

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

Petition No. 19 of 2022
Date of Order: 13.03.2024

Petition under section 61, 62(1)(a), 86, 94 and other applicable provisions of the Electricity Act, 2003 seeking revision of the variable cost of the existing Biomass and bagasse based power projects in the State of Punjab and revision of annual rate of 5 % escalation of the variable cost of the existing biomass and bagasse based power projects in the state of Punjab.

AND

In the matter of: Punjab State Power Corporation Limited, the Mall Patiala-147001-Punjab.

..Petitioner

Versus

1. M/s Malwa Power Pvt Ltd. A-177, Okhla Industrial Area, Phase-1, New Delhi-110020.
2. M/s Universal Biomass Energy Pvt. Ltd, Faridkot Road, Guru HarSahai, District Ferozepur, punjab 152022,
3. M/s Dee Development Engineers Pvt. Ltd, 1255, Sector - 14, Faridabad, Haryana,121007.
4. M/s Viaton Energy pvt.Ltd., First Floor, 6-3 569/2, Rockdale Somajiguda, Hyderabad-500082, Andhra Pradesh.
5. M/s Sampurn Agri Ventures Pvt Ltd. Village- Painchawali, Fazilka, Punjab
6. M/s Sukhbir Agro Energy Ltd,. Faridkot Road, Guru HarSahai, Ferozpur-152022, Punjab.

7. M/s Green Planet Energy Pvt. Ltd. SCF- 44-G, 1st Floor, Orient Cinema Road, Opp. Police Station, B.R.S Nagar, Ludhiana-141012, Punjab.
8. M/s A.B Sugars Ltd,. 33 Community Centre, New Friends Colony, New Delhi-110025
9. M/s Chadha Sugars & Ind. Ltd,. Vill. Kiri Afgana, Tehsil-Batala, District Gurdaspur, Punjab-143521.
10. M/s Indian Sucrose Ltd,. 5A, 2nd Floor, 18 Poorvi Marg, Vasant Vihar, New Delhi-110057.
11. M/s Nawashahar Power Pvt. Ltd,. 159- Industrial Area Power Pvt. Ltd, Co-Generation Phase-2, Chandigarh,Punjab-160002
12. M/s Rana Sugars Ltd,. Madhya Marg, Sector 8-C, Chandigarh, Punjab-160009.
13. M/s Wahid Sandhar Sugars Ltd,. G.T Road, Phagwara, District Kapurthala, Punjab-144401.
14. M/s Bhogpur Co-Operative Sugar Mills Ltd,. Vill- Bhogpur, District Jalandhar, Punjab-144201
15. M/s A.B. Grain Spirits Pvt, Ltd. Village- Kiri Afgana, Tehsil Batala, District Gurdaspur, Punjab-143505
16. M/s Chandigarh Distillers & Bottlers Ltd, Village- Banur, Tehsil, Mohali, District- SAS Nagar, Punjab- 160071.
17. M/s NV Distilleries & Breweries Pvt, Ltd. Village- Sandharshi, Tehsil Rajpura. District Patiala, Punjab 140401.
18. M/s Shree Ganesh Edibles Pvt. Ltd. Shop No. 25-B, New Grain Market Khanna, District Ludhiana, Punjab-141401
19. M/s Indian Acrylics Ltd,. SCO 49-50, Madhya Marg, Sector-26 Chandigarh, Punjab-160019
20. Punjab Energy Development Agency, Solar Passive Complex, Plot No. 1-2, Sector 33-D, Chandigarh.

....Respondents

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

PSPCL: Sh. Anand K Ganesan, Advocate
Ms. Harmohan Kaur, CE/ARR&TR

Respondents:

1. M/s Malwa Power : Sh. Tajender Joshi, Advocate
2. M/s Universal Bio: Ms. Aastha Jain, Advocate
3. M/s Dee Dev. Ltd: Sh. Tajender Joshi, Advocate
4. M/s Viaton Energy: Sh. Tajender Joshi, Advocate
5. M/s Sampurn Agri: Ex-Parte
6. M/s SAEL Ltd. : Ms. Aastha Jain, Advocate
7. M/s Green Planet : Sh. Tajender Joshi, Advocate
8. M/s A.B Sugar Ltd. : Sh. Arjun Grover, Advocate
9. M/s Chadha Sugar : Sh. Sunil Chadha, Sr. Advocate
10. M/s Indian Sucrose : Sh. Arjun Grover, Advocate
11. M/s Nawanshahar : Sh. Arjun Grover, Advocate
12. M/s Rana Sugar : Sh. Anupam Chaudhary, Advocate
13. M/s Wahid Sandhar : Ex-Parte
14. M/s Bhogpur Co-Op : Ex-Parte
15. M/s A.B Grain Ltd : Sh. Sunil Chadha, Sr. Advocate
16. M/s Chd. Dist. Ltd : Sh. Munish Thakur, Advocate
17. M/s NV Dist. Ltd. : Ex-Parte
18. M/s Shree Ganesh : Sh. Tajender Joshi, Advocate
19. M/s Indian Acrylic : Ex-Parte
20. PEDA : Sh. Aditya Grover, Advocate

ORDER

1. Punjab State Power Corporation Ltd. (PSPCL) has filed the present petition to seek review and revision of the high variable cost of existing Biomass and Bagasse based Power Projects in the State and review of 5% escalation index applicable thereon. The petition was taken up for hearing on admission on 25.05.2022, wherein, it was observed by the Commission that there is mismatch between the numbers of Biomass/Bagasse based power plants impleaded as respondents and that listed in Annexure-A of the petition. It was

further observed by the Commission that PEDDA has not been impleaded as a respondent. In response, PSPCL filed an IA No. 21 of 2022 requesting for allowing the amended memo of parties wherein PEDDA was also impleaded as a respondent. The Commission accepted the request of PSPCL for allowing the amended memo of parties to be taken on record vide Order dated 02.08.2022, with direction that PSPCL needs to clarify whether it intends to seek the review of the Commission's Order in Petition No. 26 of 2020 i.e. the tariff for projects commissioned in FY 2020-21 only or review of tariffs for all the existing PPAs. PSPCL was also directed to cite the provisions of Regulations and PPAs under which the present petition is being preferred. PSPCL, vide its memo No. 273 dated 24.08.2022, submitted that PSPCL is not seeking a review of the generic RE Tariff Order for FY 2020-21, but is seeking revision/ redetermination of the variable cost and rate of escalation thereon for all existing biomass/bagasse fuel based power plants supplying power to PSPCL. It was also clarified that the petition is for re-determination of tariff and not for review of any tariff order and that such redetermination is being sought prospectively and not for the past period. In response to the Commission's query regarding the provisions of the Regulations/PPAs under which such re-determination of the stated tariff is permissible, PSPCL submitted, without citing any such provision in the PPAs, that it has sought for the redetermination of the tariff by invoking the plenary power of the Commission under Section 61,62 and 64 read with 86 (1) (a)&(b) of the Electricity Act 2003, wherein the Commission has been bestowed with vast powers to determine tariff as well as to regulate electricity

