

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No. 71 of 2015
Date of order: 11.02.2019**

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjali Chandra, Member

In the matter of : Petition for fixing Trading Margin of PTC India Limited under Section 62 of the Electricity Act, 2003 for the period 01.04.2014 – 31.03.2015 with respect to sale of 100 MW power from Malana II Hydro Electric Project to Punjab State Power Corporation Limited through PTC (India) Limited in terms of (a) Power Purchase Agreement between PTC India Limited and Everest Power Private Limited dated 25.07.2005; (b) Power Sale Agreement between PTC India Limited and PSPCL dated 23.03.2006; (c) Tripartite Agreement between Everest Power Private Limited, PSPCL and PTC India Limited dated 03.01.2013; and (d) Orders dated 27.11.2013 passed in Petition No. 54 of 2012 and 31.08.2015 in Petition No. 37 of 2014 passed by this Hon'ble Commission

AND

In the matter of: PTC India Limited .. Petitioner
Versus
1. Punjab State Power Corporation Limited, The Mall, Patiala.
2. Everest Power Private Limited.
.. Respondents

ORDER

PTC India Limited (Petitioner) has filed the present petition under Section 62 of the Electricity Act, 2003 for the period 01.04.2014–31.03.2015 with respect to the fixation of Trading Margin for sale of electricity by the Petitioner to Punjab State Power Corporation Limited

(PSPCL) from the 100 MW Malana II Hydro Electric Project (“Project”) of Everest Power Private Limited (EPPL) in terms of:

- (a) Power Purchase Agreement between PTC India Limited and Everest Power Private Limited dated 25.07.2005 (“PPA”);
- (b) Power Sale Agreement between PTC India Limited and PSPCL dated 23.03.2006 (“PSA”)
- (c) Tripartite Agreement between Everest Power Private Limited, PSPCL and PTC India Limited dated 03.01.2013 (“Tripartite Agreement”)
- (d) Order dated 27.11.2013 in Petition No. 54 of 2012 passed by the Commission; and
- (e) Order dated 31.08.2015 in Petition No. 37 of 2014 passed by the Commission.

2. The Petitioner is a trading licensee as defined under Section 2(26) read with Section 12 of the Electricity Act, 2003 (the “Act”). The Petitioner was established with the objective to carry out the business of purchase and sale of all forms of electrical power in India and abroad.

PSPCL is a company registered under the Companies Act, 1956 and is a successor company of the erstwhile Punjab State Electricity Board. PSPCL has been entrusted with the responsibility of generation and distribution of power in the state of Punjab.

EPPL is a Generating Company within the meaning of Section 2(28) of the Act. EPPL has developed the 100 MW Malana-II Hydro-Electric Project in District Kullu, Himachal Pradesh. The Project was commissioned on 12.07.2012.

3. The petitioner submitted that on 25.07.2005, the Petitioner entered into a Power Purchase Agreement (PPA) with EPPL for the purchase of entire capacity and electricity generated by the Project. Subsequently, on 23.03.2006, the Petitioner entered into a Power Sale Agreement

(PSA) with the erstwhile Punjab State Electricity Board, (now Punjab State Power Corporation Limited) for sale of power supplied by EPPL.

Clause 10.1 of the PSA provides that the Petitioner's trading margin would be Rs. 0.05/kWh for the first 12 years. From the 13th year onwards, the Petitioner's trading margin would be Rs. 0.10/kWh. The relevant provisions of the PSA are quoted below:

"10.1 ... PTC's Trading Margin shall be Rs. 0.05/kWh for the Tariff Years 1 to 12 and Rs. 0.10/kWh for the Tariff Years 13 to 40 and shall be payable by the Purchaser to PTC for the entire Billable Energy. Such margins shall be in compliance with any norms applicable to transactions of the nature and duration as captured in this PSA, as may be laid down by CERC from time to time."

