

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 91/MP/2018
Petition No. 53/MP/2021 with IA Nos.26/2023 & 100/2023
Petition No.61/MP/2021 with IA Nos.28/2021 & 42/2022
and Petition No.149/MP/2021

Coram:

Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V, Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member

Date of Order: 28.1.2026

In the matter of:

Petition No. 91/MP/2018

Petition under Section 79(1)(b) read with Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 seeking adjudication of disputes and differences under the Power Purchase Agreement dated 31.7.2012, as amended on 19.12.2014 and 23.1.2018 in regard to the non-payment of tariff and the unilateral deduction of the monthly energy bills of the Petitioner by the Respondents.

And

In the matter of:

Petition No. 53/MP/2021

Petition under Section 79(1)(b) read with Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 seeking adjudication of disputes and differences under the Power Purchase Agreement dated 31.7.2012 as amended on 19.12.2014 and 23.1.2018 in regard to the non-payment of tariff and the unilateral deduction of the capacity charges under the bills of the Petitioner by the Respondents.

And

In the matter of:

Petition No. 149/MP/2021

Petition under Section 79(1)(b) read with Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 seeking adjudication of disputes and differences under the Power Purchase Agreement dated 31.7.2012 as amended on 19.12.2014 and 23.01.2018 in regard to non-payment of tariff and unilateral deduction of the capacity charges under the bills of the Petitioner by the Respondents.

And

In the matter of:



KSK Mahanadi Power Company Limited.
8-2-293/82/A/431/A, Road No.22, Jubilee Hills, Hyderabad - 500033
Telangana.

.....Petitioner

Vs

1. Southern Power Distribution Company of AP Limited
D.No. 19-13-65/A, Tirchanoor Road, Behind Srinivasa Kalyana Mandapam,
Kesavayanagunta, Tirupati-517503

2. Eastern Power Distribution Company of Andhra Pradesh Limited,
P&T Colony, Seethammadhara, Visakhapatnam – 530013

...Respondents

And

In the matter of:

Petition No. 61/MP/2021

Petition under Section 79 (1) (f) and (k) of the Electricity Act, 2003 for adjudication of disputes arising on account of the termination of the Power Purchase Agreement dated 31.7.2012 by the Respondents 1 and 2.

KSK Mahanadi Power Company Limited,
8-2-293/82/A/431/A, Road No.22, Jubilee Hills, Hyderabad-500 033
Telangana

.....Petitioner

Vs

1. Southern Power Distribution Company of Andhra Pradesh Limited,
D.No. 19-13-65/A, Tirchanoor Road, Behind Srinivasa Kalyana Mandapam,
Kesavayanagunta, Tirupati-517503

2. Eastern Power Distribution Company of Andhra Pradesh Limited,
P&T Colony, Seethammadhara, Visakhapatnam – 530013

3. Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Gunadala, Eluru Rd, Vijayawada,
Andhra Pradesh – 520004

.....Respondents

Parties Present:

Shri Anand K. Ganesan, Advocate, KSKMPL
Ms. Harsha V. Rao, Advocate, KSKMPL
Ms. Aishwarya Subramani, Advocate, KSKMPL
Ms. Sanjukta Das, Advocate, KSKMPL
Shri Sanjay Sen, Senior Advocate, AP Discoms
Shri S. Vallinayagam, Advocate, AP Discoms
Ms. Neha M. Dabral, Advocate, AP Discoms
Shri Ruth Elwin, Advocate, AP Discoms
Shri K. Sudheer, AP Discoms
Shri V. Venkateswarulu, AP Discoms
Shri K.G. Sreenivasulu, AP Discoms



ORDER

Background

The Petitioner, KSK Mahanadi Power Company Ltd. (KSKMPCL), is a company incorporated under the Companies Act, 1956, and is presently governed by the Companies Act, 2013. The Petitioner is a generating company within the meaning of Section 2(28) of the Electricity Act, 2003 (the Act) and is in the process of establishing a 3600 MW (6x600 MW) coal-based generating station at Village Nariyara, Tehsil Akaltara, and District Janjgir-Champa, in the State of Chhattisgarh (in short “the project/ generating station”). The Petitioner had commissioned only 1800 MW (3x600 MW) and has entered into a Power Purchase Agreement (PPA) dated 31.7.2012 under the Case-I Medium Term Open Access (MTOA) bid, floated by the erstwhile undivided State of Andhra Pradesh, for the collective procurement of 400 MW of electricity capacity by the Southern Power Distribution Company of Andhra Pradesh (APSPDCL), Northern Power Distribution Company of Andhra Pradesh (APNPDCL), Central Power Distribution Company of Andhra Pradesh (APCPDCL) and Eastern Power Distribution Company of Andhra Pradesh (APEPDCL) (hereinafter collectively referred to as the ‘AP Discoms’). The tariff for the supply of power was adopted by the Andhra Pradesh Electricity Regulatory Commission (APERC) vide its order dated 18.6.2013 in O.P. No. 38/2013, and the supply of power under the said PPA was for a period of three years, i.e. till 15.6.2016.

2. After the enactment of the Andhra Pradesh Reorganisation Act, 2014 and post-bifurcation of the undivided State of Andhra Pradesh, the capacity of 400 MW under the PPA dated 31.7.2012 was divided between the distribution licensees of the newly created



State of Telangana (for 215.56 MW) and the distribution companies in the State of Andhra Pradesh (for 184.44 MW). Thereafter, vide the amended PPA agreement dated 19.12.2014, the Respondents, AP Discoms, agreed to purchase the entire 400 MW from the Petitioner for the period from 16.6.2016 till 31.3.2021, on the same terms and conditions, as contained in the PPA dated 31.7.2012. The amended PPA was also approved by APERC vide its order dated 19.8.2015 in O.P No. 3/2015. In addition, the Petitioner has entered into a PPA for the supply of 1000 MW with the UP Discoms on 26.2.2014 and PPA dated 27.11.2013 with TANGEDCO (distribution licensee in the State of Tamil Nadu) for 500 MW under the Case-1 bid in terms of Section 63 of the Act, and the tariff for the same has been adopted by the State Electricity Regulatory Commissions. The Petitioner has also entered into a PPA dated 18.10.2013 with the Chhattisgarh State Power Trading Company (CSPTTradeCo), towards host state obligatory power supply of 5%/ 7.5% of the net generated power at variable cost, in terms of the Memorandum of Understanding dated 13.2.2008 and the Implementation Agreement dated 13.8.2009 entered into by the Petitioner with the Government of Chhattisgarh.

Petition No.91/MP/2018

3. The Petitioner KSKMPCL, filed Petition No.91/MP/2018 on 16.3.2018, before this Commission, seeking the adjudication of the disputes under the PPA dated 31.7.2012 (as amended on 19.12.2014 and 23.1.2018) claiming the wrongful unilateral deduction of amounts from the monthly invoices raised by the Petitioner on the Respondents and to direct the Respondents to release payment towards capacity charges, energy charges and transmission charges to the Petitioner in terms of the PPA, along with the late payment charges up to 28.2.2018 and also for the future period, till the date of actual



payment of the principal amounts by the Respondents. The prayers of the Petitioner, in the said petition, are extracted below:

“(a) Hold and direct the Respondents are liable to pay the amounts wrongly withheld in terms of PPA dated 31.7.2012, 19.12.2014 to the Petitioner for the FY 2017-18;

(b) Hold and direct the Respondents to release payment towards capacity charges, energy charges and reimbursement of transmission charges to the Petitioner, aggregating to Rs. 165.76 Crores till January 2018 and such further amounts for the bills from February & March, 2018 onwards as may be wrongfully deducted by the Respondents;

(c) Direct the Respondents to reimburse amounts of Rs.54.59 Crores together with Late Payment Surcharge if any payable towards transmission charges for the period November, 2017 to February, 2018 to the Petitioner within 3 days of submission of proof of payment by the Petitioner;

(d) Hold and direct that the Respondents are not entitled to any penalty in terms of Clause 4.2.4 vide Schedule 4 of PPA for any short-supply of electricity for the financial year 2017-18 and for such other period when the Respondents have not paid the tariff in terms of the PPA and have been wrongfully and unilaterally deducting amounts from the monthly bills of the Petitioner;

(e) Hold and direct that the Respondents are liable to pay late payment surcharge computed in terms of Article 8.3.5 of the PPA on the amounts withheld by the Respondents, aggregating to Rs.17.45 crores up to 28/02/2018 and also for the future period till the date of actual payment of the principal amounts by the Respondents.

(f) Direct the Respondents to establish the Letter of Credit towards payment security mechanism in terms of Article 8.4 of the PPA and arranging Collateral Arrangement of Escrow Mechanism in terms of Article 8.4.11 of the PPA.

(g) Restrain the Respondents from making unilateral deductions in the monthly invoices raised by the Petitioner and direct the Respondents to strictly comply with the terms and conditions of the PPA for payment of the tariff to the Petitioner;

(h) Hold and direct that the Respondents are not liable to invoke any right under the PPA against the Petitioner till such time the Respondents fulfill their obligations under the PPA including payment of tariff, reimbursement of transmission charges and establishment of the Letter of Credit and Payment Security Mechanism;

(i) Award costs of the present proceedings in favour of the Petitioner and against the Respondents; and

(j) Pass such other further order or orders as the Hon'ble Commission may deem just, fit and proper.”

