

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

Petition No. 28 of 2021
Date of Order:05.08.2021

Petition under Section 86 (1) (b) of the Electricity Act, 2003 seeking permission to relinquish allocated power from Anta, Auraiya & Dadri Generating Stations of the respondent in terms of letter/office Order dated 22.03.2021 issued by the Government of India, Ministry of Power.

AND

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

.. Petitioner

Versus

NTPC Limited, NTPC Bhawan, Scope Complex,
Institutional Area,
Lodhi Road, New Delhi- 110003

..Respondent

Present: Sh. Viswajeet Khanna, Chairperson
Ms. Anjuli Chandra, Member
Sh. Paramjeet Singh, Member

ORDER

Punjab State Power Corporation Limited (PSPCL) has filed the present petition seeking permission to relinquish allocated power from ANTA, Auraiya & Dadri Generating Stations of NTPC Limited in terms of letter/office Order dated 22.03.2021 issued by the Government of India, Ministry of Power. The petition was taken up for hearing on admission on 02.06.2021 and vide Order dated 10.06.2021 PSPCL was directed to submit the comprehensive proposal giving in detail the forecast of power for the next 20 years and its proposal to meet the demand and NTPC was directed to

file its reply. NTPC filed its reply dated 10.06.2021 on the issue of maintainability of the petition and PSPCL vide memo No. 6506 dated 22.06.2021 submitted its report in compliance of the Order dated 10.06.2021 alongwith rejoinder to the objections raised by NTPC. During hearing on 23.06.2021 the learned counsel for the parties requested to file written arguments and the petition was fixed for further hearing on admission on 04.08.2021. NTPC filed its written submission dated 29.06.2021 and PSPCL filed additional affidavit enclosing the Order dated 01.07.2021 passed by the Central Electricity Regulatory Commission in petition No. 60/MP/2021 and 65/MP/2021 as well as written submissions vide memo No. 6675 dated 13.07.2021. The petition was admitted during hearing on 04.08.2021 and the parties were heard.

Submissions of PSPCL

2.1. PSPCL has submitted that being a distribution licensee it is enjoined under the universal supply obligation to secure power from various sources for supply to its consumers in the State of Punjab. The Petitioner purchases power from Independent Power Producers (IPPs) and Central Sector Generating Stations (CSGSs) under long-term Power Purchase Agreements (PPAs) and central sector allocation of power by the Government of India, Ministry of Power. The Respondent is a generating company and is a Government of India undertaking which owns various conventional as well as renewable power generating stations throughout the country from which the Petitioner draws power, as allocated to it and as per the long term PPAs or Bulk Power Supply Agreements (BPSAs) executed between the Petitioner and

the Respondent.

- 2.2. That the Ministry of Power, vide letter dated 23.08.1993, allocated power to be generated from 7 nos. of generating stations of the Respondent to various state-owned distribution utilities. The allocation to the Petitioner as per latest allocation order dated: 01.04.2021 issued by MoP, GOI is as under:

Generating Station	Installed Capacity	Allocation of power to the Petitioner	Unallocated share of the Petitioner	Total MW
Singrauli STPS	2000 MW	200	8.80	208.80
Rihand STPS	1000 MW	110	4.40	114.40
Anta (Gas)	419 MW	49	0	49
Auriya (Gas)	663 MW	83	0	83
Dadri (Gas)	830 MW	132	0	132
Unchahar-I	420 MW	0	0.71	0.71

Accordingly, a BPSA dated 31.1.1994 was executed between the Petitioner and the Respondent along with 7 other distribution utilities. As per the terms of the above said BPSA, the point of drawl of power was to be at the bus-bar of the generating station and any transmission charges/losses were liable to be paid directly by the distribution utility including the Petitioner. Further, the tariff payable for drawl of such power was to be at the rates prescribed by the MoP and based upon the regional energy account to be prepared by the concerned Regional Power Committee. The said tariff based upon the regional energy account was to be a two-part tariff comprising of fixed charges and variable charges to be paid by the Petitioner upon presentation of monthly tariff bills issued by the Respondent. The Petitioner started

drawing power after the commissioning of the above said generating stations,. The 'useful life' i.e. 25 years of above generating stations except Dadri has already expired. The Petitioner continued to schedule power from the abovesaid generating stations of the Respondent till 2016.