4. On 24.01.2007 the Commission passed an Order in Petition No.11 of 2006, thereby granted conditional approval to the PSA, including PTC's trading margin and inter alia, held as follows:-

"3.7 Trading Margin

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

[Emphasis added]

Thereby the Commission approved the PSA and PSPCL's obligation to pay the trading margin.

5. On 11.01.2010, the Central Electricity Regulatory Commission (CERC) issued the Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010 (“Trading Margin Regulations”) along with the Statement of Reasons. CERC had further undertaken a review exercise of the Trading Margin Regulations, 2006 due to manifold changes in the power sector and for the said purpose appointed M/s KPMG as a consultant in 2009 to conduct a study on the Trading Margin Regulations and suggest appropriate trading margins that encourage healthy trading market as well as protection of consumer interests and the same is given as under:-

Trader Category	MUs traded	Default Risk	Late Payment Risk	Contract Dishonor Risk	O&M Expenses	Return on Net Worth	Overall Margin
	MU			(All figures in Paise/kWh)			
III	50	1.04	0.57	0.88	13.33	2.93	18.75
III	100	1.04	0.57	0.88	7.54	2.93	12.96
II	500	1.04	0.57	0.88	2.91	2.93	8.33
I	1000	1.04	0.57	0.88	2.33	2.93	7.75
I	5000	1.04	0.57	0.88	1.86	2.93	7.28
I	10000	1.04	0.57	0.88	1.81	2.93	7.23
I	20000	1.04	0.57	0.88	1.78	2.93	7.20

6. On 20.05.2011, the Petitioner filed Petition No. 34 of 2011 before the Commission seeking approval to allow PSPCL to purchase electricity in accordance with the tariff calculated as per the CERC Tariff Regulations, 2009. The said Petition was disposed of vide Order dated 17.08.2012, wherein the issue of maintainability of the petition, capping of tariff, determination of tariff, and the status of the PSA were examined. The relevant portion of the Order is quoted below:

“Further, the issue whether the PSA is void or voidable is not a matter before the Commission. The Commission is not adjudicating the inter se dispute between the parties. This is not a proceeding under Section 86 (1) (f) of the Act. The failure of Respondent No.1 to incorporate amendments directed by the Commission in its Order dated 24.01.2007 make the PSA non-

implementable by Respondent No.1, as the inter se tariff / costs agreed thereto will not be allowed in the future ARR of the Respondent No.1. Therefore, it is in the interest of Respondent No.1 that it secures incorporation of the conditions / observations contained in the Order dated 24.01.2007. If the Respondent No.1 fails to get the Commission's directions incorporated, given in the Order dated 24.1.2007, the additional costs incurred by Respondent No.1 will not be recognized in the ARR of Respondent No.1. The Commission believes that the PSA can be cured and made fully operational by incorporating amendments directed by the Commission in its Order dated 24.01.2007. The Commission appreciates that the PSA is a contract between the Petitioner and Respondent No.1. In that contract there is an element (i.e. the tariff) that requires determination by the Commission under the relevant provisions of the Act. The Commission has not determined the same in the past and had directed that certain amendments be incorporated in the PSA. Therefore it is a conditional approval of the PSA, and the approval becomes effective only when the conditions are fulfilled and the PSA can thereafter be operationalised.

In view of the above findings and decisions of the Commission, Respondent No.1 and Petitioner need to get the PSA suitably amended and incorporate the directions of the Commission issued vide its Order dated 24.1.2007. Thereafter, the Petition may be filed along with audited accounts of the project cost and other relevant documents for 100 MW Malana-II Hydro Electric Project before this Commission for determination of the tariff under the relevant provisions of the Act and Regulations.”

