

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

**IA No. 04 of 2024**  
**In Petition No.71 of 2015**

**Date of Order: 06.06.2024**

Interlocutory application seeking pro-tem approval of trading margin payable to PTC India Limited by Punjab State Power Corporation Limited from 01.04.2024 onwards in terms of article 10.1 of the power sale agreement dated 23.03.2006 subject to outcome of appeal no. 267 of 2019.

In the matter of: PTC India Limited (**PTC**), 2nd Floor NBCC Tower, 15 Bhikaji Cama Place, New Delhi-110066.

....Applicant/Petitioner

Versus

1. Punjab State Power Corporation Limited (**PSPCL**), Chief Engineer/ARR & TR, Shed No. F-4, Shakti Vihar, Patiala, Punjab.
2. Everest Power Private Limited (**EPPL**), 1<sup>st</sup> Floor, Plot No.143-144, Udyog Vihar, Phase-IV, Gurgaon-122015, Haryana.

... Respondents

Commission: Sh. Viswajeet Khanna, Chairperson  
Sh. Paramjeet Singh, Member

PTC: Sh. Amit Kapoor, Advocate (through V.C)

PSPCL: Sh. Anand K Ganesan, Advocate (through V.C)

EPPL: Sh. Parinay Deep Shah, Advocate (through V.C)

**ORDER**

1. The Applicant (PTC) has filed the present application seeking pro-tem approval of the trading margin payable by PSPCL from 01.04.2024, subject to the final outcome of its Appeal No. 267 of 2019, filed against the Commission's Order dated 11.02.2019 in

Petition No. 71 of 2015, pending before the Hon'ble Tribunal. It has been submitted that:

1.1 PTC, an inter-state trading licensee, is supplying the entire saleable power to PSPCL, from the 100 MW Malana II Hydro Electric Project of EPPL, in terms of the back-to-back PPA dated 25.07.2005 executed with EPPL and PSA dated 23.03.2006 with PSPCL. Article 10.1 of the PSA provides that PTC's trading margin would be Rs. 0.05/kWh for the first 12 years and Rs. 0.10/kWh from the 13th year onwards i.e. 01.04.2024 onwards.

1.2 On 24.01.2007, the Commission, vide its Order in Petition No. 11 of 2006, granted conditional approval to the PSA including PTC's trading margin, as under:

*"3.7 Trading Margin*

*3.7.1 Besides the landed cost of power for PSEB in respect of the PSA, the Commission has also examined the trading margin proposed by PTC in the PSA. The Commission has noted that Clause 10.1 of the PSA states that the trading margins shall be in compliance with any norms applicable to transactions of the nature and duration as captured in this PSA, as may be laid down by the CERC from time to time. The Commission agrees with this stipulation and observes that the sale of electricity by PTC from this Project, located in Himachal Pradesh to PSEB is "inter-state trading of electricity". As per Section 79 (1)(j) of the EA 2003, CERC shall fix the trading margin in the interstate trading of electricity if considered necessary. In light of the above, the applicable trading margin shall be as fixed by CERC from time to time. In the eventuality of CERC not fixing the trading margin for any particular period, it shall be such margin last fixed by CERC."*

1.3 On 11.01.2010, CERC notified the CERC (Fixation of Trading Margin) Regulations, 2010 applicable to the short term contracts (PPA and PSA with less than one year term) for inter-state trading in electricity undertaken by a licensee. The CERC decided to keep the long-term trading margin to be determined by market forces and not regulated. The relevant extract of the Statement of Reasons notified along with Trading Margin Regulations 2010 is reproduced below below:

*“7. ...Accordingly, the Commission is of the view that where traders enter into long term power purchase agreements of duration exceeding a year, the risks cannot be completely mitigated through a trading margin. Also, since the long term power procurement market is witnessing competitive forces at work, the Commission feels that the determination of an appropriate trading margin be best left to the market forces.”*

1.4 On 03.01.2013, a Tripartite Agreement was executed between Everest Power, PSPCL and PTC providing that:

- (a) Tariff will be determined by this Hon'ble Commission.
- (b) Trading Margin and other charges payable to PTC will be as per Order of this Hon'ble Commission.