4. The Petition was admitted on 31.5.2018, and the Commission directed the parties to complete pleadings in the matter. Against this order, the Respondents filed Writ Petition (W.P. No.23887/2018) before the Hon'ble High Court of Andhra Pradesh, contending that this Commission does not have jurisdiction to entertain and admit the petition filed by the



Petitioner. By an order dated 31.7.2018, the writ petition was disposed of by the Hon'ble High Court, directing the Respondents herein to file an appropriate application before this Commission, raising the plea of lack of jurisdiction of this Commission to decide the petition. The relevant portion of the order is extracted below:

"7. Therefore, petitioners are directed to file appropriate pleadings before the 1st Respondent raising the plea about lack of its jurisdiction to entertain the petition filed by the 2nd Respondent within ten (10 days) from the date of receipt of copy of the order and if such application is filed, the 1st respondent shall decide the said issue after giving notice to petitioners as well as 2nd Respondent and communicate its decision to both of them.

5. While the Respondent Discoms had, in terms of the aforesaid directions dated 31.7.2018 of the Hon'ble High Court, filed interlocutory application (IA No. 72/2018) raising the issue of jurisdiction of the Commission to adjudicate the disputes between the parties in Petition No.91/MP/2018, the Petitioner herein, filed Interlocutory Application (IA No. 68/2018) seeking to implead PGCIL as a party, in the main petition.

6. Since the Commission was not holding the hearing, in terms of the Hon'ble Supreme Court's order dated 28.8.2020 in Contempt Petition (C) No. 429/2020 in C.A No. 14697/2015, the Petitioner approached the Appellate Tribunal for Electricity ('APTEL') vide O.P No. 4/2021, under Section 121 of the Act. APTEL vide its orders dated 24.12.2020 and 12.1.2021, granted certain interim reliefs to the Petitioner as prayed for therein, and *inter alia*, also repelled the objections of the Respondent Discoms regarding the jurisdiction of this Commission. However, the said orders of APTEL were challenged by the Andhra Pradesh State Load Despatch Centre (APSLDC) before the Hon'ble Supreme Court in Civil Appeal Nos. 226 & 227/2021 and the Hon'ble Court vide its order dated 29.1.2021, observed that Section 121 does not give APTEL any power to decide the disputes pending before it, and consequently set aside the aforesaid APTEL orders. In the said order, the Hon'ble Supreme Court also observed that the parties are free to go back to



the Central Commission, which will decide the disputes before it, in accordance with the law, including the question of jurisdiction.

Petition No.61/MP/2021

7. While so, during the pendency of the above petition, the Petitioner filed Petition No. 61/MP/2021 on 13.1.2021, for adjudication of disputes arising on account of the termination of PPA dated 31.7.2012 by the Respondents APSPDCL and APEPDCL, inter alia, seeking to declare action of the said Discoms, in issuing the termination notice dated 19.12.2020 in respect of PPA, as illegal and arbitrary and to set aside the said notice. The relevant portion of the prayers is extracted below:

- “(a) Issue appropriate order(s) / direction(s) declaring the action of the AP Discoms in issuing the termination notice dated 19.12.2020 as illegal and arbitrary and accordingly set aside the impugned notice;*
- (b) Issue appropriate order(s) / direction(s) to the AP Discoms to grant consent for STOA, and take supply of power from the Petitioner in terms of the PPA;*
- (c) Pass an ad-interim order restraining the AP Discoms from taking any coercive and/or precipitative action against the Petitioner pending the hearing of the present Petition;*
- (d) Pass an ex-parte ad-interim order in terms of prayer (a), (b) and (d) above and confirm the same after notice to the Respondents; and/or*
- (e) Award costs of the Present petition in favour of the Petitioner and against the Respondents No. 1 and 2; and*
- (f) Pass such other further orders as this Hon’ble Commission may deem just in the facts of the present case.”*

8. Thereafter, the Petitioner had approached the Hon’ble High Court of Delhi by filing W.P(C) No.1380/2021 against the said termination and the Hon’ble High Court vide its judgment dated 9.2.2021 disposed of the writ petition, with a direction to the parties to maintain status quo on the invocation of bank guarantee, as well as the supply of power for a period of 30 days from its order or till the time the Petition and the application for appropriate interim orders of the Petitioner, is taken up for consideration by this Commission, whichever was earlier, and thereafter, the interim protection would be subject to the orders of this Commission. The Petitioner also filed IA No. 28/2021, praying



amongst others, for an ex-parte ad-interim order staying the termination notice dated 19.12.2020 and directing the AP Discoms to grant consent for STOA and to take supply from the Petitioner in terms of the PPA. However, the Commission, in terms of the aforesaid orders/judgments of APTEL, Hon'ble Delhi High Court and the Hon'ble Supreme Court, heard the matter on the issue of jurisdiction of this Commission to adjudicate the disputes, and on 12.3.2021, vide ROP of the said hearing, reserved its order in this petition. While doing so, the Commission directed the parties to maintain the status quo on the invocation of the bank guarantee, and the supply of power, till further orders. Thereafter, vide order dated 1.5.2021, the Commission disposed of this Petition, holding as under:

“30. Thus, in terms of the above decisions, issue of the jurisdiction of this Commission inter-se the parties and the very same PPA stands settled. However, the Respondents, AP Discoms have sought to argue that the aforesaid judgment passed by the APTEL was in a matter pertaining to compensation on account of change in law events which has direct bearing on tariff, whereas in the present case, dispute involved being termination of the PPA, does not relate to regulation or adjustment of tariff. In the foregoing paragraphs, we have already concluded that under Section 79(1)(f) of the Act, this Commission can also adjudicate upon the disputes relating to the terms and conditions of tariff including termination of supply and payments, etc. and that termination of PPA in the present case is inevitably linked to the payment of tariff. Therefore, we do not find any merit in the contention of the Respondents, AP Discoms that the aforesaid decision of APTEL does not apply to the present case

In view of the above discussion, we find and hold that this Commission has exclusive jurisdiction to hear the disputes arising between the parties on both counts, the scheme being the composite scheme and dispute is basically related to tariff.

31. It is clarified that this order is limited to determination of issue of the jurisdiction of this Commission to regulate the tariff of the project of the Petitioner and we have not expressed any view on the merit of the issues raised in the Petition. Parties are directed to complete the further pleadings on merit, if any, by 31.5.2021. No further extension of time for completion of pleadings shall be permitted. Interim directions given vide Record of Proceedings for the hearing dated 12.3.2021 shall be continued till further orders...”

Petition No.53/MP/2021

9. Meanwhile, on 15.2.2021, the Petitioner filed Petition No. 53/MP/2021, seeking the adjudication of disputes under the PPA dated 31.7.2012, as amended on 19.12.2014 and 23.1.2018, relate to the non-payment of capacity charges and the reimbursement of the



transmission charges wrongly deducted and recovered from the Petitioner, along with the LPS. The prayers, in the said petition, are extracted below:

- “(a) Hold and direct the Respondents are liable to pay an amount of Rs. 373.54 Cr towards capacity charges for the period of Regulation by Powergrid i.e. 1st, April 2018 to 28th September 2018 and 14th, January 2019 to 27th, April 2019, and 18th June 2020 to 17th December 2020;*
- (b) Hold and direct Respondents to pay an amount of Rs.151.34 Cr towards reimbursement of Transmission Charges wrongly deducted and recovered from the Petitioner during the period of Regulation by Powergrid i.e. 1st, April 2018 to 28th September 2018 and 14th, January 2019 to 27th April 2019, and 18th June 2020 to 17th December 2020;*
- (c) Hold and direct that the Respondents are liable to pay late payment surcharge computed in terms of Article 8.3.5 of the PPA on the amounts deducted and withheld by the Respondents from the date when the amounts were due and payable till the date of actual payment of the principal amounts by the Respondent;*
- (d) Restrain the Respondents from making unilateral deductions in the monthly invoices raised by the Petitioner and direct the Respondents to strictly comply with the terms and conditions of the PPA for payment of the tariff to the Petitioner;*
- (e) Award costs of the present proceedings in favour of the Petitioner and against the Respondents; and*
- (f) Pass such other further order(s) as the Hon’ble Commission may deem just in the facts of the present case;”*

Petition No.149/MP/2021

10. Subsequently, on 24.6.2021, Petition No.149/MP/2021 was filed by the Petitioner before this Commission, seeking adjudication of the disputes under the PPA dated 31.7.2012 (as amended on 19.12.2014 and 23.1.2018) with regard to the non-payment of tariff and the unilateral deduction of capacity charges, by the Respondents, in terms of the bills raised by the Petitioner. The relevant portion of the prayers is extracted below:

- “(a) Hold and direct the Respondents are liable to pay an amount of Rs. 316.09 Cr (Annexure B) towards monthly tariff payments for the power supplied by the Petitioner during the term of the PPA;*
- (b) Hold and direct that the Respondents are liable to pay late payment surcharge computed (Annexure C) in terms of Article 8.3.5 of the PPA on the amounts deducted and withheld by the Respondents from the date when the amounts were due and payable till the date of actual payment of the principal amounts by the Respondent;*
- (c) Restrain the Respondents from making unilateral deductions in the monthly invoices raised by the Petitioner and direct the Respondents to strictly comply with the terms and conditions of the PPA for payment of the tariff to the Petitioner;*



(d) Award costs of the present proceedings on favour of the Petitioner and against the Respondents; and

(e) Pass such other further order(s) as the Hon'ble Commission may deem just in the facts of the present case."