7. On 03.01.2013, a Tripartite Agreement was executed by EPPL, PSPCL, and PTC, amending the provisions of the PPA and PSA. In terms of the Tripartite Agreement, Articles 3.1, 10.1, 14.2.3 and 15.6.1 of the PSA were amended and Articles 14.3, 14.4, 14.5 and 14.6 of the PSA were substituted vide the newly inserted clause, as given below:

“14.3 The parties agree that the Punjab State Electricity Regulatory Commission shall be the Appropriate Commission in regard to adjudication of all disputes arising both under the PPA and PSA in view of the nexus existing on the sale of the contracted capacity by EPPL to PTC and by PTC to PSPCL. EPPL hereby accepts the nexus.”

The relevant portion of Article 10.1 of the PSA and the amended Article 10.1 inserted in the Tripartite Agreement is given below:

Article 10.1 of the PSA:

“...PTC’s Trading Margin shall be Rs.0.05/kWh for the Tariff Years 1 to 12 and Rs. 0.10/kWh for the Tariff Years 13 to 40 and shall be payable by the Purchaser to PTC for the entire billable energy. Such margins shall be in compliance with any norms applicable to transactions of the nature and duration as captured in this PSA, as may be laid down by the CERC from time to time...”

Article 10.1 of the Tripartite Agreement:

“The tariff for the contracted capacity payable by PSPCL to PPTC including all aspects of tariff element would be determined by the Commission and also trading margin and other charges payable additionally to PTC shall be as per the decision and approval of the Commission”

[Emphasis added]

The Tripartite Agreement stated that except for the terms contained in the Tripartite Agreement, all terms and conditions of the PPA and PSA shall continue to apply and shall bind the parties to their rights and obligations thereof. As per the terms of the Tripartite Agreement, the trading margin has to be determined by the Commission.

8.1. EPPL, subsequently filed Petition No.54 of 2012 before the Commission for the determination of tariff. Vide Order dated 27.11.2013, the Commission disposed of Petition No.54 of 2012 and observed that for long term buy-long term sell contracts, the Commission considered it will be appropriate to fix trading margin for FY 2012-13 and FY 2013-14 in line with the original provision in the PSA dated 23.03.2006 as 5 paise per kWh for the Billable Energy supplied / to be supplied during this period by PTC to PSPCL from Malana-II HEP. Trading margin beyond this period shall be fixed by the Commission on filing of an application by PTC along with the tariff application to be filed by the generating

company for determination of tariff as per the applicable tariff regulations.

8.2. Aggrieved by the above mentioned Order dated 27.11.2013, EPPL and PSPCL filed cross-appeals before the Hon'ble Appellate Tribunal for Electricity ("APTEL") being Appeal Nos. 30 and 35 of 2014. Further, PSPCL neither impugned the obligation to pay a trading margin nor impugned the fixation of the same. The issue of trading margin was not the subject matter of challenge in the aforesaid appeals and hence the issue of determination of trading margin had attained finality.

8.3. On 12.11.2014, Hon'ble APTEL disposed of Appeal Nos. 30 and 35 of 2014, thereby remanded back the matter to the Commission for consequential orders. In compliance thereof, the Commission passed a consequential Order dated 04.12.2014, thereby revising the capital cost of the Project, and the AFC for FY 2012-13 and FY 2013-14. And directed EPPL to file a revised petition in Petition No. 37 of 2014.

8.4. On 12.06.2014 (during the pendency of the appeals) EPPL filed Petition No.37 of 2014 before the Commission for Approval of Annual Fixed Cost for the Project for the period 01.04.2014 to 31.03.2015, Truing up of expenses for the FY 2012-13 and FY 2013-14 under Section 62 of the Act.

8.5. Accordingly, on 10.02.2015, EPPL filed the revised petition. PTC filed its Reply to Petition No.37 of 2014, submitting that PTC's trading margin was 5 paise/kWh during year 1-12, and 10 paise/kWh from 13th year onwards, during the term of the contract. The trading margin on levellised basis for 40 years worked out to 6.1 paise/kWh. The said rate was below the trading margin cap of 7 paise/kWh as prescribed under the Trading Margin Regulations. PTC further requested the Commission to fix the trading margin based on the submissions made therein.