1.5 On 11.02.2019, the Commission, vide its Order in the Petition No. 71 of 2015 filed pursuant to its direction in Order dated 31.08.2015 in Petition No. 37 of 2014, *inter alia*, observed that:

- (a) The trading margin payable by PSPCL to PTC for facilitating supply of 100 MW power from Everest Power is

Rs. 0.01/kWh from FY 2014-15 till the end of 12<sup>th</sup> tariff year i.e. till 31.03.2024 for the entire billable energy.

- (b) PSPCL shall recover/adjust the amount of excess trading margin already paid to PTC beyond 31.03.2014.
- (c) For fixing the trading margin from the 13<sup>th</sup> tariff year i.e., from 01.04.2024 onwards, PTC shall approach this Hon'ble Commission at the appropriate time.

1.6 On 05.04.2019, PTC filed Appeal No. 267 of 2019 before Hon'ble APTEL challenging the above Order dated 11.02.2019 passed by this Commission in Petition No. 71 of 2015. Alongwith the Appeal No. 267 of 2019, PTC also filed an Interlocutory Application (IA) No. 700 of 2019 seeking interim relief in Appeal No. 267 of 2019 and *inter alia* praying as under:

- “(a) Grant ad-interim stay on operation of Impugned Order;*
- (b) Restrain PSPCL from recovering the amount of trading margin already paid by it to PTC beyond 31.03.2014;*
- (c) Direct PSPCL to pay trading margin of 5 paise per unit from 01.04.2016 till date and clear all outstanding dues in this regard.*
- (d) Pass any such other appropriate orders/directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”*

1.7 On 19.09.2019, the Hon'ble Tribunal, in IA No. 700 of 2019 in Appeal No. 267 of 2019, granted an interim stay restraining the arrears deduction and recovery pertaining to trading margins ordered by this Commission. The relevant extract of the Order dated 19.09.2019 is reproduced below:

*“We grant stay till next date of hearing as sought in interim application so far as arrears deduction and recovery pertaining to trading margins is concerned.”*

1.8 On 02.01.2020, the CERC notified the Trading Licence Regulations 2020 specifying that the trading margin for long term contracts shall be decided mutually between the parties. The relevant extracts of the Trading License Regulations are set forth below:

*“7. Applicability of Trading Margin:*

*Trading margin shall be applicable to the following transactions undertaken by the Trading Licensee:*

.....

*(b) Transactions under long term contracts (where period of the contract of the Trading Licensee with either the seller or the buyer or both is more than one year);*

.....

*(d) Transactions under Back to Back contracts, irrespective of duration of the contract;*

*8. Trading Margin:*

*(1) Trading Licensee shall comply with the trading margin as given below: .....*

*(d) For transactions under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller.”*

1.9 On 23.08.2022, the Hon’ble Tribunal in IA No. 700 of 2019 in Appeal No. 267 of 2019 ordered continuation of its interim order. The relevant extract of the Order dated 23.08.2022 is reproduced below:

*“The present appeal is already at the stage of hearing, hence, it be included in the **“List of Finals of Court-I”** to be taken up from there, in its turn.*

*Interim order, if any, shall continue till next date of hearing.”*

1.10 On 20.03.2024, PSPCL wrote to PTC enquiring about the status of petition, if any, before this Commission for fixing the trading margin from 01.04.2024 onwards in terms of Order dated 11.02.2019. Accordingly, PTC filed an IA No. 534 of 2024 on 22.03.2024 before the Hon’ble Tribunal for emergent directions/urgent listing in Appeal No. 267 of 2019 since PTC is required to file an appropriate petition before this Commission for fixation/adoption of the trading margin payable to PTC from 01.04.2024 onwards in terms of the Order dated 11.02.2019. The Hon’ble Tribunal in its Order dated 02.04.2024 observed that PTC may approach this Commission for fixation of trading margin payable to PTC from 01.04.2024 onwards without prejudice to the contentions of PTC in Appeal No. 267 of 2019.