11. While so, the Commission vide its order dated 20.7.2021, disposed of the IA Nos 68/2018 and 72/2018 filed by the parties (as stated in para 5 above), as under:

Interlocutory Application No.68/2018

6. KSKMPCL, the applicant, has filed this IA seeking impleadment of PGCIL as a respondent in Petition No.91/MP/2018, stating therein that the issue of non-payment to PGCIL has arisen due to substantial defaults on part of the AP Discoms to make payments to the Petitioner and also for directions in relation to the payment of outstanding dues towards transmission of electricity and for furnishing of payment security. However, during the hearing, the learned counsel for the applicant submitted that the prayer for impleadment of PGCIL was not being pressed since the reliefs sought for by the applicant in the petition relates to the non-payment of dues by the AP Discoms and no relief was claimed against PGCIL. Accordingly, the learned counsel for the applicant prayed that the IA may be treated as withdrawn. In consideration of the submissions of the learned counsel for the applicant, the IA No.68/2018 is dismissed as withdrawn."

Interlocutory Application No.72/2018

16. We have considered the submissions of the parties. The issue of jurisdiction between the parties in terms of the PPA dated 31.7.2012, as amended, is no more res integra. It is observed that the submissions of the applicants that APERC has the jurisdiction to adjudicate the disputes, since it has adopted the tariff under the PPA in terms of Section 64(5) of the Act, had already been examined by this Commission in Petition No. 61/MP/2021 (KSKMPCL V AP discoms) filed by the Respondent for adjudication of the disputes arising on account of termination of the PPA dated 31.7.2012 by the applicants and the same was rejected by the Commission vide its order dated 1.5.2021. The relevant portion of the said order is extracted hereunder:

Xxx

17. In line with the above decision, the submissions of the applicants that this Commission has no jurisdiction stands rejected.

Xxxx

21. Pursuant to the above judgment of APTEL dated 31.10.2018, as confirmed by the Hon'ble Supreme Court on 3.12.2018, APERC, vide its order dated 29.12.2018, has transferred the entire records in O.P. No.46/2014 to this Commission. Similarly, APERC vide its orders dated 19.1.2019 in O.P. No.13/2014 and O.P. No.14/2014 has transmitted the entire records of these petitions to this Commission. It is pertinent to mention that in the light of the aforesaid decisions, this Commission, vide its order dated 1.5.2021 in Petition No. 61/MP/2021, had rejected the submissions of the applicants on the issue of jurisdiction. Thus, the jurisdiction of this Commission to adjudicate the disputes between the parties has been settled by the aforesaid decisions and has attained finality, the submissions of the applicants that APERC only has the jurisdiction in the matter, cannot be entertained and is accordingly rejected.

22. Pursuant to the aforesaid orders/judgments upholding the jurisdiction of this Commission to adjudicate the disputes between the parties in respect of the PPA dated 31.7.2012, the other submissions of the applicants namely, that the judgment of the Hon'ble Supreme Court



in Energy Watchdog case is not applicable to the present case; that the provisions of Section 79(1)(b) of the Act are not applicable to the tariff adopted by APERC under section 86(1)(b) of the said Act; and that the parties had approached APERC even after the judgment of the Hon'ble Supreme Court in Energy Watchdog case, have all been rendered inconsequential.

23. Thus, the issue of jurisdiction having been settled in favour of this Commission in terms of the above orders/judgments, the same cannot be unsettled by the applicants, by once again raising issues on jurisdiction, on extraneous grounds. In the light of the above, we hold that this Commission has the jurisdiction to regulate the tariff of the project of the Respondent, under Section 79(1)(b) of the Act and to adjudicate the disputes in terms of Section 79(1)(f) of the Act.

24. It is, however, clarified that this order is limited to determination of the issue of the jurisdiction of this Commission to adjudicate the disputes between the parties and we have not expressed any view on merits of the matter raised in Petition No.91/MP/2018.

12. Against the aforesaid Commission's orders dated 1.5.2021 and 20.7.2021, the Respondent Discoms filed Writ Petition Nos. 25904/2021 and 11908/2021 before the Hon'ble High Court of Andhra Pradesh, on the ground of violation of natural justice, and the Hon'ble Court vide its order dated 17.12.2021, set aside the Commission's orders dated 1.5.2021 and 20.7.2021, and remanded the matter to the Commission, for fresh consideration, on the issue of 'jurisdiction'.

13. Thereafter, Petition No. 149/MP/2021 was admitted on 20.5.2022, and the Commission directed that the petition be listed along with other petitions (Petition Nos. 91/MP/2018, 61/MP/2021 and 53/MP/2021), subject to the question of jurisdiction. Also, the Commission, while permitting the amendment to Petition No. 61/MP/2021 in IA No. 42/2022, directed the parties to complete their pleadings, on the issue of 'jurisdiction' as well as on merits.

Hearings dated 12.7.2022, 18.10.2022, 19.1.2023 and 29.5.2023

14. The petitions were clubbed together and heard on various dates, and the Commission also sought certain additional information, including the joint reconciliation statement (in Petition No.149/MP/2021), indicating the bills, the payments and the deductions made and the balance dues. Later, IA No. 26/2023 (in Petition No. 53/2021)



was filed by the Respondent AP Discoms on 21.3.2023, placing on record the documents relating to capacity declared to each procurer during the regulation periods as certified by the procurer and the balance capacity available with the generator for adjudication of the disputes. Accordingly, the Commission, after hearing the parties, reserved its order in these petitions on 29.5.2023.

15. However, pursuant to the Petitioner's letter dated 15.9.2023 and the application (IA No.100/2023 in Petition No.53/MP/2021) filed by the Respondent Discoms raising certain objections, including the violation of natural justice, these petitions were listed on 9.10.2023 and the Commission after directing the Respondents to file their short note of submissions and the Petitioner, its response to the same, reserved its orders in these petitions. As the orders in these petitions could not be issued prior to one Member of the Commission demitting office, these petitions (91/MP/2018, 61/MP/2021 and 149/MP/2021) were listed on 18.3.2024, and the Commission, based on the consent of the parties, reserved its order in these petitions. Similarly, Petition No.53/MP/2021, along with 100/IA /2023, was listed on 19.4.2024, and orders were reserved, with the consent of the parties. However, since no order could be issued, these petitions were listed on several dates (17.10.2024, 9.12.2024, 21.1.2025) on the issue of jurisdiction. Thereafter, the matter was heard on 8.4.2025, and the Commission, after hearing the parties on the issue of jurisdiction, directed the parties to place their submissions on affidavit on the question of referring the disputes to arbitration. On 13.5.2025, the parties were heard at length on the issue of this Commission's jurisdiction, including the question of referring the disputes to arbitration. The parties were also permitted to file their written submissions, along with the judgments relied upon by them, on the issue of arbitrability



of the matter. In compliance with the above directions, the Petitioner and the Respondents have filed their written submissions on 12.6.2025 and 19.7.2025, respectively.

Written submission of the Respondents

16. The Respondents, in their written submissions, have mainly submitted the following:

(a) The petition has been filed to adjudicate a purely contractual dispute involving the Petitioner and the Respondents. The Petitioner has made only a pure money claim, which could only be adjudicated by the State Commission or the Arbitral Tribunal, upon a reference being made to that effect. It is the case of the Respondent Discoms that a petition for a money claim by a generator against the State Discoms is not maintainable under Section 79 (1) (f) of the Act. It is a settled proposition of law that a statutory body/ Commission can exercise jurisdiction only to the extent provided by the statute.

(b) The ambit of Section 79 (1) (f) of the Act is quite narrow, and the present dispute cannot be adjudicated by this Commission. In terms of the judgment dated 28.8.2024 of the APTEL in Appeal No. 309/2019 (MPPMCL vs DVC), as confirmed by the Hon'ble Supreme Court vide its order dated 23.9.2024 in C.A No. 10480/2024 (DVC vs MPPMCL), there is a difference in the language of Section 79 (1) (f) and Section 86 (1) (f) of the Act, and as such this Commission necessarily has to decide whether or not, the dispute currently raised can at all be adjudicated in terms of the jurisdiction of the Commission under Section 79 (1) (f) of the Act.

(c) The decision of the Hon'ble Supreme Court in Energy Watchdog vs. CERC (2017) 14 SCC 80, as relied upon by the Petitioner, related to a dispute pertaining to a change in law, which matter is clearly a tariff issue. A change in law claim has a direct impact on tariff and, as such, can only be subject to the regulatory jurisdiction of the Appropriate Commission. Apart from the statute, even the PPA recognises this aspect.

(d) Section 79 (1) (f) of the Act relates to the adjudication of disputes involving the generating companies or transmission licensees in respect of the determination or regulation of tariff. The petitioner has neither sought a determination of tariff nor the regulation of tariff in the present petition. The petition relates to a dispute alleging non-payment of the transmission and capacity charges raised in its invoices by the Petitioner. There is no dispute qua the tariff discovered under Case-I bidding. This is purely a financial dispute arising from the terms and conditions of the PPA and is not related to the determination or regulation of the tariff.