2.3. That from the Financial Years (FYs) 2013-14 onwards due to addition of 3920 MW power from Independent Power Producers (IPPs) within the state, the State of Punjab was having surplus power available after meeting the demand in the State from its own sources as well as from external sources tied up under various long-term PPAs. Note No. 02 of Regulation 42 of the Central Electricity Commission (Terms and Conditions of Tariff) Regulations, 2014, provided that the beneficiaries may propose surrendering part of their allocated firm share to other states within/outside the region. The Petitioner, vide its letter dated 29.4.2016, and 10.08.2016 informed the MoP that due to power surplus scenario in the State of Punjab, the Petitioner was not scheduling its allocated share of power from Anta, Auraiya and Dadri gas power stations of the Respondent and requested the MoP that the allocated/unallocated share of power of the Petitioner from the said project could be re-allocated/de-allocated.

2.4. That under the applicable Tariff Regulations, despite surrender of allocated share of power from a central sector generating station, the Petitioner was still liable to pay fixed/capacity charges of the generating station till the time the said allocation was either formally de-allocated or re-

allocated to a different distribution utility by the MoP. That despite having informed the MoP of the surrender of power owing to surplus scenario in the State of Punjab, the Petitioner was constrained to bear a high fixed cost for Anta, Auraiya and Dadari power stations of the Respondent. However, the request of the Petitioner remained unanswered by the MoP. Similar requests were again sent to the MoP on 16.3.2017 and 9.11.2017 impressing upon the MoP that with the commissioning of three new IPP generating stations, the State was now surplus in power owing to which the Petitioner has already stopped scheduling its allocated share from as many as 11 nos. of generating stations operated by the Respondent and NHPC Ltd. However, neither any response was received, nor the request of the Petitioner was acceded to by the MoP.

2.5. That, despite the repeated requests of the Petitioner for surrender and re-allocation of power from 11 nos. of generating stations of the Respondent and NHPC Ltd., the MoP, without any concurrence of the Petitioner, selectively re-allocated shares from the abovesaid three generating stations. In the meantime, the power surplus scenario in the State of Punjab changed and the requirement for surrender and re-allocation of power remained only for 4 nos. of generating stations of the Respondent being Anta, Auriya, Dadri and APCL-Jhajjar. Accordingly, vide letter dated 11.2.2019, the Petitioner requested the MoP to divert the power from these generating stations to other needy states in India.

2.6. That on 9.5.2019, M/s Meja Urja Nigam Pvt. Ltd. informed the Petitioner that the MoP had allocated 24.02 MW power from Unit-I of its generating station (660 MW) to the Petitioner. Thus, despite being aware that the State of Punjab was already in a power surplus scenario, the Petitioner was allocated further share in central sector generating station leading to payment of fixed charges without any scheduling of power. The petitioner vide letter dated 26.8.2019, again requested the MoP to re-allocate its share from MUNPL to other needy States. The Petitioner is continuously requesting MoP to re-allocate its share from above NTPC Stations and till date re-allocation of Punjab share has not been done by the MoP.

2.7. That the MoP, vide Office Order dated 22.3.2021, has launched a new policy initiative to enable distribution utilities to either continue or exit from the PPAs with CSGSs after completion of the term of the PPAs. Under the aforesaid Office Order, the MoP has granted an option to distribution utilities to discontinue power procurement from CSGSs after the expiry of their useful life i.e. 25 years. However, the request for relinquishment of the power can only be *made* after taking due approval from the State Electricity Regulatory Commission who is to ensure the adequacy of power tie-up of the distribution utility. The petitioner has submitted the details of energy scheduled, energy surrendered and fixed charges paid by PSPCL for the said plants for the FY 2018-19 and 2019-20. As per the details, PSPCL has paid an amount of Rs. 128.99 Crore for FY

2018-19 and Rs. 115.11 Crore for FY 2019-20 against the surrendered power. Thus continuing allocation of power from the above generating stations is causing undue financial burden on the Petitioner and is leading to higher cost of power purchase which ultimately passes on to the consumers and translates in hike in the retail tariff of the Petitioner.