purchase of the distribution licensees. In the hearing for admission held on 21.12.2022, the Ld. Counsel for the petitioner argued the matter and requested the Commission to admit the petition. After hearing the Ld. Counsel for the petitioner and considering the petition and additional submissions, the Commission vide Order dated 26.12.2022 held that it would be appropriate to also hear the respondents on the maintainability of the petition and accordingly directed that the notices be issued to the respondents to file their reply on the maintainability of the petition. In response, M/s Malwa Power, M/s Dee Development, M/s Viaton Energy Pvt. Ltd, M/s Green Planet, M/s Shree Ganesh Ltd., M/s Universal Biomass, M/s SAEL Limited, M/s A.B Sugar Ltd, M/s Nawanshahar, M/s Indian Sucrose, M/s Chadha Sugar Mills, M/s A.B Grain Spirits Pvt. Ltd., M/s Rana Sugar Ltd, M/s Chandigarh Distillers & Bottlers and the PEDDA, filed their respective replies objecting to the admissibility/maintainability of the petition mainly on the ground that such provisions do not exist in the PPA/Regulations. PSPCL filed its rejoinders to the objections raised by the respondents reiterating that the Commission has the powers to revise/re-determine the tariffs, without referring to any such provision in the Regulations/PPAs. However, despite the repeated adjournments/ opportunities given by the Commission, M/s Sampurn Agri Ventures Pvt. Ltd, M/s Wahid Sandhar Sugar Ltd, M/s Bhogpur Co-Operative Sugars, M/s NV Distillers & Breweries Pvt. Ltd and M/s Indian Acrylic Ltd., neither appeared nor filed any reply and were proceeded against ex-parte vide Order dated 31.07.2023.

2. Submissions of PSPCL

Submissions of PSPCL are summarized as under:

2.1 PSPCL, being a distribution licensee in the State, has tied up with various generating stations including biomass and bagasse fuel based power plants for purchase of electricity to meet the demand of its consumers. The power purchase cost and other expenses incurred by PSPCL are regulated by the Commission under the provisions of the Electricity Act, 2003 and accordingly the retail supply tariff to be paid by the consumers is designed to cover its annual revenue requirements. However, the variable cost payable to biomass and bagasse based plants is very high when compared to the actual cost incurred by the generating companies to purchase such fuel. A list of the biomass and bagasse based power plants that have existing PPAs with PSPCL and are impleaded as respondents being the affected parties is attached as **Annexure-A** to the petition.

2.2 The Central Commission *vide* notification dated 23.06.2020 notified the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 (hereinafter being referred to as the **CERC RE Regulations, 2020**) for the period of 01.07.2020 upto 31.03.2023. The said Regulations laid down the State specific norms/parameters for determination of tariffs for various RE projects. Further, to the same, the Commission, *vide* Order dated 18.09.2020 in Petition No. 26 of 2020 (Suo-Motu), after following due process, adopted the said CERC RE Regulations with one State specific amendment i.e., applying CUF of 40% for Small Hydro Plants instead of 30%

adopted by CERC and determined the levelized generic tariff for RE projects in the State for FY 2020-21. However, the fuel costs of Rs. 3960/MT and Rs. 2351/MT considered for biomass and bagasse respectively as envisaged in the CERC RE Regulations adopted by the Commission were much higher than the actually prevalent prices in the market. The Regulations/Order further mentions that for each subsequent year of the Tariff Period, a normative escalation factor of five (5) % per annum shall be applicable on the fuel/variable cost.

2.3 Further, based on the said Regulations i.e., by considering 5% escalation in the fuel prices, the Commission vide Petition No. 34 of 2021 (Suo-Motu) issued a staff paper for determination of levelized generic tariff for RE projects for FY 2021-22. In response to the public notice issued for inviting comments/objections on the said staff paper, PSPCL filed its objections pointing out that the fuel costs of biomass and bagasse considered are very much higher when compared to the actual costs prevalent in the market. Considering the same, the Commission directed PEDDA to carry out an independent exercise to assess the weighted average landed fuel cost for biomass and bagasse in the State. However, there are a number of discrepancies in the draft report and the fuel prices indicated therein are not a true reflection of the actual prevalent prices in the State.

2.4 That upon routine checking of the fuel used at eight (8) biomass generating stations by PSPCL team, it was found that six (6) of them majorly use paddy straw as the biomass fuel whereas two (2) of them, in fact, use paddy straw as 100% of the fuel. In further

inquiries made by PSPCL, it has come to light that one of the generating companies namely M/s Sukhbir Agro Energy Limited, in the month of November 2021, has procured Paddy Straw at the rate of Rs. 155 per quintal, which comes to Rs. 1550/- per MT.

2.5 It is submitted that, the cost of fuels as envisaged in the CERC RE Regulations and adopted by the Commission are incorrect as:

- a) The Central Commission has fixed a higher base price of biomass and bagasse fuel for the State of Punjab without taking into account the actual prevalent prices;
- b) The determination by the Central Commission is only at a macro level, without taking into account specific factual situations in each State;
- c) The Central Commission has mandated that the already high base price of biomass and bagasse fuel has to be escalated @5%, which results in a much higher profit to the generators.
- d) Section 61 (h) of the Electricity Act, 2003 envisages that the Appropriate Commission, while determining tariff, should be guided by the principle that the tariff should progressively reflect the cost of supply of electricity. Therefore, the tariff so determined should be reflective of the actual prevalent costs.

2.6 The aforementioned anomalies result in considerably higher variable cost of biomass and bagasse based power plants which is detrimental and against the interests of the consumers in the State. It is submitted that under Section 61 (a) of the Electricity Act, 2003, while determining the tariff this Commission has to be only guided by the methodologies and principles of the Central Commission and not adopt it *verbatim*. Thus, the CERC

Regulations are not binding on this Commission. The primary objective to be achieved is the safeguarding of the consumers' interest while ensuring the recovery of reasonable cost of generation to the generators. Therefore, the variable cost ought to cover the cost of fuel and the generators ought not to profit from the determination of the variable cost by the Commission.