1.11 A prayer has been made in the IA as under:

That in order to avoid a vacuum vis-à-vis trading margin for the period beyond 31.03.2024 that will occur due to the directions in the Order dated 11.02.2019, this Commission may be pleased to:

- (a) Adopt the trading margin of Rs. 0.10/kWh payable to PTC from 01.04.2024 onwards as mutually agreed between PTC and PSPCL in the PSA till the Appeal No. 267 of 2019 is disposed of by the Hon’ble Tribunal;

(b) Pass such order(s) as this Hon'ble Commission may deem fit and proper in light of the facts and circumstances of the present case.

2. On 20.05.2024, PSPCL filed its reply objecting to the maintainability of the IA filed in an already concluded and disposed of Petition. Submissions of PSPCL are summarized as under:

2.1 That the present application has been filed in a disposed-of Petition No. 71 of 2015, seeking redetermination of the trading margin beyond the period determined by the Commission in its order dated 11.02.2019. The Commission's Order dated 11.02.2019, *inter-alia*, provides that, "*this trading margin of Rs. 0.01 per kWh shall be applicable upto the end of the 12th tariff year. For fixing the trading margin from the 13th tariff year onwards, PTC shall approach the Commission at the appropriate time.*" As is evident, the determination of trading margin was only till the end of 12<sup>th</sup> tariff year (i.e., FY 2023-24), with a direction that there would be a separate determination for the period from 13<sup>th</sup> tariff year onwards (i.e., FY 2024-25).

2.2 Therefore, it was incumbent upon the Petitioner to file a petition seeking determination of the trading margin from the 13<sup>th</sup> tariff year onwards (i.e., FY 2024-25), and in such petition seek an interim determination of the trading margin pending final determination by this Hon'ble Commission. It is not possible for an interim application to be entertained in a disposed of petition.

3. The Applicant filed a rejoinder dated 21.05.2024 reiterating its earlier submissions and further submitting that, it has filed the present Application in terms of the directions of the Hon'ble

Tribunal in Order dated 02.02.2024 in IA No. 534 of 2024 in Appeal No. 267 of 2019. The relevant extract of the Order is reproduced below:

*“...since post 31.03.2024, the Appellant is not entitled for trading margin, they are required to file a Petition before the PSERC to claim the same, and as the jurisdiction of the PSERC to entertain the Petition is questioned in this appeal, it may not be possible for them to file such a Petition. We are of the view that since the main appeal itself relates to the year 2019, no useful purpose would now be served in adjudicating an interlocutory application of the year 2019 on its merits, more so as the appeal itself is ripe for hearing.*

*When we enquired from Mr. Amit Kapur, learned Counsel for the Appellant, as to why they could not file an application before PSERC, in terms of the impugned order, without prejudice to their contentions in the present appeal, learned counsel would submit that filing such an application would not resolve the issue, since hearing of the IA is also likely to take considerable time.*

*Mr. Anand K. Ganesan, learned Counsel for the 2nd Respondent, submits that they would co-operate with the Appellant in requesting the PSERC to decide the IA, at the earliest, preferably within a period of two weeks from the date on which the application is filed.”*

4. The application was taken up for hearing on 22.05.2024. The Ld. Counsel appearing for EPPL stated that the issue of trading margin is between PTC India Ltd. Vs PSPCL therefore, it has nothing to submit at the present stage. The Ld. Counsel for PSPCL reiterated that Petition no. 71 of 2015 has already been finally disposed of by the Commission and the petitioner needs to file a fresh petition for re-fixation of the trading margin from the 13th Tariff Year onwards. The Ld. Counsel for PTC India Ltd requested