- 2.8. That during FY 2019-20 the Petitioner had a surplus of 21089 MUs of power, which has been proposed to be surrendered as per the merit order of power purchase from thermal power stations during the last ARR approval of the Petitioner and the same has been duly taken note of by this Commission in its Tariff Order dated 27.5.2019 passed in Petition No. 2/2019 for true up of ARR for FY 2017-2018, annual performance review for FY 2018-19 and approval of revised ARR for FY 2019-20 and determination of tariff for FY 2019-20. The Petitioner is already experiencing surplus of power in the State which is currently at 17431.84 MUs during FY 2020-21 as has been submitted by the Petitioner before this Commission in Petition No.45/2020 filed while seeking true-up of APR for FY 2019-20 and approval of ARR for FY 2020-21. Therefore, even upon relinquishment of allocated power from Anta, Auraiya and Dadri generating stations of the Respondent, there will be no shortage of power in the State of Punjab.
- 2.9. That in terms of the Office Order dated 22.3.2020 issued by MoP, the Petitioner is completely eligible for relinquishment of the allocated power from Anta, Auraiya & Dadri

Generating Stations of the Respondent as the useful life of the said generating stations has already expired, currently there are no pending dues payable by the Petitioner to Respondent qua the said generating stations, the Petitioner undertakes to continue to make all eligible payments as per prevailing Regulations till final settlement; and, as demonstrated hereinabove, the State of Punjab is currently in a scenario of surplus power and as such relinquishment of power from the said generating stations would not result in any shortage of power in the State.

2.10. PSPCL was directed to submit a comprehensive proposal giving details of forecast of power for the next 20 years and its proposal to meet the demand. PSPCL submitted the information vide affidavit dated 22.06.2021, submitting that.

- a) peak demand which was 12638 MW in the year of 2019-20, will rise to 14504 MW in 2023-24, 16354 MW in 2026-27, 19727 in MW in 2031-32 which will further increase to 22167 MW by 2035-36;
- b) the installed capacity from all sources will increase from 13896 MW in 2019-20 to 15615 MW in 2023-24, 16865 MW in 2030-31 and 17115 MW in 2035-36;
- c) after relinquishment of share from the subject generating stations, considering peak availability (MW) and peak demand (MW), there is a surplus of power throughout the scenario during lean period (except in peak period i.e. June to September) without considering banking of power with other States;

- d) in energy terms (in MUs), after relinquishment of share from the subject generating stations, there is surplus of power during lean period only upto FY 2030-31 i.e. January to April and November to December and there is shortfall of energy during peak period throughout the scenario (without considering banking of power with other States) and afterwards, there is a deficit scenario. Installed capacity in the report has been used to predict availability of power in MW as well as MU by taking into account respective Plant Load Factors (PLFs) and Plant Capacity Factors (PCFs) for different type of power generations. PLF has been taken according to norms dated 17.4.2017 of the Central Electricity Authority.
- e) The power deficit in MW in peak period i.e. June to Sept and in MUs from FY 2031-32 onwards is proposed to be met by undertaking a comprehensive long-term power procurement plan. In any case, since the variable cost of the subject generating stations is amongst the highest in Merit Order, continuing power procurement from the said stations to meet the power deficit after FY 2031-32 would be economically unviable for the Petitioner and against consumer interest.

2.11. PSPCL filed additional affidavit vide memo No. 6675 dated 13.07.2021 submitting that petition No. 60/MP/2021 and 65/MP/2021 pending before the CERC having the similar issue as involved in the present petition has been disposed

of vide Order dated 01.07.2021 wherein it has been held that “...In terms of the PPA and the SPPA and the fact that Dadri-I generating station having completed 25 years on 30.11.2020, the Petitioners are eligible to exercise the first right of refusal as per provisions of Regulation 17(2) of the 2019 Tariff Regulations. Government of India Guidelines also permit the willing distribution companies to relinquish their allocation after a period of 25 years from COD. DERC has already written to Ministry of Power for de-allocation of share of distribution companies of Delhi. For relinquishment of their allocations, the Petitioners may approach the Ministry of Power. Provisions of Regulation 17(2) related to first right of refusal would become effective once the Ministry of Power de-allocates share of the Petitioners from Dadri-I generating station.”

