the annual escalation in O&M expenses has been reduced from the existing 6.64% to 4.77% (i.e. approx. 30% reduction in escalation rate).

The Commission observes that, the cost of power procurement from all of the hydro projects under consideration is reasonable as the same would be used to meet the demand during the peak/paddy season. Further the cost per unit of hydro stations reduces with time. Also, the Ministry of Power vide its Office Memorandum dated 08.03.2019 has declared large hydro power projects (>25MW) as Renewable Energy Source and the Commission would like

to encourage procurement from these sources at a reasonable cost. Further, MoP GOI shall be mandating a separate provision for Hydropower Purchase Obligation (HPO) in addition to the existing Renewable Purchase Obligation (RPO). The power from these hydro stations would qualify for the Hydro power obligation as and when mandated.

In respect of power procurement from RAPP 5&6 nuclear station the cost of power for FY 2018-19 is Rs 4.06 per unit. However, energy generation from a nuclear power station has almost zero GHG emissions. Therefore the Commission in order to encourage plants with lower carbon footprint considers it prudent to approve power procurement from this plant.

In view of the findings above, the Commission approves the PSPCL's Long Term Power purchase arrangement for 709MW (663MW Hydro+46MW Nuclear) from the 16 Generating Stations listed in Table-1 above at the Tariff determined by the CERC as per rule 8 of the Electricity Rules, 2005 as given below:

Rule 8 of the Electricity Rules, 2005

8. Tariffs of generating companies under section 79.- The tariff determined by the Central Commission for generating companies under clause (a) or (b) of sub-section (1) of section 79 of the Act shall not be subject to re-determination by the State Commission in exercise of functions under clause (a) or (b) of sub-section (1) of section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or

procurement process with such generating companies based on the tariff determined by the Central Commission.”

The petition is disposed of accordingly.

Sd/-

**(Anjuli Chandra)
Member**

Sd/-

**(Kusumjit Sidhu)
Chairperson**

Chandigarh

Dated: 08.12.2020