(e) The tariff was discovered under Case- I bidding and is not disputed by either party to the litigation. The dispute concerns only the alleged non-compliance with the contractual obligations, specifically the short payment of invoices raised by the generator to the Respondents under the PPA signed by the parties. This is a contractual dispute exclusively between the parties, with reference to a specific PPA. Thus, the Central Commission under Section 79 of the Act lacks the jurisdiction to adjudicate the dispute raised by the Petitioner.

(f) Section 79 of the Act provides for the jurisdiction to adjudicate the dispute involving the generating companies or the transmission licensees, in relation to the regulation of tariff under (a) to (c) and the determination of tariff under (d). Section 86 (1) (a) and (b) of the Act provides for the power to determine tariff/ regulate tariff. Section 86 (1) (f) of the Act provides for jurisdiction to adjudicate disputes between licensees and the distribution company. Section 86 (1) (f) does not restrict the jurisdiction of the State Commission to adjudicate disputes relating solely to the determination/ regulation, as in the case of Section 79 (1) (f), and is independent of the determination and regulation of tariff.

(g) Under Section 79(1)(f) of the Act, there is no mention of any power of the Commission to adjudicate a dispute between a distribution licensee and a generating company. The reliance placed by the Petitioner on the judgment in the Energy Watchdog case to contend that this Commission has jurisdiction, where there is an inter-state supply of power or a composite scheme, is wrong in the facts of the present case. The dispute in the Energy Watchdog case, involving generating companies and distribution licensees, concerned a composite scheme for determining and regulating tariffs as covered under Section 79 (1) (f) on the grounds of a change in law and force majeure.

(h) Adjudication of disputes between a licensee and a generator is only provided for under Section 86(1)(f) of the Act. Disputes relating to the determination of tariff/ regulation of tariff are fundamentally different from disputes relating to the non-payment or short-payment of approved tariff. Section 86 alone provides for the adjudication of disputes between the generating company and the licensee on issues other than disputes relating to the determination or regulation of tariff. This is the legislative intention and mandate of the Act.

(i) In view of the law laid down by the Hon'ble Supreme Court in GUVNL vs Essar Power Limited (2008) 4 SCC 755, the present case cannot be adjudicated under Section 79 (1) (b) read with 79(1)(f) of the Act. The Hon'ble Supreme Court, while discussing the issue of applicability of limitation on disputes between a licensee and a generator (in APPCC vs LKPL- (2016) 3 SCC 468), held that the limitation Act will be applicable when the judicial power of the State Commission is invoked



and not on the administrative or regulatory power. Thus, Section 79(1)(f) of the Act restricts the adjudicatory jurisdiction to administrative and regulatory powers.

(j) In the present case, the generator entered into a PPA under Case-I bidding, and the State Commission approved the PPA by adopting the tariff determined, as per the MOP, GOI guidelines under Section 63 of the Act. Although the generator has a PPA with three states, each PPA is obtained through Case-I bidding, with a tariff approved by the respective State Commission and agreed exclusively between the Petitioner and the Respondents.

(k) The judgment in the Energy Watchdog case considered the request for an adjustment to the coal price based on a change in legislation, which is effectively a regulation of tariff as provided under Section 79(1)(b). The increase in coal prices affected the generation tariffs of generator having PPAs with distribution licensees in various states. It was in the context of regulation of tariffs that the composite scheme was considered, as envisaged under Section 79(1) (b) of the Act.

(l) Although the generator is supplying power to three more states, bringing the scheme of generation into a composite scheme, the dispute involved does not in any manner affect the generation tariff agreed upon under the PPA between the parties, as in the case of Energy Watchdog. In the present case, the generation scheme is composite, but there is no issue relating to the regulation of tariff in the present case. Section 79(1)(f) provides for the adjudication of disputes relating to the determination or regulation of tariffs that are enumerated under Section 79 (1) (a) to (d) of the generating companies or transmission licensees. This Commission is not conferred with any power to adjudicate a money claim arising under a PPA where the tariff is not disputed by either of the parties to the lis.

(m) Disputes relating to tariff determination or regulation fundamentally differ from disputes relating to non-payment or short payment of an approved tariff. Section 86 alone provides for the adjudication of disputes between the generating company and licensee on issues other than tariff determination or regulation disputes. This is the legislative intention and mandate of the Act 2003.

Written submission of the Petitioner

17. The Petitioner, in its submissions, has submitted the following:

(a) The Respondents have raised two primary contentions viz., (i) It is the State Commission which exercises the jurisdiction over the disputes involved in the present batch of cases, as the dispute raised allegedly do not fall within the scope of Section 79 (1) (b) & (f); (ii) The disputes involved in the present case have to be



re-examined by the Commission in the light of the decision of the APTEL in MPPCL vs DVC case.

(b) The law on the jurisdiction of this Commission and the exercise of power under Section 79(1) has been unequivocally settled by the Hon'ble Supreme Court in the Energy Watchdog case, wherein it has upheld the jurisdiction of this Commission to adjudicate upon the disputes involving the generating companies engaged in the composite scheme for generation and supply of electricity. The Court has specifically held that the State Commission's jurisdiction is only for issues within the State and not on an inter-state basis, and all inter-state issues would only come under the jurisdiction of this Commission. In deciding so, the Hon'ble Court has not restricted the jurisdiction to any issue, whether tariff or non-tariff. The only and primary test that the Hon'ble Supreme Court applied in determining so is whether the issue relates to inter-state/intra-state supply.

(c) The first test that has to be applied is whether the issue would fall under the jurisdiction of this Commission or the State Commission, based on the decision of the Hon'ble Supreme Court in the Energy Watchdog case. Only if it falls within this Commission's jurisdiction, does the second test apply : whether the issue is tariff-related. Even in the case of MPPMCL v DVC, the decision of APTEL, which was upheld by the Hon'ble Supreme Court, the decision is only that this Commission would refer to arbitration, the non-tariff issues and not that this Commission does not have jurisdiction at all over non-tariff matters.

(d) In fact, the APTEL, vide its judgment dated 31.10.2018 in Appeal No. 230/2017, has held that the appropriate Commission to adjudicate the disputes involving the Petitioner and the Respondents herein is this Commission. This decision binds the parties. As against the distinction sought to be carved out by the Respondents that the dispute therein pertained to change in law claims, the APTEL vide its judgment dated 31.10.2018 upheld the jurisdiction of this Commission to adjudicate upon disputes involving the Petitioner, regardless of their nature. The said judgment was also upheld by the Hon'ble Supreme Court vide its order dated 3.12.2018 in C.A.No.11142/2018, wherein it was held that this Commission will exercise jurisdiction over disputes involving the Petitioner.

(e) This Commission has also upheld its jurisdiction in matters involving the Petitioner and the Respondents, in its decision in Petition Nos.169/MP/2016 and 21/MP/2018. Cross petitions filed by the Petitioner and the Respondents before the APERC in Petition No. 82/MP/2021 (O.P. No. 14/20214) and Petition No. 38/MP/2021 (O.P. No. 13/2014) were also transferred to this Commission, by the State Commission, vide its order dated 19.1.2019, referring to the judgment of APTEL and the Hon'ble Supreme Court. The said matters are also non-tariff matters, and the Respondents have not contested the decision of the APERC to



transfer the petitions to this Commission. This makes it clear that the Central Commission exercises exclusive jurisdiction over the disputes involving the Petitioner and the Respondents.

(f) The generating station of the Petitioner is located in the State of Chhattisgarh, and the Petitioner supplies electricity to the States of Tamil Nadu, Uttar Pradesh and Chhattisgarh, while the disputes in the present petition arise out of the supply to the State of Andhra Pradesh. Hence, any or all the disputes arising out of the agreements entered into by the Petitioner fall within the jurisdiction of this Commission. The interpretation of the Respondents that the disputes are amenable to the jurisdiction of the State Commission leads to an arbitrary situation, wherein two or more State Commissions concurrently exercise jurisdiction over a given dispute, which is evidently not envisaged under the provisions of the Act.

(g) The second issue sought to be raised by the Respondent is whether the present dispute involves tariff or not. APTEL, in MPMCL v DVC case, held that only tariff-related disputes ought to be adjudicated by this Commission, in view of the language of Section 79(1)(f). Other disputes ought to be referred to arbitration, as the latter part of Section 79(1)(f) is for any dispute and not restricted to clauses (a) to (d) of Section 79(1)(f). The consent of the parties/absence thereof, does not take away the discretion vested with this Commission, to refer to arbitration the matters which fall within its jurisdiction.

(h) The issues involved in the present petition are clearly tariff-related issues. Sub-clauses (b) and (c) of Section 79(1) are clearly invoked in each of the cases, as the issues involve the payment of tariff, interpretation on the quantum of tariff to be paid, including transmission charges, energy charges and capacity charges (as explained in the affidavits dated 12.8.2021, 5.8.2022 and 8.5.2025). In any event, to avoid any further litigation only on the issue of whether the issues are tariff-related or not and whether the Commission ought to adjudicate or refer the disputes to arbitration, the Commission may refer all the disputes to be adjudicated by means of arbitration. This will ensure that no further issues can be raised by the AP discoms. The issue has, in fact, been addressed only in the account of the objection raised, relying upon the APTEL decision in the DVC case.