2.12. The petitioner has prayed to:

- (a) allow the present Petition;
- (b) grant approval/permission in terms of Para 2 (II) of the Office Order dated 22.3.2021 issued by the Government of India, Ministry of Power so as to enable the Petitioner to relinquish its allocated share of power from Anta, Auraiya & Dadri Generating Stations of the Respondent; and
- (c) pass such further and other Order(s) as this Commission may deem fit in the facts and circumstances of the present case.

Submissions of NTPC Limited

3.1 NTPC limited has filed objections to the petition and has submitted that the present petition is not maintainable and is an abuse of the process of the Commission. PSPCL earlier filed petition No. 28 of 2019 before the Commission seeking permission/approval of power purchase from a variety of sources including the generating stations of NTPC. The stand of PSPCL in the said petition was that it requires all the electricity which has been allocated to it by the Central Govt. – Ministry of Power. The Commission accepting the above stand of PSPCL approved the power purchase from the Anta, Auriya and Dadri Gas Stations vide Order dated 01.02.2021. PSPCL sought review of the order dated 01.02.2021 wherein PSPCL has contended that it is in need of Gas Power since gas phase units have faster response to note changes in higher ramp rates and the advantages of gas based generation are better suited for flexible operation and also recounted the other advantages of procuring gas based generation. PSPCL does not have surplus power and has sought approval from three more sources namely Durgapur, Bokaro & Raghunathpura generating stations of DVC, Bawana generating station of Pragati Power Corporation Limited and Meja Thermal Power Project of Meja Urja Nigam Pvt Ltd. Therefore, there can be no question of approaching the Commission for approval under section 86 (1) (b) of the Electricity Act, 2003 when such approval stands granted to the power purchase from the Anta, Auraiya and Dadri Gas Stations of NTPC.

3.2 That PSPCL has misconstrued the letter dated 22.03.2021 issued by the Ministry of Power giving a mechanism for distribution licensees to surrender or discontinue power procurement from such generating stations which have either completed the useful life of 25 years or such other period as may be agreed to in the Power Purchase Agreement. The allocation of electricity from Anta, Aurairya and Dadri Gas Stations has been captured in a Bulk Power Supply Agreement dated 31.01.1994 entered between PSPCL and NTPC. Clause VIII of the BPSA specifically provided that the distribution company has to take a conscious decision to exit out of all such projects covered by a BPSA if such projects have completed 25 years of useful life. The distribution company cannot pick and choose and must surrender the power from all such generating stations which have completed 25 years of life and covered under the BPSA. This becomes clear when one reads the second line of clause VIII which provides that the power supply from other projects shall continue as per the terms of the PPA. While the first line uses the term 'BPSA', the second line uses the term 'PPA'. The Ministry of Power has been extremely cautious and has carefully worded clause VIII. The intention of the letter of the Ministry of Power is to make a specific exception where BPSAs are involved. When there is a specific provision made for BPSAs in clause VIII, namely that the distribution company has to consciously decide to relinquish all the capacity for stations which have completed 25 years life and can take the power from the balance stations, it is not correct on the part of PSPCL to approach the

Commission under Clause II.

- 3.3 That even as per 19th Electric Power Survey report of the Central Electricity Authority dated January 2017, which had examined the demand projects for the State of Punjab/PSPCL till 2037, there is no surplus as is being contended but the power from Anta, Auraiya and Dadri Gas Stations would be required by PSPCL. Further, PSPCL has given consent to NTPC to enter into and extend the Gas Supply Agreements with GAIL for the Anta, Auraiya and Dadri Gas Stations.
- 3.4 That PSPCL has failed to take into account that after receiving consents of all the Northern Regional beneficiaries in 2008 & 2009, Gas Supply Agreements were signed on 14.08.2009 between GAIL & NTPC for supply of 2.0 MMSCMD LT RLNG for Anta, Auraiya Dadri & Faridabad Gas Stations for 10 years. The supply commenced from January 2010 till December 2019. As per the GSA, the Annual Take or Pay (ToP) liability is 90% of Annual Contracted Quantity.
- 3.5 That PSPCL after giving its consent on the basis of which the GSA was extended, cannot unilaterally seek to exit out of the BPSA. PSPCL shall be required to pay upfront ToP charges for upto CY 2023 and indicative top liability of PSPCL is expected to be around Rs. 150 Core for each year. In case the entire power covered under the BPSA is surrendered by PSPCL, the per unit cost of power purchase of PSPCL from NTPC stations would increase from 3.05 per unit to Rs. 3.21 per unit based on the energy scheduled during FY 2020-21.