2.7 That Haryana Electricity Regulatory Commission (HERC) while keeping in mind the actual prices has deviated from the norms as prescribed in the CERC RE Regulations and has determined fuel price during first year of control period of FY 2021-22 to 2024-25 for Biomass and Bagasse as Rs. 3000/MT and Rs. 1027/MT respectively, with 2.93% escalation per annum. This Commission too should take steps to deviate from the CERC RE Regulations in order to align the tariff with the actual cost of fuel and may also review the annual escalation index of 5% and set the escalation index, if any, to the actual parameters. Further, rather than providing for a fixed escalation of 5% on a yearly basis, the Commission may apply the variable cost determined on a yearly basis to ensure that the variable cost only covers the actual fuel cost and does not become an avenue for the projects to profit in the procurement of fuel. The State of Punjab is an agriculturally abundant state where agricultural by-products of biomass and bagasse fuel are in abundance and as such the cost awarded should relate to the actual cost.

2.8 Although the renewable energy generators are to be facilitated and promoted, they cannot be allowed to profit on the use of fuel, and that too at such exorbitant levels. The determination of the variable

cost by the Commission is to ensure recovery of the reasonable cost of fuel to the generators, and has to be corresponding to the actual cost of fuel as prevalent in the market. The generators cannot take the position that irrespective of the actual cost of fuel, they are entitled to an exorbitant assumed cost of purchase with no correlation to the actual cost. It is submitted that even for thermal projects under Section 62, the cost of fuel is recovered on an actual basis. It is submitted that the energy charges cannot be an avenue for the generators to profit.

2.9 It is stated that the present petition is only in relation to the variable cost. PSPCL, in the present petition, is not disputing the fixed cost for the projects, which is determined based on the year of commissioning. Moreover, the variable cost being determined on a yearly basis, the same ought to apply to all projects which are supplying electricity in that particular year, irrespective of the year of commissioning or the fixed cost that the projects are entitled to.

2.10 The tariff determination exercise is a continuous process and the principle of limitation does not arise in case of adjustment of tariff. Further, the tariff as determined by the Commission governs the supply of electricity by the impugned renewable projects to PSPCL. Being given tariff under Section 62 of the Electricity Act, 2003, the Commission can adjust tariff from time to time, considering the reasonable cost of generation that is incurred. The Hon'ble Supreme Court, *vide* Judgement dated 03.03.2009 in the matter of ***Uttar Pradesh Power Corporation Limited v National Thermal Power Corporation Limited and Ors. [(2009) 6 SCC 235]*** has held that the Power and/ or jurisdiction of the Commission to frame

tariff and/ or carry out revision thereof is not in dispute. Therefore, the Commission has the jurisdiction and the power to amend the tariff which was earlier determined by the Commission.

2.11 PSPCL has prayed to:

- “a) Review and revise the high variable cost of existing biomass and bagasse-based power projects as mentioned in Annexure A;*
- b) Determine the biomass and bagasse fuel price at Rs.1,400/MT and Rs. 1,027/MT in line with the market price in the State of Punjab;*
- c) Review the five (5) % escalation index applicable to the variable cost of the existing biomass and bagasse -based power projects as mentioned in Annexure A; and*
- d) Pass further order(s) as deemed fit and proper.”*

3. Submissions of the Respondents

The reply/objections submitted by the Respondents mentioned in para 1 above are summarized as under:

3.1 That the Govt. of Punjab (GOP), vide Notification No. 10/106/06-STE (1)/5390 dated 24th November 2006, notified the NRSE Policy 2006 specifying the tariff of Rs.3.49/unit, with base year 2006- 07 and annual escalations @ 5% up to 2011-12. The same was accepted by the Commission vide its Order dated 13.12.2007. Thereafter, the Central Electricity Regulatory Commission (Terms and Condition for Tariff Determination from Renewable Energy Sources) Regulations (**CERC Regulations**) were notified from time to time through CERC RE Tariff Regulations 2009, CERC RE Tariff Regulations 2012, CERC RE Tariff Regulations 2017 and CERC RE Tariff Regulations 2020. The same were adopted by the Commission (with some State specific amendments) and the

annual generic RE tariffs were determined by the Commission in various petitions i.e. Petition No. 32 of 2010, 59 of 2011, 35 of 2012, 37 of 2013, 42 of 2014, 43 of 2015, 55 of 2016, 50 of 2017, 23 of 2018, 17 of 2019 and 25 of 2020, which consisted of two parts i.e. Fixed cost and Variable cost with 5% escalation as envisaged in the CERC Regulations. The respondent generators are getting tariff as per the above said Orders. The said Orders have not been challenged by the PSPCL at any stage and have attained finality. Thus now, PSPCL cannot challenge the tariff Orders passed by the Commission which have attained finality. Moreover, any review of same is also barred by Limitation.

3.2 That PSPCL has filed a joint petition, for review of tariff for all the existing biomass/bagasse projects, joining the separate and distinct causes of actions, which is not maintainable on account of misjoinder of the parties. As per law, cause of action cannot be joined for the convenience of any party. It is submitted that the Respondents have entered into separate PPAs with the PSPCL having different terms & conditions and signed under different RE Tariff Regulations. For example, some Bagasse based co-generation projects are getting tariff based on the weighted average normative parameters for Bagasse and biomass projects, whereas some are getting tariff based on normative parameters specified exclusively for bagasse based Co-gen plants. Also, some like M/s Nawanshar Power Pvt. Ltd. (NPPL) are before the Hon'ble APTEL by way of an appeal against the Commission's Orders on the tariffs applicable to their projects.

3.3 The relief as sought by the Petitioner in the present Petition, if allowed, would amount to,

- a) Unilateral re-opening and revision of the express contractual stipulations agreed between the parties under the concluded PPAs;
- b) Re-determination of issues already settled under various Orders to the prejudice of Respondents, which have otherwise attained finality;
- c) Deviation/violation and invalidating of norms prescribed under CERC Tariff Regulations as adopted by this Commission which can only be done through a judicial review under Article 226 of the Constitution of India and not through the present Petition.