(i) The jurisdiction of this Commission to decide the disputes involving the generators engaged in the generation and sale of power under the composite scheme, and also in respect of the inter-parties, having been settled, this Commission has the jurisdiction to decide the disputes involved in the present batch of petitions. However, as stated above, this Commission, being vested with the discretion under Section 79(1)(f) to refer disputes to arbitration, this Commission may refer the disputes involved in the present case, to arbitration (as



stated vide affidavit dated 8.5.2025), notwithstanding the nature of the disputes involved, in view of the discretion vested with the Commission.

18. Accordingly, we, in terms of the directions of the Hon'ble High Court of Andhra Pradesh and the Hon'ble Supreme Court, and taking into consideration the submissions of the parties and the documents on record, proceed to examine the issue of 'jurisdiction' of this Commission, including the question of 'arbitrability' of the matter, as stated in the subsequent paragraphs:

Analysis and Decision

Re: Jurisdiction

19. We have considered the submissions of the Petitioner and the Respondent Discoms. The issue for consideration at this stage is whether this Commission has jurisdiction to deal with the present Petition under sub-section (1) (f) of Section 79 of the Act, in view of the objections raised by the Respondents. The jurisdiction of this Commission to regulate the tariff of the generating companies is derived from Section 79(1)(a) and (b) of the Act, and to adjudicate the dispute under Section 79(1)(f) of the Act. The said provisions are extracted below:

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

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

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(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

20. In terms of Section 79(1)(b) of the Act, the Central Commission has the jurisdiction to regulate the tariff of generating companies other than those owned or controlled by the



Central Government, if those generating companies have a composite scheme for generation and sale of electricity in more than one State. The Hon'ble Supreme Court in its judgment dated 11.4.2017 in Energy Watchdog Case, has dealt with the issue of composite scheme under Section 79(1)(b) as under:

"22. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in sub-sections (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression "within the State" in sub-clauses (a), (b), and (d), and "intra-state" in sub-clause(c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission's jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression "composite scheme" does not mean anything more than a scheme for generation and sale of electricity in more than one State.

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24. The scheme that emerges from these sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in clauses (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression "within the State" in clauses (a), (b) and (d), and "intra-State" in clause (c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission's jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression "composite scheme" does not mean anything more than a scheme for generation and sale of electricity in more than one State.

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26. Even otherwise, the expression used in Section 79(1)(b) is that generating companies must enter into or otherwise have a "composite scheme". This makes it clear that the expression



“composite scheme” does not have some special meaning — it is enough that generating companies have, in any manner, a scheme for generation and sale of electricity which must be in more than one State.”

21. Thus, in terms of the above findings of the Hon'ble Supreme Court, the moment generation and sale of electricity takes place in more than one State, this Commission is the Appropriate Commission under the Act. Even though several issues cropped up for consideration before the Hon'ble Supreme Court in the said case, one of the controversies was with regard to the 'composite scheme'. After analysing some of the relevant provisions of the Act, the Hon'ble Supreme Court opined that the State Commission has jurisdiction only where generation and supply take place within the State (intra-state), but in cases where the generation and sale take place in more than one State, the Central Commission becomes the appropriate Commission under the Act. Thus, the only test applied by the Hon'ble Supreme Court in the said case, for determining the question of jurisdiction of the Commissions (both State and Central) is, whether the issue relates to an 'inter-state' or 'intra-state' supply and not the question as to, 'whether it is related to tariff or non-tariff', as argued by the Respondents. We note that, in the present case, the Petitioner's generating station is located in the State of Chhattisgarh, and, besides the Respondent Discoms, the Petitioner is also supplying power to the distribution companies of the States of Uttar Pradesh, Tamil Nadu and Chhattisgarh. Thus, the generating station of the Petitioner has a composite scheme for the generation and supply of electricity in more than one State, and is therefore, inter-state in nature, falling within the jurisdiction of the Central Commission. By no stretch of imagination can the jurisdiction be vested in the State Commission (as contended by the Respondents), by overlooking the provisions of Section 79(1)(b) of the Act and the existence of a composite scheme of the Petitioner's generating station. We, therefore, in terms of the said provisions of the Act and in the light of the decision of the Hon'ble Supreme Court in



Energy Watchdog case, reject the contentions of the Respondents and hold that this Commission only has the jurisdiction, to adjudicate the disputes raised by the Petitioner, in the present batch petitions, under Section 79(1)(b) read with Section 79(1)(f) of the Act.

22. It is pertinent to mention that the jurisdiction of this Commission to adjudicate the disputes between the parties *inter se*, under the very same PPA, is no more *res integra*, in view of the APTEL's judgment dated 31.10.2018 in Appeal No. 230/2017 (KSKMPCL v APERC & 2 ors) upholding the jurisdiction of this Commission to adjudicate the disputes between the parties, regardless of the nature of the dispute. The relevant portion of the judgment is extracted below:

"5. We heard both learned counsels appearing for the parties at length. It is not in dispute that the impugned order came to be passed prior to the decision of the Hon'ble Supreme Court in the case of Energy Watchdog Vs. Central Electricity Regulatory Commission, but subsequent to the full bench decision of the Tribunal in Appeal No. 100 of 2013 dated 7-4-2016 in the case of Uttar Haryana Bijli Vitran Nigam Ltd. Vs. Central Electricity Regulatory Commission & Ors. So far as Appellant entering into PPA in the year 2012 with four distribution licensees in the erstwhile undivided State of Andhra Pradesh, there is no dispute. There is no dispute that the generating station of the Appellant is situated in Chhattisgarh. It is also not in dispute that Appellant generating company is supplying power not only to the licensees in Andhra Pradesh but also to licensees in the State of Telangana apart from supplying power to the licensees of Tamil Nadu, Uttar Pradesh, and Chhattisgarh. It is also not in dispute that pursuant to the law applicable on the question of jurisdiction, Appellant did file petitions raising disputes with the Respondents herein before the Regulatory Commission meant for undivided State of Andhra Pradesh. Apparently, the full bench of the Tribunal in the case of Uttar Haryana Bijli Vitran Nigam Ltd. Vs. Central Electricity Regulatory Commission & Ors. In Appeal No. 100 of 2013 dated 7-4-2016 opined that the mere sale of electricity by a generator to two or more States would mean it is a composite scheme attracting the provisions of Section 79(1)(b), and therefore, it would be within the exclusive jurisdiction of the Central Commission to adjudicate disputes between the parties to PPA.

5.1 At Para 24 of Energy Watchdog case, the Hon'ble Supreme Court while interpreting what would be a composite scheme and who under what circumstances would get jurisdiction to entertain disputes, whether Central Commission or State Commission, opined that in the case of inter-State sale, it would be a composite scheme for the exclusive jurisdiction of the Central Commission.

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5.5 While analyzing Sections 79, 86 and 65, Their Lordship, while interpreting composite scheme opined that the State Commission has jurisdiction only where generation and supply takes place within the State (intra-State). But in a case where the generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. In the present case, the generation of electricity is in the State of Chhattisgarh and sale of electricity is not restricted to either State of Chhattisgarh or State of Andhra



Pradesh. The Appellant generating company supplies electricity to other States as well, i.e. Tamil Nadu, Uttar Pradesh and Telangana apart from Andhra Pradesh and Chhattisgarh.”

23. The aforesaid decision was challenged by the Respondent AP Discoms before the Hon’ble Supreme Court in Civil Appeal No. 11142/2018, and the Hon’ble Court vide its order dated 3.12.2018, disposed of the said Civil Appeal, affirming the APTEL judgment, as under:

“2) We are not inclined to interfere with the order passed by the Appellate Tribunal for Electricity, New Delhi.

3) Accordingly, the Civil appeal is dismissed.

4) However, we make it clear that we have considered only the case of K.S.K Mahanadi Power Company Ltd.”

24. Thus, the jurisdiction of this Commission inter-se the parties to the very same PPA, having stood settled in terms of the aforesaid decisions, the same is binding, and the Respondents cannot now argue to the contrary. The Respondents’ contention on this count is accordingly rejected.

25. Further, the Respondents have relied on the APTEL judgment dated 23.8.2024 in MPPMCL vs DVC (Appeal No. 309/2019) case, as affirmed by the Hon’ble Supreme Court, and contended that in terms of the observations of the Hon’ble Supreme Court, there is a difference in the language of Section 79(1)(f) and Section 86(1)(f) of the Act, and therefore, this Commission has to decide whether or not the disputes raised herein, can be adjudicated by it, in terms of the powers vested under Section 79(1)(f). They have also referred to the judgment of the Hon’ble Supreme Court in GUVNL v Essar Power Ltd (GUVNL case) to contend that the present case cannot be adjudicated under Section 79(1)(b) read with Section 79(1)(f) of the Act. Pointing out that the dispute in the Energy Watchdog case related to the regulation of tariffs under Section 79(1)(a) to (d) read with Section 79(1)(f) [on the grounds of change in law & force majeure], the Respondents have



argued that since there is no issue relating to regulation of tariff in the present case, Section 86(1)(f) of the Act, which provides for the adjudication of disputes between the generating company and licensee, on issues other than disputes relating to the determination/regulation of tariff is applicable. Accordingly, the Respondents have submitted that this Commission lacks jurisdiction to adjudicate the disputes raised by the Petitioner in these petitions. *Per contra*, the Petitioner has argued that the issues involved in the present batch of petitions, necessarily involve a composite scheme and are related to tariff/regulation of tariff and therefore, this Commission only has the jurisdiction to adjudicate the disputes, falling under sub-clauses (a) to (d) of Section 79(1) of the Act and for any other disputes not restricted to these clauses, the same ought to be referred to arbitration.