this Commission to allow continuation of trading margin of Rs. 0.01/kWh already being paid till the final decision of the Hon'ble APTEL. The Ld. Counsel for PSPCL did not oppose the Applicant's amended submission. While noting the statement made by Ld. Counsel for PTC for allowing continuation of its trading margin at Rs. 0.01/ kWh during the pendency of the appeal before the Hon'ble APTEL, the Commission observed that PTC's prayer in the IA is for seeking a trading margin of Rs. 0.10/ kWh. Ld. Counsel for PTC requested the Commission to take his statement on record as a revised prayer. While taking note of it, the Commission asked Ld. Counsel for PTC to also file an affidavit to support its statement made during the hearing. After hearing the parties, the Order on IA was reserved awaiting the affidavit to be filed by PTC regarding its amended prayer. In response thereto, PTC filed its affidavit dated 30.05.2024, stating that:

*"5. That in this context, it is submitted that in order to avoid vacuum vis-a-vis trading margin for the period beyond 31.03.2024 that will occur due to the directions in the Order dated 11.02.2019, this Commission may be pleased to direct PSPCL to continue to pay trading margin at Rs. 0.01/kWh from 01.04.2024 onwards on a pro-tem basis till the Appeal No. 267 of 2019 is disposed of by the Hon'ble Tribunal ...."*

#### **5. Commission's observation and Decision:**

The Commission refers to its Order dated 11.02.2019 in Petition No. 71 of 2015, wherein it was held as under:

*".....the Commission notes that PTC did not furnish the requisite information as sought by the Commission to facilitate fixing of the trading margin for PTC. The Commission is of the considered opinion that in the instant case, PTC's role is limited and risks are marginal as all the risks are sufficiently*

*covered in the contract documents and a secure payment mechanism is provided in the PSA ensuring payment to PTC by PSPCL. Accordingly, the Commission finds it just and fair in the present scenario of declining trading margins, to fix the PTC's trading margin as Rs. 0.01 per kWh from FY 2014-15 onwards which shall be payable by PSPCL for the entire billable Energy. However, PSPCL shall recover/adjust the amount of excess trading margin already paid by it to PTC beyond 31.03.2014, upto which the Commission had allowed the trading margin to be paid in its Order dated 27.11.2013 in petition no. 54 of 2012. Further, the Commission finds it prudent to hold that this trading margin of Rs. 0.01 per kWh shall be applicable upto the end of the 12th tariff year. For fixing the trading margin from the 13th tariff year onwards, PTC shall approach the Commission at the appropriate time."*

As is evident, the trading margin @ Rs. 0.01 per kWh determined by the Commission vide the above order was applicable upto the end of the 12th tariff year i.e 31.03.2024, with directions that for fixing the trading margin from the 13th tariff year onwards, PTC shall approach the Commission at the appropriate time.

Accordingly, PTC is required to approach the Commission through a separate petition for fixing the trading margin from 01.04.2024 onwards. However, as submitted by the Applicant, the said Order of the Commission is under challenge before Hon'ble APTEL in an Appeal No. 267 of 2019, questioning the jurisdiction of the Commission to entertain the Petition in the matter of fixation of the trading margin. The related interim orders passed by the Hon'ble APTEL have already been noted and reproduced earlier in this order.

Considering, the absence of any approved trading margin for the period post 01.04.2024, which has created a vacuum vis-à-vis

trading margin payable by PSPCL to PTC now for the period after 31.03.2024, the Commission decides that while it is incumbent upon PTC to file a separate petition to have the trading margin determined from 01.04.2024 onwards as per the Commission order dated 11.02.2019 under challenge before the Hon'ble APTEL, in view of the interim orders passed by the Hon'ble APTEL dated 02.04.2024 in IA No. 534 of 2024, this Commission, as a purely interim measure allows the continuation of payment of the trading margin already being paid by PSPCL i.e. @ Rs. 0.01/kWh, from 01.04.2024 onwards on a pro-tem basis till the Appeal No. 267 of 2019 is disposed of by the Hon'ble Tribunal.

The IA is disposed of in terms of the above.

**Sd/-**

(Paramjeet Singh)

Member

**Sd/-**

(Viswajeet Khanna)

Chairperson

Chandigarh

Dated: 06.06.2024