8.6. PSPCL filed its Reply to Petition No. 37 of 2014 and submitted its no objection regarding the issue of trading margin, raised at this stage. On 12.08.2015, during the course of arguments before the Commission, PSPCL for the first time raised its objections regarding the fixation of trading margin. In view of the objections raised by PSPCL. PTC filed Application No.8 of 2015 seeking fixation of trading margin before the Commission. The said Application was opposed by PSPCL on the ground that PTC had not filed an appropriate Application in terms of the direction given in Order dated 27.11.2013.

8.7. On 31.08.2015, the Commission passed the final tariff order and disposed of Petition No.37 of 2014 and observed as follows with regard to the issue of trading margin:-

“C. Trading Margin

The Commission notes that in its Order dated 27.11.2013 in petition no. 54 of 2012 filed by EPPL, it fixed the trading margin of PTC for FY 2012-13 and FY 2013-14 and directed that trading margin beyond this period shall be fixed by the Commission on filing of an application by PTC alongwith the tariff application to be filed by the generating company for determination of tariff as per the applicable tariff regulations.

PTC filed the application dated 17.08.2015 praying to the Commission to fix the trading margin for FY 2014-15 as ₹ 0.05/kWh in line with the Commission’s Order dated 27.11.2013 in petition no. 54 of 2012 and approval of trading margin of ₹ 0.05/kWh for initial 12 years and ₹ 0.10/kWh from 13th to 40th year as provided in the PSA dated 23.03.2006.

.....

The Commission notes that PTC filed the application dated 17.08.2015 for fixation of trading margin by the Commission belatedly, almost at the closing stage of the petition when all the submissions by the parties had been made and arguments concluded. The hearing in the petition was closed on 18.08.2015 and Order reserved. However, in order to give an opportunity to PSPCL to submit its reply to the Application filed by PTC, the Commission in its Order dated 19.08.2015 allowed PSPCL to file additional written submissions in respect of trading margin of PTC by 21.08.2015.

The Commission observes that PSPCL has vehemently opposed the submissions of PTC for the payment of trading margin to PTC in its reply. In view of the same, the Commission opines that in the interest of justice, the matter needs to be examined in detail. The Commission, therefore, decides that a separate petition is required to be filed by PTC for determination of trading margin for FY 2014-15 for decision by the Commission on merits after due process. Accordingly PTC is directed to file a petition for determination of trading margin for FY 2014-15 by the Commission.”

8.8. Vide Order dated 31.08.2015, the Commission dismissed Application No.8 of 2015 filed by PTC on the ground that it had been filed belatedly, at the closing stage of the petition, after arguments had been concluded and directed PTC to file a fresh petition for determination of Trading Margin for FY 2014-15 for a decision on merits.

9. Petitioner further submitted that, the Trading Margin in terms of the PSA is justified and reasonable as in terms of Clause 10.1 of the PSA, the Trading Margin has been fixed at Rs. 0.05/kWh for the Tariff Year 1 to 12 and Rs. 0.10/kWh for the Tariff Years 13 to 40. Further, the terms of the PSA have been approved by the Commission vide Order dated 24.01.2007 and the same was not challenged and has attained finality. The Commission has also followed the terms of the un-amended PSA while fixing the trading margin for the period FY 2012-13 and FY 2013-14 and the trading margin has to be fixed in terms of the PSA for the future period as well.