26. We have examined the rival contentions. The relevant provisions of Section 79(1) of the Act are extracted in para 19 above. Section 86(1)(f) of the Act provides as under:

“Section 86. (Functions of State Commission): - (1) The State Commission shall discharge the following functions, namely: -

(a) xxxxxx

(f) adjudicate upon disputes between the licensees and generating companies and to refer any dispute for arbitration:

27. Thus, Section 79(1) of the Act provides for the jurisdiction of this Commission to adjudicate the disputes involving the generating companies or transmission licensees, in relation to the regulation of tariff under clauses (a) to (c), and for determination of tariff under clause (d). However, Section 86(1)(f) does not restrict the jurisdiction of the State Commission to disputes relating solely to the determination or regulation, as in the case of Section 79(1)(f) of the Act. The submissions of the Respondents that the Energy watchdog case judgment is not applicable in the present case, is misconceived, as in the said case, the Hon’ble Supreme Court observed that the expression ‘composite scheme’ does not mean anything more than a scheme for the generation and sale of electricity in



more than one State. In other words, the real test applied by the Hon'ble Court for determining the question of jurisdiction of the Commissions (both State and Central) under Section 79(1)(b) of the Act was, whether there is an 'inter-state' or an 'intra-state' generation and sale of electricity, and not on the basis 'whether it was related to 'the determination of tariff/regulation of tariff', as argued by the Respondents. Be that as it may, the question as to whether, in case of a composite scheme for generation and sale of electricity in more than one State, the disputes arising on a matter, other than a tariff related matter, as specified in the PPA, fall within the jurisdiction of the State Commission, came up for consideration before APTEL in Appeal No. 414/ 2022 (SECI v KSERC & anr) and the APTEL vide its judgment dated 13.8.2024, after examining the scheme of the Act and taking note of the judgment in the Energy Watchdog case, observed the following:

"20. The operations of the Central Commission and the State Commission are prescribed in Sections 79 and 86 of the Electricity Act, 2003 respectively. Bare reading of these Sections would reveal that they operate in different fields and are totally independent of each other. It would be advantageous to note the comparative provisions of these two Sections by way of the table mentioned below: -

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21. Section 79(1)(f) of the Act empowers the Central Commission to adjudicate upon the disputes involving generating companies or transmission licensees in the matters connected with clauses (a) to (d) of the said Section. Therefore, any dispute involving a generating station or a transmission licensee covered under Clauses (a)(b) & (c) will fall within the jurisdiction of the Central Commission. It appears that since the generating companies owned by Central Government and the generating companies having a composite scheme for generation and sale of Electricity in more than one State have Pan India presence, the Parliament found it proper and prudent to subject such companies to a special treatment and, therefore, have been brought under the jurisdiction of the Central Commission vide Section 79 of the Act. The primary object for such exercise appears to be uniformity of tariff amongst more than one State beneficiaries and prescribing uniform terms and conditions of supply of electricity to more than one State.

22. It is notable that Clauses (a) (b) & (c) of Section 79 (1) of the Act begin with the expression "to regulate". It is only the clause (d) which begins with the term "to determine tariff". "Regulation of Tariff" is totally distinct from "Determination of tariff". Regulation of Tariff includes all the necessary terms and conditions relating to the tariff such as billing, consequences of delay in payment of electricity charges, rebate, termination, suspension of electricity supply, payment of security, etc.

23. Section 86(1)(b) of the Act, provides for regulating the role of Distribution Licensees in the procurement of power and 86(1)(f) relates to adjudication upon the disputes between the licensees and generating companies by the State Commission. These are general



provisions and have to be read subject to Section 79(1) (a) to 79(1)(d) of the Act. In so far as the generating companies who have a composite scheme for generation and sale of electricity in more than one State, the role of the State Commission would be only to decide whether the PPA to be entered into by them and a distribution company for sales/purchase of electricity at the tariff determined by Central Commission, has to be approved or not. In doing so, the State Commission would take into consideration various factors including the availability of power from other sources at a cheaper or in a more economical manner to be supplied to the consumers in the State. Thus, the State Commission has a limited role to play with regards to the sale of electricity under a composite scheme and it has no power to suggest any modifications to the terms and conditions of the PPA/PSA to be executed between a generating company, a distribution company and an intermediary.

24. In view of the scheme of the Act, as specified more particularly in Section 79 & 86, it would be anomalous to permit State Commission to claim concurrent jurisdiction along with the Central Commission in any dispute arising out of a composite scheme for generation and sale of electricity in more than one State, which is covered by Section 79(1) (b) of the Act. The jurisdiction of the Central Commission would be only in respect of the matters other than those which fall within the jurisdiction of the State Commission under Section 79 of the Act. In other words, if any matter falls under the scheme of 79(1)(a) to 79(1)(d) of the Electricity Act, 2023, the provisions of Section 86(1)(f) are of no application. In this context, we find it apposite to quote the observations of the Hon'ble Supreme Court in *Energy Watchdog Vs. CERC & Ors.*, (2017) 14 SCC 80.

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25. We are further of the opinion that a close and meaningful interpretation of the provisions of Section 79 & 86 of the Act, would indicate that the adjudicatory powers of the Central Commission under 79(1)(f) are not restricted to only determination of tariff as well as the Regulation of tariff but include the other disputes or differences between generating companies and transmission licenses which necessarily impact the regulation of tariff. This would include fulfilment/non-fulfilment of conditions precedent as well as conditions subsequent, claim for extension of time in commissioning all projects on the ground of Force Majeure events etc. Even though disputes on these subjects do not specifically relate to determination or the regulation of tariff but these would necessarily have a direct bearing upon the regulation of tariff and, therefore, would come under the purview of the Central Commission under Section 79 of the Act.

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27. On the other hand, the jurisdiction of the State Commission under Section 86(1)(b) of the Act refers only to initial stage where approval is to be granted or not to be granted to the Power Purchase Agreement providing for purchase of power at the price and other terms and conditions specified therein. This provision does not empower the State Commission to regulate implementation of Power Purchase Agreement for all times to come in future also and to adjudicate upon the disputes arising between the parties therein. Holding otherwise would tantamount to permit the State Commissions to make inroads with the functioning of the Central Commission which would militate against the very scheme of Act, as discussed hereinabove."

28. It is evident from the above that if any matter falls under the scheme of Section 79(1)(a) to 79(1)(d) of the Act, the provisions of Section 86(1)(f) would have no application. Thus, the judgment reiterates the scope of 'regulation of tariff' and further



holds that the adjudicatory powers of this Commission under Section 79(1)(f) are not restricted to only the determination of tariff as well as regulation of tariff, but include other disputes or differences which necessarily impact the regulation of tariff. We may also refer to the APTEL judgment dated 27.3.2025 in Appeal No. 134/2024 (NPCIL v GUVNL & anr) wherein, it has examined the scope of Section 79(1)(a), particularly the meaning of expressions “tariff” and “regulate” as well as the scope and ambit of Section 79(1)(f) of the Act. Some portions of the said judgment are extracted below:

(iii) SECTION 79(1)(f): ITS SCOPE:

Section 79(1)(f) of the Electricity Act requires the Central Commission to discharge the function of adjudication of disputes involving generating companies or transmission licensees in regard to matters connected with clauses (a) to (d) of Section 79(1), and to refer any dispute for arbitration.

The power conferred on the Central Commission to adjudicate disputes is confined only to those disputes involving (1) generating companies or (2) transmission licensees. As long as the dispute involves a generating company or a transmission licensee, and even if the other parties to the dispute are neither generating companies nor transmission licensees, the Central Commission would have jurisdiction to adjudicate disputes.

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The jurisdictional facts, necessary for the CERC to exercise its powers of adjudication of the dispute under Section 79(1)(f) read with Section 79(1)(a), is firstly that the dispute involves a generating company owned or controlled by the Central Government; secondly that the dispute is in regard to matters connected with the power of the CERC to regulate the tariff of such a generating company.

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By use of the words ‘in regard to’, in Section 79(1)(f), Parliament has made it clear that the disputes, to which a generator is a party to, can be adjudicated by the CERC only ‘for the purposes of’ clauses (a) to (d) of Section 79(1), and not otherwise. By use of the words “connected with”, in Section 79(1)(f), Parliament has stipulated that the dispute should be really incidental or in close proximity to clauses (a) to (d) of Section 79(1).