It shows that PSPCL has not applied its mind to the option given by letter dated 22.03.2021 issued by Ministry of Power and instead PSPCL is using the letter as an excuse to override the order dated 01.02.2021 passed by the Commission to pick and choose and avoid the purchase of power from certain generating stations. The petition has not only been wrongly filed under clause II of the letter of MoP, but is also an attempt to override the order dated 01.02.2021 passed by the Commission. The petition should be dismissed directing PSPCL to apply its mind and approach the Commission, if PSPCL desires, under Clause VIII of the MoP letter dated 22.03.2021.

Rejoinder filed by PSPCL

4.1 PSPCL filed rejoinder reiterating its earlier submissions and denying the objections raised by the respondent. PSPCL has submitted that the submissions made by NTPC are based upon incorrect appreciation of law. Replying to the submissions of the respondent with regard to the objection that the present petition is contrary to the Order dated 01.02.2021 passed by the Commission in petition No. 28 of 2019, PSPCL has submitted that the said petition had been filed seeking approval of the Commission of its power procurement on long term basis from the coal/gas based conventional generating stations executed after the enactment of PSERC (Conduct of Business) Regulations, 2005, since prior thereto, there was no requirement for the petitioner to obtain a specific approval from the Commission in respect of its power procurement. The petitioner had

sought post-facto approval of the Commission for all power procurement measures undertaken by the petitioner after 07.03.2005. The contention of the respondent is based upon the isolated and selective reading of the submissions of the petitioner contained in the Order 01.02.2021. With regard to the objection raised by the respondent that the petition is based on incorrect understanding of the Office Order dated 23.03.2021 issued by the MoP, PSPCL has submitted that the contention of the respondent is contrary to the clear intent of the Office order dated 23.03.2021 for providing an exit option to the distribution companies from such generating stations which have completed 25 years of their useful life. With regard to the objection as to the failure on the part of the petitioner to consider the ensuing liabilities on account of the proposed relinquishment of power and not applying its mind while filing the present petition, PSPCL has submitted that the contentions raised by the respondent are irrelevant and misplaced in context of the issue involved in this petition. PSPCL has submitted that discharge of any such liability by the petitioner including that of the ToP charges would be addressed at the appropriate stage and in appropriate proceedings which cannot have any bearing on the adjudication of the present petition. The scope of the present petition is limited to the approval of the Commission subject to its satisfaction as regards adequacy of power tied to meet the demand of electricity for all the consumers of the petitioner. The contention of the respondent that the petitioner has failed to consider the ensuing liabilities on account of the proposed relinquishment of power and has

not applied its mind while filing the present petition is misplaced and liable to be rejected.

Observations and decision of the Commission:

The Commission has examined the submissions made by Petitioner (PSPCL), respondent (NTPC), information submitted during the course of hearings and the arguments of the Counsel.

Observations of the Commission:

- 5.1 Punjab State Power Corporation Limited (PSPCL) has signed Bulk Power Supply Agreement (BPSA) with National Thermal Power Corporation (NTPC) for scheduling of power from its Generating Stations vis. Singrauli, Rihand, Unchahar-I, Anta, Auraiya and Dadri Gas Power stations. Though the BPSA, expired on 31.10.1997, it has a condition that in case bulk power customer continues to get power from NTPC stations even after expiry of the Agreement without further renewal or formal extension thereof, then all the provisions of the Agreement shall continue to operate till this agreement is formally renewed, extended or replaced.
- 5.2 PSPCL vide its affidavit dated 22.06.2021 has submitted that it is surplus in peak power up to FY 2031-32 except in peak period (June to September) without taking in consideration the banking of power with other states. In energy terms also PSPCL is surplus during lean period i.e. January to April and November to December and there is shortfall of energy during peak period.