3.4 That the Petitioner has been raising the issue of fuel cost previously also. Whereon, the Commission has held that the methodology as specified in CERC Regulations is a preferable option. Recently, in Petition No. 26 of 2020 also, PSPCL had raised the said issue of fuel prices by submitting that the actual cost of biomass in Punjab is very much on the lower side and that the annual rate of escalation on the variable cost component of tariff for biomass/biogas based RE projects should be linked to the fuel price index mechanism subject to a maximum of 3%. However, its pleas were not allowed by the Commission as PSPCL has not substantiated its claim with any authentic market survey based data. It is submitted that as per the settled principles of *res-judicata* enshrined under the Section 11 of the Code of Civil Procedure 1908, once a matter is finally decided by a competent court, no party can be permitted to re-open it in a subsequent

litigation. Elaborating upon the doctrine of *res-judicata*, the Hon'ble Supreme Court in case of ***Asgar & Ors. v Mohan Varma [(2020) 16 SCC 230]*** has held that once a matter is finally decided by a competent court, no party can be permitted to re-open it in a subsequent litigation in as much as in the absence of such a rule there will be no end to litigation and the parties would be put to constant trouble, harassment and expense.

3.5 Further, PSPCL in its additional submissions has specifically mentioned that it is not seeking a review of the Commission's Order for RE tariff for FY 2020-21 passed in petition No. 26 of 2020. Meaning thereby, that PSPCL has no objection to the tariff of Rs. 8.75 per kWh (i.e. Rs. 2.79 per kWh towards the fixed cost and Rs. 5.96 per kWh towards the variable cost) decided therein for F.Y. 2020-21. The said variable part of the tariff now comes to Rs. 6.57 per kWh (5.96 +5%+5%). It is submitted that the respondents are in fact getting a lower variable tariff than this variable tariff.

3.6 That the generic tariff awarded to a project is determined on normative parameters in terms of the applicable Regulations at any particular time and situation. The relief sought by PSPCL will amount to going contrary to the applicable regulations of the time. The adjudicatory function of the Commission is distinct from its legislative function. It has been held by the Hon'ble Supreme Court in ***PTC India Limited Vs. CERC, (2010) 4 SCC 603*** that the decision-making power under Section 79(1) of the 2003 Act being the adjudicatory function is distinct and separate from the functions enshrined under Section 178 of the 2003 Act, which are

- legislative in nature. The Hon'ble Appellate Tribunal for Electricity, New Delhi in Madhya Pradesh Power Generation Company Ltd. v. Madhya Pradesh Electricity Regulatory Commission and Ors., 2011 SCC Online APTEL 72 has held that the Regulations framed by the State Commission partake the character of subordinate or delegated legislation therein having the force of statutory law.
- 3.7 That the Commission has jurisdiction and power to decide/amend the tariff and other matters as per Section 61, 62, 64 and 86 of the Electricity Act in terms of the applicable Regulations. Therefore, the same can be made applicable only prospectively i.e. on the projects which would be commissioned in the future years.
- 3.8 PSPCL has wrongly mentioned that determination of RE tariff is a continuous process and the Commission can adjust the tariff from time to time considering the reasonable cost of generation actually incurred. It is submitted that, the PPAs were executed on the basis of tariff determined by the Commission which became a part of the PPAs. There is no provision in the PPAs which authorizes the PSPCL to file the present petition. The judgment relied upon by the PSPCL passed by the Hon'ble Supreme Court in (2009)6 SCC 235 is not applicable in the present case. The Commission has adopted the applicable CERC RE Regulations and passed the various RE Tariff Orders after following the due process. The said Orders were never challenged by the PSPCL and have now attained finality.
- 3.9 There is no provision in the PPAs which authorizes PSPCL to file the present petition. The PPAs being sacrosanct and binding on the parties, the terms of a concluded PPA cannot be varied

unilaterally at the behest of one party to the detriment of other as held in various judgments by the Hon'ble Supreme Court. It is submitted that:

- a) The issue of review and revision of the terms of the PPA is no longer res-integra as held in the following decisions of the Hon'ble Supreme Court, particularly in the case of ***Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Company (India) Limited [(2017) 16 SCC 498]*** and ***Gujarat Urja Vikas Nigam Limited v. EMCO Limited & Anr. [(2016) 11 SCC 182]***. Also, in the matter of ***Rajasthan State Industrial Development & Investment Corpn. Vs. Diamond & Gem Development Corpn. Ltd. & Anr. [(2013) 5 SCC 470]*** the Hon'ble Supreme Court, has held that a party cannot claim anything more than what is covered by the terms of a contract, for the reason that contract is a transaction between the two parties and has been entered into with open eyes and by understanding the nature of the contract. The contract has to be interpreted without inserting any outside aid. It is to be construed by attributing the plain & literal meaning to the words written in the contract and it is not permissible for the court to make a new contract, however reasonable it may seem, if the parties have not made it themselves.
- b) Further, in the case of ***United India Insurance Co Ltd v. MKJ Cooperation Appeal (civil) 6075-6076 of 1995***, it has been held that the material alterations in a contract can only be done by mutual consent of the parties. The basic pre-requisite for alteration in the contract is that both the parties to the contract

must be in agreement to such novation, it cannot be unilateral until mentioned otherwise in the contract. In the case of ***Citi Bank N A v. Standard Chartered Bank Civil Appeal No. 7941 of 1995***, it was held that novation, rescission, and alteration under Section 62 requires that both the parties should agree to substitute, rescind or alter the existing contract with a new one. Such substitution, rescission or alteration has to be done bilaterally. In the case of ***Polymat India P. Ltd. & Anr. vs National Insurance Co. Ltd. & Ors., Appeal (civil) 4366 of 1999***, it was held that the terms of a contract cannot be varied without the mutual agreement of the parties.

- c) The Hon'ble Supreme Court had observed, in the case of ***Energy Watchdog vs CERC [(2017) 14 SCC 80]***, that Parties to an executable contract are often faced, in the course of carrying it out, with a turn of events, which they did not at all anticipate, for example, a wholly anomalous rise or drop in prices, which is an unexpected impediment to execution. This does not in itself get rid of the bargain they have made. The Courts have no general power to absolve a party from the performance of its part of the contract merely because its performance has become arduous on account of an unforeseen turn of events. Also, the Hon'ble Supreme Court in the matter of ***Har Shankar & Ors. Vs the Dy. Excise & Taxation Commr., [(1975) 1 SCC 737]***, has held that when the terms and conditions are stated in advance and the participating bidders do so with full knowledge of the commitments which the bid involves, those who contract with open eyes must accept the

burdens of the contract along with its benefits. Commercial considerations may have revealed an error of judgment in the initial assessment of productivity of the venture but that is a usual incident of business transactions. Reciprocal rights and obligations arising out of a contract do not depend for their enforceability upon whether a contracting party finds it either prudent or onerous to abide by the terms of the contract.

d) This Commission, in Petition no. 72 of 2021 titled M/s Salasar Hydro Vs PSPCL, has dismissed the petition filed by the M/s Salasar Hydro accepting the plea of PSPCL that the grant of relief in the absence of any provision would tantamount to alteration/re-writing of the PPA, which is not permissible under the law. Hence, PSPCL now cannot take a contrary stand in the present petition. Further, the Hon'ble APTEL in order dated 02.08.2022 passed in Appeal Nos. 65 & 284 of 2016 has observed that concluded PPA cannot be reopened so as to vary the terms, there being a sanctity attached to the contracts entered into by the parties of their own volition.