29. Since the power to regulate the tariff of generating company owned and controlled by the Central Government under Section 79(1)(a) is analogous to the Commission’s power to regulate the tariff of generating companies having a composite scheme under Section 79(1)(b), the APTEL’s observation therein, can safely be applied to the present case as well. As per above judgment, the jurisdictional facts necessary for the Commission to exercise its powers of adjudication of the disputes under Section 79(1)(f)



read with Section 79(1)(b), are firstly the dispute involves a generating company, who enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State, and secondly, the dispute is in regard to the matters connected with the power of this Commission to 'regulate the tariff' of such generating companies. Further, the expressions "in regard to" and "connected with" as used in the said subsection require that the dispute should be really incidental or in close proximity to the clause (b) of Section 79(1). In other words, the nexus between the dispute and clause (b) of Section 79(1) must be real and not remote. Also, the term 'tariff' includes within its ambit not only the fixation of rates but also the rules and regulations relating to it and the power to regulate tariff under Section 79(1)(b) would also include the power to control, govern or direct the price at which the generating companies having a composite scheme should supply electricity. Thus, even as per the above judgment, the exercise of the adjudicatory jurisdiction in respect of any dispute under Section 79(1)(f) read with Section 79(1)(b) of the Act requires that such dispute must be an integral part of Section 79(1)(b) or should at least be incidental or in close proximity thereto. In other words, the dispute must be an integral part of the regulation of the tariff of a generating company, having a composite scheme or should at least be in close proximity thereto. That being so, to examine if the dispute in the present case, can be adjudicated by this Commission under Section 79(1)(f) of the Act, reference is made to the APTEL judgment dated 23.8.2024 in Appeal No. 309/2019 (MPPMCL vs DVC) wherein, it has decided that all matters, which have a bearing upon tariff of a generating company, would constitute tariff disputes, and the disputes which do not impact tariff, either directly or indirectly, can be considered as non-tariff related disputes. The relevant portion of the judgment is extracted below:

"25. At this juncture, we would again revert to Section 79(1) of the Electricity Act, 2003. Section 79(1) empowers the Commission to adjudicate upon the disputes relating to regulation of tariff for the generating companies as well as inter-state transmission of



Electricity and to determine tariff inter-state transmission of electricity as provided under clause (1) to (d) therein. We wonder how the dispute relating to termination of PPAs would be regarded as a dispute relating to tariff or regulation of tariff of the generating companies, as held by the Commission in the impugned order. To understand this aspect, it is necessary to determine what constitutes tariff and non-tariff disputes. In our considered opinion, all the matters which would have a bearing upon the tariff for a generating company would constitute "tariff disputes" namely disputes related to Change in Law, delayed completion of projects, invocation of Force Majeure events etc. Such matters impact the tariff for a generating company directly and, therefore, fall solely within the jurisdiction of the Central Commission under Section 79(1) of the Electricity Act, 2003. However, the disputes related to termination or breach of contract which do not impact the tariff either directly or indirectly, can be considered as non-tariff related disputes referable to arbitration.

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33. In case it is to be held that all the disputes brought before the Commission are to be adjudicated upon by it and the Commission does not have power to refer any dispute for arbitration even though it finds a valid arbitration agreement existing between the parties, it would render the above noted expressions used in Section 79(1) and 86(1) of the Electricity Act, 2003 as well as its Section 158, totally redundant. It is manifest that the Parliament while passing the Electricity Act, 2003 did not intend to completely rule out the applicability of provisions of A&C Act, 1996 to the disputes under the Electricity Act, 2003. Had it been intention of the Parliament to make all the disputes under the Electricity Act immune to Arbitration, it would have made a specific provision in this regard in the Act like Section 145 which totally bars the jurisdiction of Civil Courts to entertain any suit or proceedings of any matter which is to be decided by an assessing officer or an appellate authority or the adjudicating officer appointed under the Act."

30. On an appeal filed by DVC before the Hon'ble Supreme Court, challenging the aforesaid decision, the Hon'ble Court, affirmed the same as under:

" We do not find any good ground and reason to interfere with the impugned judgment in view of the difference of language in Section 79(1)(f) of the Electricity Act, 2003, from Section 86(1)(f) of the 2003 Act. The power of the Central Electricity Regulatory Commission under Section 79(1)(f) is different from the discretion exercised by the State Electricity Regulatory Commission under Section 86(1)(f) of the 2003 Act.

The appeal is accordingly dismissed."

31. Thus, the APTEL, in the above decision has held that only the tariff related disputes ought to be adjudicated by the Commission, in view of the language in Section 79(1)(f) read with clauses (a) to (d) therein, and any other disputes [not restricted to clauses (a) to (d) of Section 79(1)] ought to be referred to arbitration, in terms of the latter part of Section 79(1)(f) of the Act. We note that the Petitioner's claims in Petition No. 91/MP/2018 relate to the release of payments towards capacity charges and energy charges, and to



the reimbursement of transmission charges to the Petitioner, along with LPS. Also, the issue in Petition No. 53/MP/2021 relates to the non-payment of capacity charges and to the reimbursement of transmission charges wrongly deducted and recovered from the Petitioner. Further, Petition No.149/MP/2021 pertain to the liability of the Respondents to make monthly tariff payments for the power supplied by the Petitioner during the term of the PPA, along with the LPA. However, in Petition No. 61/MP/2021 the Petitioner has sought a declaration that the action of the Respondent AP Discoms in issuing the termination notice dated 19.12.2020 is illegal to set aside the same and also to issue appropriate order(s)/ direction(s) to the Respondent AP discoms to grant consent for STOA, and take supply of power from the Petitioner in terms of the PPA. Thus, except for Petition No.61/MP/2021 (against termination), in all the other Petitions, the disputes raised by the Petitioner relate to tariff/ regulation of tariff of the generating company, which has a composite scheme for generation and supply to more than one state under Section 79(1)(b) of the Act. In other words, the main subject matter/ prayers of the Petitioner, in the three petitions (viz., 91/MP, 53/MP and 149/MP) involves the tariff of the generating company and therefore, the Commission has the jurisdiction under Section 79(1)(f) read with Section 79(1)(b) to adjudicate the disputes thereunder. However, Petition 61/MP/ 2021 is being dealt with separately, in this order.

32. Further, the contention of the Respondents that, in terms of the judgment of the Hon'ble Supreme Court in the *GUVNL* case, only Section 86(1)(f) of the Act provides for the adjudication of disputes between the licensees and generating companies, and the State Commission only has the jurisdiction to adjudicate the disputes, is misconceived. As discussed above, this Commission only has the jurisdiction to adjudicate the disputes between the parties herein, under Section 79(1)(b) read with Section 79(1)(f) of the Act,



and does not, in any manner, fall within the scope of Section 86(1)(f) of the Act. In the GUVNL case, the Hon'ble Supreme Court, while examining the power of the Commission under Section 86(1)(f) of the Act to adjudicate the disputes, held that the provisions of the Electricity Act prevail over the Arbitration Act, insofar as the latter is found to be in conflict, both implied and express, with the former. It is pertinent to note that the applicability of the GUVNL case to Section 79(1)(f) of the Act, was examined and decided by the Hon'ble High Court of Delhi in CAPL v APCPDCL, wherein, the Writ Petitioner claimed the disputes to be arbitrable and the Respondents therein, claimed that the disputes were covered under Section 79(1)(a) to (d) of the Act. Holding that the writ petition was not maintainable, the Hon'ble Court held as under:

“Therefore, one way of approaching the problem would be for CAPL to approach the CERC which will, in terms of Section 79(1)(f) of the EA, determine which part of the dispute between the parties is referable to arbitration. The words “and to refer any dispute for arbitration” occurring at the end of Section 79(1)(f) of the EA contemplates such a course. This power to refer any dispute to arbitration, which is common to both the CERC under Section 79(1)(f) and the SERC under Section 86(1)(f), has to be seen in addition to the power of the CERC to decide the disputes arising under Section 79(1)(f) to (d). Where the CERC is of the view that the dispute actually relates to the determination of tariff, it will exercise its jurisdiction and decide such dispute. On the other hand, a dispute not involving the tariff can be referred to arbitration. This interpretation harmonises Section 79(1)(f) of the EA with Article 17.3.1 of the PPA. Although the decision of the Supreme Court in GUVNL case concerned the scope of the powers of the SERC, it would equally apply to the interpretation of Section 79(1)(f) of the EA in so far as it concerns the power of the CERC to refer disputes to arbitration.”

33. Also, the Hon'ble High Court of Delhi in OMP (I) (COMM.) 213/2025 (Renew Wind Energy Pvt Ltd. Vs SECI), has, amongst others, while examining the adjudicatory and referral powers of this Commission under Section 79(1)(f) of the Act, taken note of the GUVNL case and vide order dated 3.11.2025, observed as under:

65. It may be seen that paragraph 59 of the said judgement is not limited to an analysis of Section 86(1)(f). The express words ‘or the Central Commission (as the case may be) or arbitrator (or arbitrators) nominated by it’ squarely apply to Section 79(1)(f). Thus, by the sheer weight of precedent, it can safely be concluded that the referral powers of Section 79(1)(f) preclude the application of any provision of the Arbitration Act, including Section 11, which trigger arbitration or change the authority which is making the referral for arbitration.



66. However, even if the declaration in GUVNL qua Section 79(1)(f) is considered as obiter, the reasoning for the apex court's conclusion on the referral powers under Section 86(1)(f) equally applies to Section 79(1)(f).