10. In the present case, the Trading Margin has been fixed at Rs. 0.05/kWh for the Tariff Year 1 to 12 and Rs. 0.10/kWh for the Tariff Years 13 to 40 and the Trading Margin on a levelled basis for 40 years of the contract period, based on the discount rate notified by CERC on 07.10.2013 works out to be Rs. 6.1 Paise/kWh, whereas in terms of the Trading Margin Regulations for short term-buy and short term-sell contracts, a trader can charge a trading margin not exceeding 7.0

paise/kWh in case the sale price exceeds Rs. 3/kWh and 4.0 paise/kWh where the sale price is less than or equal to Rs. 3.0/kWh. In terms of Paragraph 7 of the Statement of Reasons to the Trading Margin Regulations, CERC has stated as follows:

“7. The Commission is cognizant of the fact that the traders are providing different types of products by entering into contracts on long-term, medium-term and short-term basis. The risk profile of each of these contracts is different. Accordingly, the Commission is of the view that where traders enter into long term power purchase agreements of duration exceeding a year, the risks cannot be completely mitigated through a trading margin. Also, since the long term power procurement market is witnessing competitive forces at work, the Commission feels that the determination of an appropriate trading margin is best left to the market forces.”

The Trading Margin in the present case was kept lower in the initial years to reduce the impact as the tariff for a Hydro Project would be higher during this period. Despite the non-applicability of the trading margin prescribed by CERC to long term-buy and long term-sell contracts, PTC's levellised Trading Margin for 40 years, i.e. Rs. 6.1 paise /kWh in terms of the PSA, is within the cap prescribed by CERC and hence is just and reasonable. Petitioner submitted that no objection has been raised by PSPCL in relation to the Trading Margin fixed in terms of the PSA and is evident from the fact that the Order dated 24.01.2007 passed by the Commission, approving the terms of the PSA was never challenged by PSPCL. PSPCL, while challenging the Order 27.11.2013 in Petition No. 54 of 2013 before the Hon'ble APTEL, did not raise any ground of challenge with regard to fixing of the Trading Margin for FY 2012-13 and FY 2013-14 in line with the original provisions in the PSA as Rs. 5 paise per kWh.

11. Petitioner further submitted various obligations, costs and risks being undertaken by PTC which are as under:

- (a) Open and maintain a letter of Credit as required in terms of the PPA;
- (b) Scheduling of power and real time revisions in schedule for which PTC operates and maintains a 24x7 Control Room;
- (c) Payment of monthly bills and supplementary bills to the Generator as well as raising corresponding bills to the purchasers;
- (d) Obtaining long term open access from the Central Transmission Utility on behalf of the Purchaser for adequate transmission capacity and provision of payment security mechanism to the CTU;
- (e) Obtaining and maintaining the Trading License;
- (f) Operational/ Control Room Expenses;
- (g) Risks pertaining to late payment by Purchasers;
- (h) Risks pertaining to non-payment by Purchasers;
- (i) Risks pertaining to contract dishonor by Purchasers/Generators;
- (j) Increased net-worth requirements by Ld. CERC and return on net worth;
- (k) Administrative and Legal Expenses.

12. In view of these risks PTC prayed for to Fix a Trading Margin at Rs. 0.05/kWh for the current period in terms of the PSA read with the Tripartite Agreement and Order dated 27.11.2013 passed by the Commission.

13. The petition was admitted on 07.01.2016. PSPCL was directed to give justification as to how the payment of trading margin at the rate of Rs.0.05/kWh of energy is being made to PTC in the absence of any determination of trading margin by the Commission for the period with effect from 01.04.2014 onwards.

14.1. EPPL filed its reply to the petition agreeing with the contentions raised by PTC pertinent to the provisions of the PSA dated 23.03.2006, provisions of the Tripartite Agreement, Order dated 27.11.2013 in Petition No. 54 of 2012; Judgment dated 12.11.2014 of Hon'ble APTEL in Appeal Nos. 30 & 35 of 2014; Order dated 24.04.2015 of Hon'ble Supreme Court of India in Civil Appeal Nos. 3346-3347 of 2015; relevant CERC Regulations and Statement of Reasons quoted by PTC and the findings of KPMG (consultant appointed by CERC) and supported the claim of PTC for trading margin made in accordance with the provisions of the PSA.