3.10 That PSPCL is simply looking for ways to open the already concluded PPAs, the Orders passed by the Commission and the CERC Regulations, which have attained finality. Its contention that determination of Fuel cost and its escalation factor is a continuing process is incorrect. In fact the Generic RE tariff regulations are notified for a specific period and the relevant normative parameters covering the variable charge i.e., fuel cost, Heat rate, GCV and escalation factor are fixed for the tariff period. After the prescribed period of regulation is over, the exercise of previous

publication, inviting comments and public hearing is taken up for a new set of regulations and after finalization and notification of the new regulations, the earlier regulations are repealed. Therefore, the fuel cost determination is not a continuous process and is related with the relevant regulations applicable for the specific year and unless the particular order and/or Regulations are challenged within the limitation period, they attain finality and thus the petition is not maintainable as the limitation period is already over long ago.

4. Rejoinder filed by PSPCL

PSPCL, vide its rejoinder to the reply/objections filed by the respondents, while reiterating its earlier submissions has further stated that:

4.1 The contention of the respondents that the petition is barred by limitation is misplaced since PSPCL is neither seeking a review of the past Orders nor a retrospective revision of tariff. The present petition is for re-determination of tariff i.e., the variable cost and annual escalation thereon for the future, in view of the availability of biomass and bagasse fuels in Punjab at substantially lower cost than that envisaged for allowing tariffs to the projects of the respondents. It is stated that under Section 61, 62, and 64 read with 86(1)(a) and (b) of the Electricity Act, 2003 the Commission has been bestowed with vast powers to determine tariff as well as to regulate electricity purchase of the distribution licensees.

4.2 The price of fuel is dynamic and is constantly varying and hence the cause of action is a continuous one. The issue of fuel prices not being market aligned is no longer *res- integra* and has been decided

by this Commission in Petition No. 34 of 2021. In fact, the finding of the Commission supports the case of PSPCL, inasmuch as after taking note of the huge price difference between the actual price and price considered by the CERC, it has decided to discontinue the determination of generic tariff for the year FY 2021-22 onwards *vide* Order dated 19.01.2023 after observing that the actual prices of biomass and bagasse in the State of Punjab are substantially lower than the prices which were being paid to the generators by way of fuel charges.

- 4.3 The contention of the respondents that the present Petition is not maintainable since it is a joint petition is incorrect. The fact that each of the generators have entered into separate PPA is immaterial to the facts of the present case. The fact that one of the Respondents (NPPL) has challenged the Order dated 29.03.2022 passed by the Commission in Petition No. 31 of 2019 before the Hon'ble APTEL has also no bearing to the facts of the present case since no stay has been granted in favour of the Respondent Generator. In fact, the Petitioner has filed the present petition on the same cause of action arising against the respondents on account of actual price of biomass and bagasse fuel becoming substantially lower than the cost which was assumed earlier when the tariff was determined. The Order II Rule 3 of the Civil Procedure Code 1908 provides that when a similar cause of action arises against different respondents, a suit can be filed by joining the cause of action against all the respondents.
- 4.4 Reliance as placed on the CERC RE Tariff Regulations is also immaterial since, the Commission has the power to make state

specific deviations from the same as done in case of CUF of Small Hydro projects. Submissions on the part of the Respondents that the Petitioner is seeking to challenge the validity of any Regulations stems from an incorrect understanding of the scheme of the electricity Act.

4.5 The contentions raised by the respondents in respect of sanctity of the PPAs are misplaced. Where the contract is detrimental to the interest of the consumers, the contractual perspective of the PPA requires to be diluted. The decisions referred to by the respondents are not applicable to the facts of the present case. Herein, the contracts/PPAs are based on the tariffs determined by the Commission. The Hon'ble Supreme Court in ***Gujarat Urja Vikas Nigam Limited vs. Tarini Infrastructure Limited and Others [(2016) 8 SCC 743]*** has also held that tariff in the case of such PPAs can be varied.

4.6 The reliance placed by the Respondent Generators on the Energy Watchdog decision is misplaced. It is not the case that PSPCL is seeking to absolve itself from the performance of its contract with the Respondent Generators. Reliance as placed by the Respondent Generator on the decision of the Hon'ble Supreme Court in *Har Shankar decision* is also misplaced. The issue therein was whether after conclusion of a bidding process can the same be rescinded based on the financial considerations and as such the *ratio* as held therein is not applicable to the facts of the present case. Further, the issue before the Hon'ble Tribunal in Appeal Nos. 65 and 284 of 2016 was whether the concluded PPAs can be reopened at the behest of an association which was not a party to the PPA. It is in

this background that the Hon'ble Tribunal had held that terms of contract cannot be varied with at the instance of a party which is alien to the contract.

5. The petition was taken up for hearing the final arguments on admission on 24.01.2024. After hearing the parties on the maintainability of the petition, the Order was reserved vide Order dated 25.01.2024 and the parties were allowed to file written submissions, if any, within one week. PSPCL filed its written submissions on 06.02.2024, reiterating the earlier submissions and further stating that the Hon'ble Supreme Court has, in the constitutional bench decision in *PTC India Limited v. Central Electricity Regulatory Commission [(2010) 4 SCC 603]*, settled the position that Regulations over-ride contracts and that even existing contracts have to be aligned to the Regulations framed. Whether Regulations are to be framed for over-riding and novating the PPAs, are aspects of exercise of powers and such exercise may be by regulatory orders or by framing regulations or in any other manner, as permissible in law. But these are issues of exercise of powers and not of availability of powers, particularly at this stage of admissibility. The Respondents appearing in the case also submitted their respective written submission on 07.02.2024, 12.02.2024 and 17.02.2024 reiterating their earlier submissions.