34. Thus, the declaration in the GUVNL case [under Section 86(1)(f)] equally apply to the interpretation of Section 79(1)(f) of the Act. In line with the above decisions, the contention of Respondents that the present case is covered within the ambit and scope of Section 86(1)(f) of the Act, for the State Commission to adjudicate or refer to arbitration, stands rejected. It is reiterated that this Commission has the jurisdiction to adjudicate the disputes raised in the three Petitions, under Section 79(1)(b) read with Section 79(1)(f) of the Act.

Re: Arbitrability

35. We have, in this order above, decided that the Commission has the jurisdiction to adjudicate the disputes in the three petitions, which relate to tariff, under Section 79(1)(b) read with Section 79 (1)(f) of the Act. Now the question for consideration is regarding the powers of the commission to refer to arbitration. As stated earlier, APTEL in the MPPMCL v DVC case held that matters that have a bearing on the tariff of a generating company constitute tariff disputes for adjudication by the Commission, and disputes which do not impact tariff, either directly or indirectly, can be considered as non-tariff related disputes, referable to arbitration. As regards the Commission's power to refer to arbitration, in respect of the disputes which the Commission is capable of adjudicating, the Hon'ble High Court of Delhi in OMP (I) (COMM.) 213/2025 dated 3.11.2025, observed as under:

23. The power of CERC, qua the first facet, is discretionary in nature, thereby allowing the Commission to choose whether to adjudicate upon the dispute or to refer it for arbitration.

24. Thus, in a case before the CERC involving generating companies or transmission licensee, where the dispute is connected with matters listed under Section 79(1)(a)-(d), the CERC may choose to itself adjudicate upon the dispute or refer the same for arbitration.

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52. From the above-detailed discussion on the interpretation of Section 79(1)(f) and the rejection of the plaintiff's submissions, it is hereby concluded that the CERC has the power



to refer a dispute, which falls outside the scope of Section 79(1)(a)-(d), for arbitration when there exists an arbitration clause in the agreement involving generating companies or transmission licensee. This power needs to be mandatorily exercised, and the party seeking the referral has, in such a situation, a right to be referred for arbitration.

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54. A conjoint reading of Section 79(1)(f) and Section 158 of the Electricity Act would reveal that the CERC's referral power, as also the act of referring parties for arbitration, is effectively a trigger mechanism for invoking the provisions of the Arbitration Act. In other words, it is through Section 79(1)(f) that the Arbitration Act gets operationalized.

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79. Thus, from the above discussion, it is clear that the CERC has the exclusive powers to refer any dispute involving generating companies or transmission licensee for arbitration. The referral power of the CERC is evidently without a subject matter bar and any such bar cannot be carved out by way of a judicial construction

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107. It is important to clarify that the words used by APTEL "disputes related to termination or breach of contract" must be considered in the context of the preceding finding as well in conjunction with the following words in the same sentence. Meaning thereby, the disputes related to termination or breach of contract, without impacting the tariff either directly or indirectly, would qualify as non-tariff disputes. Merely because a dispute has arisen from a breach of contract would not necessarily be determinative of the nature of dispute.

108. The position of law which, thus, emerges is that the word 'regulation' is of wide amplitude and that Section 79(1)(f) of the Electricity Act would attract, not merely a strict regulation of tariff, but also disputes 'connected with' the regulation of tariff.

109. In the opinion of this court, the test for determining whether Section 79(1)(f)'s adjudicatory powers are attracted is the requirement of a nexus between the dispute between the parties and the regulation of tariff. The powers of the CERC under the said provision are broad enough to cover disputes which affect considerations that had led to the fixation of tariff and further entitlements, charges, rights and obligations the determination of which utilizes tariff as an input function.

(ii). The Appropriateness of Referring Parties for Arbitration

110. It has been concluded by this court above that CERC has powers to refer disputes for arbitration, which it has powers to adjudicate upon, as also those which fall outside the outside the purview of its adjudicatory jurisdiction. In appropriate cases, therefore, CERC can refer matters for arbitration even though they bear a nexus with tariff.

111. This determination, it is true, falls within the discretion of the CERC as identified by the Apex Court in GUVNL at paragraph 30 and 31; however, the exercise of this discretion must be sound. The CERC must not, merely because it has jurisdiction to adjudicate a given dispute, reject a prayer for referral for arbitration. The nature of the dispute, the connection it has with the regulatory functions of the CERC, and the requirement of specialized adjudicators shall, inter alia, determine whether a given dispute is to be adjudicated by the CERC itself or is to be referred for arbitration."

36. It is evident from the above that this Commission, apart from exercising its powers to adjudicate the disputes connected with Section 79(1)(a) to (d) of the Act, also has the discretion to refer the matters to arbitration, even though they bear a nexus with tariff. The



Hon'ble Court has also observed that merely because it (CERC) has jurisdiction to adjudicate a given dispute, it must not reject a prayer for referral to arbitration. We note that the Petitioner, in its written submissions dated 8.5.2025 and 19.6.2025, has stated that, in order to avoid any further litigation and without going into other issues raised by the Respondents, the Commission may refer all the disputes in the present case to arbitration. Accordingly, the dispute resolution clause under the PPA between the parties is extracted below:

“14.3 Dispute Resolution

14.3.1 Dispute Resolution by the Appropriate Commission

14.3.1.1 (a) Where any Dispute arising from a claim made by any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

(b) Where SERC is the Appropriate Commission, all disputes between the Procurers and the Seller shall be referred to SERC.

14.3.1.2 The obligation of the Procurer(s) under this Agreement towards the Seller shall not be affected in any manner by reason of inter-se disputes among the Procurer(s).”

14.3.2 Dispute Resolution through Arbitration

14.3.2.1 If the Dispute arises out of or in connection with any claims not covered in Article 14.3.1(a), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in Article 14.2.1.3 hereof, any party to such Dispute may refer the matter to Registrar under the Rules of the Indian Council of Arbitration.

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37. Thus, the parties have contractually demarcated certain issues which would be submitted for adjudication by the Commission and those which would be resolved by arbitration. While Article 14.3.1 covers the disputes relating to the change/ determination of tariff, it would also cover ‘any matter related to tariff’, thus leaving only the non-tariff matters out of its purview for adjudication. As indicated earlier, the disputes in the present petition (except Petition No.61/MP/2021) relate to/ connected to tariff under Section 79(1)(b) read with Section 79(1)(f) of the Act, and the Commission can either adjudicate



the same or refer to arbitration (though having nexus to tariff). As regards appointment of Arbitrators by this Commission, Regulation 49(1) of the Central Electricity Regulatory Commission (Conduct of Business) Rules, 2003 provides as under:

“49. Nomination of Arbitrators

(1) Where the Commission decides to refer the matter to arbitration by a person or persons, the reference shall be:

(a) To a sole arbitrator, if the parties to the dispute agree on the name of the sole arbitrator. Where the parties are unable to agree on the name of the sole arbitrator, the Commission may designate a sole arbitrator.

(b) xxxxx.

(2) The Commission shall not nominate a person as arbitrator to whom any of the parties to the arbitration has a reasonable objection on grounds of possible bias or similar reasons, if the Commission considers the objection to be valid and justified.

38. The Petitioner, in these petitions, has sought claims under various heads, in terms of its prayers (as quoted), relating to the period from 2017 to 2021, along with the Late Payment Surcharge (LPS). Keeping in view the nature of the disputes, the period, the issues and the amounts involved in these petitions, we find it appropriate, to refer the disputes between the parties, in the present petitions (except Petition No.61/MP/2021) for arbitration, in exercise of our powers under Section 79(1)(f) read with Regulation 49(1)(a) of the CERC (Conduct of Business) Regulations, 2023.

Petition No. 61/MP/2021

39. As mentioned earlier, the Petitioner has filed this petition seeking the reliefs, as extracted in para 7 above. Admittedly, the reliefs sought by the Petitioner are against the termination of the PPA by the Respondents, directions to grant STOA and to take supply of power from the Petitioner, relate to breach of contractual obligations and do not impact the tariff or regulation of tariff of the Petitioner, directly or indirectly. Hence, it can be concluded that the dispute raised in this petition is a non-tariff dispute, which the Commission does not have the jurisdiction to adjudicate under Section 79(1)(f) of the Act, and is mandatorily referable to the arbitration, in terms of the decisions of APTEL/ Hon'ble



Delhi High Court supra. Considering the fact that the disputes in the aforesaid three petitions are being referred to arbitration, for the reasons stated therein, the dispute in this petition, which relates to termination, etc., being a non-tariff dispute, is also being referred to arbitration.

40. Accordingly, both parties are directed to suggest and agree on the name of the sole arbitrator, in terms of Regulation 49(1)(a) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 2023, within three weeks from the date of this order, failing which, the Commission may designate a sole arbitrator. While doing so, the parties shall keep in view the provisions of the Arbitration and Conciliation (Amendment) Act 2015, regarding the independence and impartiality of the proposed Arbitrator(s). We direct accordingly.

Sd/-
(Ravinder Singh Dhillon)
Member

Sd/-
(Harish Dudani)
Member

Sd/-
(Ramesh Babu V.)
Member

Sd/-
(Jishnu Barua)
Chairperson