PSPCL has surrendered more than 90% in FY 2018-19 and more than 88% in FY 2019-20 of its share of power from

Anta, Auraiya and Dadri Gas Power stations but is still paying fixed charges for them. PSPCL has paid Rs. 128.99 Crore in FY 2018-19 and Rs. 115.11 Crore in FY 2019-20 as fixed charges against power surrendered from these gas based power plants. All the projects referred in BPSA have completed 25 years (except one unit of Dadri gas based project which shall be completing its 25 years in April 2022). PSPCL prayed for permission to relinquish its allocated share from Anta, Auraiya & Dadri Generating Stations of NTPC.

5.3 The summary of submission of NTPC, the respondent and the observations of the Commission are as under:

- i) In petition No. 28 of 2019, the stand of PSPCL was that it requires all the electricity which has been allocated to it by the Central Government – Ministry of Power. The Commission accepting the above stand of PSPCL has approved the power purchase from the Anta, Auraiya and Dadri Gas Stations vide Order dated 01.02.2021.

The Commission notes that PSPCL has filed Petition No. 28 of 2019 for approval of power procurement from coal/gas based conventional generating stations. PSPCL vide Memo No. 5848 dated 28.09.2020 filed the details of thermal / gas plants for which PPAs have been entered into /renewed after 07.03.2005. The Commission, therefore, in its Order dated 01.02.2021 in Petition No. 28 of 2019, has only approved the power procurement from projects for which PPA was entered into/renewed into by PSPCL after 07.03.2005 i.e. the enactment of PSERC

(Conduct of business) Regulations, 2005. This did not include approval for power projects for which PSPCL had entered into PPAs before 2005 inter alia including Anta, Auraiya and Dadri Gas Stations.

- ii) In the Review Petition No. 1 of 2021 of Petition 28 of 2019, PSPCL has submitted that it requires gas power since gas units have faster response to note changes in higher ramp rates and the advantages of gas - based generation are better suited for flexible operation and also recounted the other advantages.

The Commission notes that PSPCL's submission in Review petition No. 1 of 2021 of Petition 28 of 2019 was with regard to Pragati Gas power plant which has a lower variable rate. PSPCL has submitted that procurement from Pragati Gas Station is an economically feasible option to get power at short notice. The Commission shall be deciding the issue after due consideration.

- iii) The respondent NTPC has stated that PSPCL has approached the Commission under Clause II of the MoP letter dated 22.03.2021. In case of BPSA, the letter has a special provision in Clause VIII. The State /distribution company cannot pick and choose and must surrender the power from all such generating stations which have completed 25 years life and covered under the BPSA. PSPCL has to consciously decide to relinquish all the capacity for Stations that have completed 25 years life and can take the power from the balance stations. The

petition should be dismissed on the short ground alone directing PSPCL to make a decision as per Clause VIII and then the approach the Commission, if need be.

The Commission observes that Clause-I, Clause II & VIII of the Ministry of Power letter dated 22.03.2021 specifies that:

Clause-I “The first right to avail power from the Central Generating Stations developed under section 62 of the Electricity Act (eligible CGSs), even beyond the term of PPA i.e. on completion of 25 years from the date of commissioning of the plant or a period specified in the PPA will continue to be with the States/Discoms with whom the PPA was signed.

Clause-II “Willing State / Discoms may relinquish their share from eligible CGSs after expiry of the term of the PPA i.e. on completion of 25 years from the date of commissioning of the plant or a period specified in the PPA. The request for relinquishment of such power from CGSs may be submitted only after the approval of the State Commission who would also ensure the adequacy of power tied up with the Discoms to meet the demand of electricity for all consumers under such Discoms.”

Clause- VIII “In case of bulk Power supply agreement (BPSA) also, the state / discoms may relinquish entire allocated power from such projects which have completed 25 years since commissioning of the project. Power supply from other projects shall continue as per the terms of the PPA.”

The Commission takes note of PSPCL submission that Clause II of Ministry of Power letter dated 22.03.2021 is also applicable on BPSA projects and

it can relinquish power from individual stations under BPSA which have completed 25 years of useful life. Also, Ministry of Power has itself reallocated power of Unchahar-I generating station covered under this BPSA with PSPCL.