6. Observations and Decision of the Commission

The Commission has examined the prayers made in the petition, objections raised by the Respondents on the admissibility/maintainability of the same, rejoinder thereto by the Petitioner and the arguments thereof. In its prayer, the Petitioner is seeking review and revision of tariff (variable cost and the rate of annual escalation thereon)

payable to various biomass/bagasse fuel based power projects supplying power to PSPCL under different PPAs, citing a mismatch between the prevalent market prices of fuels and those that were earlier assumed/considered for determination of tariff for the respective projects. The Respondents are objecting to the admissibility/maintainability of the petition mainly on the following issues:

- i) Filing of a joint petition impleading various generators, all having separate PPAs with different tariffs/terms & conditions;
- ii) Commissions' powers to review/amend the Regulations;
- iii) Limitation;
- iv) Higher fuel prices issue already stands dealt with previously and is therefore barred by the principle of *res-judicata*;
- v) Sanctity of the Contracts/PPAs.

The Commission examines the issues raised by the Respondents as under:

6.1 Issue of filing of a joint petition impleading various generators having separate PPAs with different tariffs/terms & conditions:

The Respondents' contention is that cause(s) of action cannot be joined for convenience of the Petitioner. It has been submitted that the present petition is not maintainable as PSPCL has filed a joint petition for revision of tariffs for various biomass and bagasse fuel based projects, who are supplying power under separate PPAs with different terms & conditions. These are also governed by different regulations and have distinct and different tariff structures. Some

Bagasse based co-generation projects are getting tariff based on the weighted average normative parameters for Bagasse and biomass projects, whereas some others are getting tariff based on normative parameters specified exclusively for bagasse based co-generation plants.

On the contrary, PSPCL's submission is that since cause of action arising against all the respondents is the same (i.e., availability of fuel in the market at substantially lower price than that assumed/considered for determination of tariff earlier for these impugned projects), it has preferred a joint petition before the Commission. PSPCL has also placed its reliance on the Order II Rule 3 of the Civil Procedure Code' 1908.

The Commission refers to the Civil Procedure Code' 1908 (CPC), which reads as under:

"ORDER I- Parties to Suits

.....

3. Who may be joined as defendants.—All persons may be joined in one suit as defendants where—

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.]

.....

ORDER II- FRAME OF SUIT

.....

3. Joinder of causes of action.—

(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

.....

6. Power of Court to order separate trials.—where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of justice.

7. Objections as to misjoinder.—All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.”

As is evident, the CPC under ‘Order I Rule 3’ and ‘Order II Rule 3’ provides for joining of respondents and/or causes of action. The purpose is to avoid multiplicity of proceedings.

PSPCL is also invoking a common point of law invoking the Commission’s inherent powers to determine the tariff and regulate electricity purchase of the distribution licensee including the price under Section 61, 62, 64 & 86(1)(a)&(b) of the Electricity Act. The reason on which the Petitioner is seeking redetermination of tariff too is based on a common issue of fuel price i.e. the availability of fuel in the market at substantially lower prices than that

assumed/considered for determination of tariff for the impleaded projects. Taking that as stated by PSPCL and in order to avoid multiplicity of litigation and pass a common Order on the issue of maintainability, the Commission overrules this objection of the Respondents.

6.2 Issue of the Commissions' powers to review/amend the Regulations:

The Respondents have submitted that PSPCL is seeking revision/redetermination of the permitted fuel cost and its escalation mechanism, deviating from the norms prescribed under the applicable Regulations. It was contended that the framing of the Regulations are deemed to be legislative enactments. Once the Regulations are framed /adopted by the Commission, PSPCL cannot seek review/amendment of same under the adjudicatory powers of the Commission. The adjudicatory powers of the Commission cannot be exercised to initiate steps to amend the Regulations as sought in the present petition.

Whereas, PSPCL has submitted that the issue raised by the Respondents regarding framing/amendment of Regulations are aspects of exercise of powers by the Commission either by regulatory orders or by framing regulations or in any other manner as permissible in law. The objections being raised are on the exercise of powers and not on availability of powers, which do not warrant consideration at the stage of admissibility/maintainability of the present petition. The issue to be decided at this stage is whether the Commission has the jurisdiction to admit and hear the

petition or not.

The Commission observes that the power conferred under the Electricity Act to frame Regulations also entails the powers to amend the same, albeit after following the due process. The process for the same, as per law, is initiated either suo-moto or on the filing of a petition before the Commission and its prima facie admission. However, the Commission exercising its powers to determine the admissibility/maintainability of petition is also an exercise of such jurisdiction by considering all aspects and issues emerging from the Petition and Objections to it.

6.3 Issues of Limitation:

The Respondents have submitted that the RE Tariff Regulations framed by the Central Commission in 2009, 2012, 2017 and 2020 were adopted by the Commission (with some State specific amendments) for determination of annual generic RE tariffs for the State in various suo-moto petitions i.e. Petitions No. 32 of 2010, 59 of 2011, 35 of 2012, 37 of 2013, 42 of 2014, 43 of 2015, 55 of 2016, 50 of 2017, 23 of 2018, 17 of 2019 and 26 of 2020. These tariffs consisted of two parts i.e. Fixed cost and Variable cost with 5% annual escalation as envisaged in the CERC Regulations. The Respondent generators are getting tariff on the basis of above said Orders. The said Orders have not been challenged by the PSPCL at any stage and have attained finality. Therefore, PSPCLs' prayers to seek any review/revision of the tariffs determined in the above said Orders is barred by Limitation.

Whereas, PSPCL's contention is that it is not seeking review of any

of the Commission's Order(s). It was submitted that the tariff determination exercise is a continuous process and the principle of limitation does not apply since the revision in tariff sought is only for the prospective period by invoking the powers of the Commission under Section 61, 62, 64 and 86(1)(a)&(b) of the Electricity Act.

The Commission observes that the respective CERC Regulations as adopted by the Commission and the Commissions' Orders determining the RE Tariffs in terms of the same, are applicable for a fixed 'Tariff Period' of 13, 20, or 25 years, as specified thereunder. These Orders have not been challenged in Review or Appeal and are final. Any revision of the said tariffs before completion of the said 'Tariff period' tantamounts to review of the earlier Orders, revision of the applicable Regulations, the Commissions' annual generic RE Tariff Orders, Orders in various petitions allowing the said tariffs to the Respondents' projects and also the PPAs duly contracted between parties. Further, the Commission also notes that the approval of power procurement arrangements from most of the Respondent projects at the said tariffs with an annual escalation of 5% on variable cost was sought by PSPCL itself in an earlier Petition No. 17 of 2020. Even during pendency of this petition, PSPCL proceeded to file a Petition No. 76 of 2022 praying for approval of its power procurement arrangements from three of the present Respondents' projects at tariffs based on the impugned cost parameters with 5% annual escalation on the variable cost. In different Petitions, PSPCL cannot have contrary stands on the same issue.

Thus any such review/revisions would have to be assessed qua the principles of limitation. PSPCL's plea that the tariff determination exercise is a continuous process is misplaced considering the provisions of the applicable RE Tariff Regulations. If that was the case, then this should have formed a part of the earlier petitions filed by PSPCL for seeking approval of its power procurement arrangements from the Respondents' projects and should have been included in the respective PPAs as a dynamic ongoing exercise without specifying the exact number of years (13) during which the existing tariff model would be applicable.

6.4 Issue of fuel prices being barred by principle of *res-judicata*:

The Respondents have submitted that the Petitioner has been raising the issue of fuel cost previously also. Whereon, the Commission has held that the methodology as specified in CERC Regulations is a preferable option. Recently, in Petition No. 26 of 2020 also, PSPCL had raised the said issue of fuel prices by submitting that the actual cost of biomass in Punjab is very much on the lower side and that the annual rate of escalation on variable cost component of tariff for biomass/biogas based RE projects be linked to fuel price index mechanism subject to maximum 3%. However, its pleas were not allowed by the Commission as PSPCL has not substantiated its claim with any authentic market survey based data. It was contended that as per the settled principles of *res-judicata*, once a matter is finally decided by a competent court, no party can be permitted to re-open it in a subsequent litigation. It was also contended that, PSPCL in its additional submissions has specifically mentioned that it is not seeking review of the

Commission's Order for RE tariff for FY 2020-21 passed in petition No. 26 of 2020, meaning thereby, that PSPCL has no objection to the tariff of Rs. 5.96 per kWh towards variable cost decided therein for F.Y. 2020-21. The said variable part of the tariff now comes to be Rs. 6.57 per kWh (5.96 +5%+5%), whereas the respondents are in fact getting lower variable tariff than the one above approved by the Commission in Petition No. 26 of 2020 which is not being challenged by PSPCL. PSPCL cannot have two different stands on a similar issue.

On the contrary, PSPCL's contention is that under Section 61(a) of the Electricity Act, while determining the tariff this Commission has to be guided only by the methodologies and principles of the Central Commission and not to adopt it *verbatim*. It was submitted that the price of fuel is dynamic and constantly varying and hence the cause of action is a continuous one. The issue of fuel prices not being market aligned is no longer *res-integra*. In fact, the finding of the Commission in its suo-moto Petition No. 34 of 2021 supports the case of PSPCL, in as much as it has decided to discontinue the determination of generic tariff for the year FY 2021-22 onwards *vide* Order dated 19.01.2023 after observing that the actual prices of biomass and bagasse in the State of Punjab are substantially lower than the prices which were being paid to the generators by way of fuel charges.

The Commission refers to its Order in Petition No. 26 of 2020 (Suo-Motu), as under:

“Objection No. 3: Punjab State Power Corporation Limited (PSPCL)

.....

“Issue No. 2: Fuel Cost for Biomass projects

The Variable Cost for biomass based power projects is very high. The fuel cost allowed for State of Punjab is Rs. 3960/MT whereas the cost in the market in Punjab is on the lower side i.e. Rs. 2600-2700/MT as per documents submitted by various firms under EOI for supply of Paddy straw at GNDTP, Bathinda and Rs. 2800/MT as submitted by M/s Shree Ganesh Edibles Pvt. Ltd. in the DPR.

View of the Commission

CERC carries out a detailed study to finalize the norms/parameters after proper analysis and due process of calling comments/suggestions & objections.

The Commission is of the opinion that the price of paddy straw for supplying to a power plant of 50/100 MW capacity on long term basis for 20-25 years would not be the same as the price of rice straw for supply to small plants of 8/10 MW on a yearly basis. Moreover PSPCL has not substantiated its claim with any authentic market survey based data. The Commission considers the price of biomass fuel fixed by CERC as reasonable in the absence of an authentic market survey based data for the last 8-10 years.”

Issue No. 4: Norms / parameters

.....

b) The rate of escalation i.e. 5% per annum on variable cost component of the tariff of Biomass/Biogas based RE Projects should be reviewed for long term based PPAs. Escalation should be linked to Fuel Price Index Mechanism subject to maximum 3%

View of the Commission

.....

b) PSPCL has not substantiated its claim with any market research based analysis with regard to fuel cost escalation. CERC has done away with fuel price index mechanism with effect from 01.04.2017.”

As is evident, the same issue of fuel prices and normative rate of escalation i.e. 5% per annum on variable cost component of the tariff raised earlier by PSPCL, in its objections filed in Petition No. 26 of 2020 (Suo-Motu), was rejected by the Commission with the observation that PSPCL has not substantiated its claim with any authentic market survey/research based data/analysis. The Commission also observes that even now, in the present petition, PSPCL has not substantiated its claim with any authentic market survey/research based data. While the Commission agrees with PSPCL that generators should not profit from fuel cost at the expense of the consumer and that the fuel prices may vary depending on market conditions, the Commission is also bound to keep in mind the contractual sanctity of the PPAs.

On the point raised by PSPCL that the Commission itself had, in its Order in Petition 34 of 2021, observed that “the actual prices of biomass and bagasse in the State of Punjab are substantially lower than the prices which were being paid to the generators by way of fuel charges” is factually incorrect. The said petition was intended for the projects to be commissioned in FY 2021-22 only and was not to be applicable to the already commissioned projects. Therein, the Commission had only observed that the PEDDA report is flawed on various counts and doesn't project the true assessment of the prevalent bio-fuel prices. The Commission decided to discontinue the practice of determination of annual generic tariffs (ceiling) for

RE Projects. This was also in view of the Tariff Policy guidance to the States to endeavor to procure power from renewable energy and the Commission's observation that, with the maturing of RE Technologies resulting in higher CUF at lower costs and innovative financial engineering in project costing, the Tariffs now being discovered through competitive bidding are considerably lower than the RE Generic Tariffs determined by the Commission on normative parameters.

Further, while agreeing with PSPCL's contention that, the methodologies and principles of the Central Commission are not binding in nature, the Commission observes that the said Regulations have been consciously adopted and have not been challenged.

Therefore, the Commission is convinced that the submissions as made by PSPCL in the present petition are not maintainable and are legally barred by res-judicata, the issue having already been dealt with earlier as discussed above.