The Commission further takes the note of PSPCL submission dated 20.07.2021 vide which it has attached Ministry of Power, GoI clarification dated 05.07.2021. It clearly indicates that clause 2 (VIII) of Ministry of Power, GoI letter dated 22.03.2021 read with its clauses 2(I) and 2 (II) stipulates that the first right to avail power from Central Generating Stations developed u/s 62 of the Electricity Act 2003, even beyond the term of PPA i.e. on completion of 25 years from the date of commissioning of the plant or a period specified in the PPA will continue to be with the State/Discoms with whom the PPA was signed. Accordingly, the State may choose to continue to take power from a project or project(s) under clause 2 (VIII) even after completion of 25 years from the date of commissioning of the project or exit from a project or project(s) under clause 2 (VIII) after completion of 25 years from date of commissioning of the project.

It is felt that in view of MoP Letter dated 22.03.2021 and clarification given by MoP vide its letter dated 05.07.2021, it is amply clear that PSPCL can relinquish the entire power from one or more

projects in the BPSA which have completed 25 years of life.

- iv) PSPCL has not mentioned in the petition that it has given the consent to NTPC to enter into and extend the Gas Supply Agreements (GSA) with GAIL for the Anta, Auraiya and Dadri Gas Stations. However, based on the consent received from the beneficiaries (including PSPCL), NTPC extended the period of supply till Dec 2023. It was claimed by the respondent that PSPCL after giving its consent on the basis of which the above GSA was extended, cannot unilaterally seek to exit out of the BPSA. PSPCL shall be required to pay upfront ToP charges for up to CY 2023. Indicative ToP liability of PSPCL is expected to be around Rs 150 Crore (190 MUs @ Rs 8/kwh) for each year.

The Commission takes note of the PSPCL submission that any such liability including ToP charges would be addressed at the appropriate stage and in appropriate proceedings which cannot have any bearing on adjudication of the present petition. It is felt that the take or pay liability cannot be determined at this stage. The liability, if any, arising out of ToP would be dealt with when these actually arise.

- v) It was claimed by the respondent that if the entire power covered under the BPSA is surrendered by PSPCL, the per unit cost of power purchase of PSPCL from NTPC stations would increase from Rs 3.05 per unit to Rs 3.21

per unit based on the energy scheduled during FY 2020-21.

The Commission notes that PSPCL has submitted that it is not seeking the relinquishment of power from all the generating stations under BPSA which could if at all, results in increase in per unit cost of power purchase for it. PSPCL has only sought approval towards relinquishment of power from Anta, Auraiya and Dadri Gas Power Stations. The Commission also take note of PSPCL's submission that variable cost of Anta, Auraiya and Dadri gas power stations is amongst the highest in Merit Order. It is felt that relinquishment of allocation from these expensive gas based power stations only, would not increase the cost of power purchase of PSPCL. The allocation of power from these gas generating stations which have high variable costs is causing undue financial burden on PSPCL and is leading to higher costs of purchase of power by it which is against the interest of the consumers of Punjab.

Further also, the Commission notes that since MoP vide its letter dated 22.03.2021 and clarification dated 05.07.2021 has allowed the Discoms to surrender entire power from a project/projects in the BPSA, there appears to be no question of cost increasing by surrender of allocation of power from the gas stations Anta, Auraiya and Dadri.

- 5.4 The Commission observes that CERC also vide Order dated 01.07.2021 in Delhi DISCOM petition No. 60/MP/2021 and 65/MP/2021 acknowledged that the petitioners are eligible to exercise the first right of refusal as per provisions of Regulation 17(2) of the 2019 Tariff regulations in respect of Dadri-I generating station which has completed 25 and Government of India Guidelines also permit the willing DISCOM to relinquish their allocation after a period of 25 years from COD.
- 5.5 The Commission observes that as per the Report on demand and availability forecast submitted by PSPCL, PSPCL has adequate long term power procurement arrangements for meeting the base load even after the relinquishment of its share of power from Anta, Auraiya and Dadri gas stations. The balance requirement can be met by PSPCL through medium /short term contracts, bilateral arrangements and procurement from power exchanges.

Decision of the Commission:

In view of the above, the Commission allows the present petition to the effect that PSPCL is permitted to relinquish its allocated share of power from Anta, Auraiya and Dadri power stations of NTPC.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Anjuli Chandra)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: 05.08.2021