6.5 Issue of the sanctity of the contracts/PPAs:

The respondents have submitted that the PPAs were executed between the parties on the basis of the generic RE tariffs, determined by the Commission in terms of prevalent Regulations at that time. While there seems to be no dispute on the issue of the Commissions' powers to determine tariff and regulate electricity purchase of a distribution licensee, the Respondents have pointed out that the existing tariffs are to continue for a period of 13, 20 or 25 years as per the provisions of the respective PPAs. PSPCL's plea that determination of RE tariff is a continuous process and the

Commission can adjust the tariff from time to time considering reasonable cost of generation actually incurred by the Respondent generators is misplaced. It is submitted that, the PPAs were executed on the basis of tariff determined by the Commission which became a part of the PPAs. There is no provision in the PPAs which authorizes the PSPCL to file the present petition. While emphasizing that a concluded PPA is a binding contract/agreement, the Respondents' contention is that any unilateral revision of the same, at the behest of one party to the detriment of other, would be against the sanctity of the contract/PPA executed between the parties and denial of justice to one party to the benefit of the others.

Whereas, PSPCL's contention is that the tariff as determined by the Commission governs the supply of electricity by the impugned renewable projects to PSPCL. Being given powers to determine tariff under Section 62 of the Electricity Act, 2003, the Commission can adjust tariff from time to time, considering the reasonable cost of generation that is incurred.

The Commission has noted various relevant Hon'ble Supreme Court judgments as cited by the Respondents on the sanctity and binding nature of the contracts. This is also the consistent stand of the Commission that contracts once entered into should not be tampered with or amended except by mutual consent. Any other manner of amendment to the detriment of either party would lead to unnecessary and protracted litigation.

The Commission also peruses the Hon'ble Supreme Court

Judgment cited by the Petitioner in support of its pleas in *Gujarat Urja Vikas Nigam Limited vs. Tarini Infrastructure Limited and Others* [(2016) 8 SCC 743], which reads as under:

“10. ... The power of tariff determination/ fixation undoubtedly is statutoryIn the present case, admittedly, the tariff incorporated in the PPA between the generating company and the distribution licensee is the tariff fixed by the State Regulatory Commission in exercise of its statutory powers. In such a situation it is not possible to hold that the tariff agreed by and between the parties, though finds mention in a contractual context, is the result of an act of volition of the parties which can, in no case, be altered except by mutual consent. Rather, it is a determination made in the exercise of statutory powers which got incorporated in a mutual agreement between the two parties involved.

11. The principles on which tariff is to be determined by the Commission as set out in Section 61 have already been noticed. Under Section 64(6) a tariff order continues to remain in force for such period as may be specified. In the State of Gujarat, currently, the Gujarat Electricity Regulatory Commission (multi-year tariff) Regulations, 2016 govern the fixation of tariff by the State Commission.....

12. Not only the tariff fixed is subject to periodic review, furthermore the above Regulations provide for taking into consideration the force majeure events. Any force majeure is considered as an uncontrollable factor. In fact Regulation 23 provides that the approved aggregate gain or loss on account of uncontrollable factor shall be passed through as an adjustment in the tariff over such period as may be specified in the Order of the Commission.

.....

14. When the tariff order itself is subject to periodic review it is difficult to see how incorporation of a particular tariff prevailing on the date of commissioning of the power project can be understood to bind the power producer for the entire

duration of the plant life (20 years) as has been envisaged by Clause 4.6 of the PPA in the case of Junagadh.

.....”

As is evident, in the said case, the Hon'ble Supreme Court, after observing that the tariff incorporated in the PPA is the tariff fixed by the State Commission, had noted that under Section 64(6) of the Act a tariff order continues to remain in force for such period as may be specified and has proceeded to rely upon the fact that the fixation of the impugned tariff therein was governed by the Gujarat Electricity Regulatory Commission MYT Regulations, which not only provide for periodic review of the tariff fixed but also for taking into consideration the force majeure events as an uncontrollable factor, gain or loss on account of which are a pass through as an adjustment in the tariff.

However, this is not the case in the present petition. In the case of these projects of the Respondents to this Petition, the applicable RE Tariff Regulations specifically provide that the tariff so determined shall continue to be applicable for the entire duration of the 'Tariff Period' of 13, 20, or 25 years, depending on the Regulations applicable at the time of commissioning of the respective projects. The said provision of 'Tariff period' has also been incorporated by the parties in the respective PPAs. Therefore, it is clear that the said judgment is distinguishable in terms of the facts of the respective cases, and the respective Regulations governing them, and cannot apply to the present case.

The Commission also notes that, instead of answering the Commission's direct query regarding the provisions, if any, of the respective PPAs/Regulations under which its prayer for

review/revision of the already stated tariff is permissible, PSPCL only submitted that it has sought for the same under Section 61, 62 and 64 read with 86 (1) (a)&(b) of the Electricity Act 2003, wherein the Commission has been bestowed with vast powers to determine tariff as well as to regulate electricity purchase of the distribution licensees.

The Commission observes that the appropriate opportunity for PSPCL to raise the issue of tariff determination under Section 61, 62, 64 and 86(1)(a)&(b) and for the Commission to consider it is also provided for in the PPAs itself which mandates it at the close of the respective 'Tariff Periods' of 13th, 20th or 25th years, as per the applicable Regulations/PPAs. Some projects have already finished the 13th year period and have applied for re-determination as per their PPA.

The Commission observes that while the petition is being preferred under Section 61, 62, 64 and 86(1)(a)&(b), the Petitioners prayer itself seeks a "review" and "revision" of the tariff and consequently of the PPAs itself by implication. If allowed, it would have the effect of reopening and rewriting the PPAs itself. The whole focus of the Petition is a review of the earlier tariffs approved by the Commission and incorporated in the respective PPAs which is not permissible in law and thus not maintainable here on the grounds of Limitation, Res-judicata as discussed above as also the implicit abrogation and violation of contractual obligations enshrined in the PPAs mutually agreed to and signed. Once such a process is allowed, it shall potentially lead to repeated and continuous process of similarly

abrogating all PPAs and reassessing all tariff structures in various PPAs thus taking away the sanctity of all contracts.

The redetermination of tariff is what will be done as per the provisions of the respective PPAs and applicable Regulations in the new petitions filed and yet to be filed before the Commission after the completion of respective Tariff Periods of 13th, 20th or 25th years of the projects, as may be applicable.

In light of the above analysis of the points of arguments professed by both sides, the Commission does not consider it legally permissible to admit the petition and holds it to be not maintainable.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 13.03.2024