14.2. With regards to the eligibility of PTC to Trading Margin under Regulations, EPPL submitted that PTC is a trading licensee and has been granted license to undertake the inter-state trading activity in electricity by CERC and as per the Rule 9 of the Electricity Rules, 2005, a license issued by CERC to a trader for Inter-State Operations entitles such trader to undertake intra-state trading also, without taking a separate license from the concerned State Commission. In this regard, Regulation 6(g) of PSERC (Intra State Electricity Trading) Regulations, 2006 provides that the Licensee will be subject to trading margins for Intra State Trading as notified by the Commission from time to time. Further, the Commission vide Notification No.PSERC/Secy/29 dated 18.05.2007 has *inter-alia* held as below:

“3. Trading Margin: The maximum intra-state trading margin shall not exceed 6 paise/KWH including all charges except the charges for scheduling energy and open access.”

14.3. EPPL further submitted that CERC (Fixation of Trading Margin) Regulations, 2005 did not differentiate between long-term and short-term trading of electricity and trading margin was capped at 4 paise per unit on the electricity traded. Subsequently, with CERC (Fixation of Trading Margin) Regulations 2010, trading margin on long-term trading has not

been capped. Only short term margin have been capped at 7 paise per unit for electricity traded above Rs. 3.00 per unit and 4 paise per unit below that. EPPL quoted CERC's reason for differentiating between short term and long term contracts that it had left the determination of trading margin for long term contracts on the market forces while considering the risks associated with them which could be completely mitigated through a trading margin.

14.4. Therefore, PTC being a party to a long-term Contract in the instant case i.e. a PSA of 40 years, is eligible for a higher trading margin as against the cap fixed for short term contracts and considering the fact that risks associated with a long term contract is much higher and cannot be mitigated only through a trading margin.

15.1. PSPCL filed its reply to the petition and submitted that in the tariff order dated 27.11.2013 passed by the Commission, the trading margin was decided only up till 31.03.2014 with a specific direction to PTC to file a separate application for determination of trading margin. PTC did not file any such application and when PSPCL raised the aspect of the trading margin of 5 Paise per unit as being very high in the hearing of Petition No. 37 of 2014 on 12.08.2015, PTC in the said matter filed an Application for justifying the trading margin of 5 Paise per unit. PSPCL objected to the same and the Commission decided the Petition No. 37 of 2014, interalia directing PTC to file a separate petition for determination of Trading Margin for 2014-15.

15.2. PSPCL submitted that the contention that Trading Margin as per PSA is justified and reasonable as per Clause 10.1 of the PSA which provides for the trading margin to be 5 Paise / Kwh for years 1 to 12 and 10 Paise / Kwh for years 13 to 30 should be applicable at this stage has no merit. If the trading margin is to be decided in terms of the PPA as well as PSA and not in terms of the Tripartite Agreement, then the

generating tariff also needs to be on the same basis. The parties specifically agreed in the Tripartite Agreement that the trading margin will be as determined by the Commission. PPA and PSA ceased to have any effect with regard to the trading margin. The power purchase was approved in the Order dated 24.01.2007 passed in Petition No. 11 of 2006 on the basis of capping of tariff. However, the same was changed vide Order dated 27.11.2013 passed by the Commission in Petition No. 54 of 2012. The Hon'ble Commission, inter-alia held as under-

“Decision of the Commission

Keeping in view the above and the fact that CERC has not fixed the trading margin for long term buy-long term sell contracts, the Commission considers it appropriate to fix trading margin for FY 2012-13 and FY 2013-14 in line with the original provision in the PSA dated 23.03.2006 as 5 Paise per kWh for the Billable Energy supplied / to be supplied during this period by PTC to PSPCL from Malana-II HEP. Trading margin beyond this period shall be fixed by the Commission on filing of an application by PTC alongwith the tariff application to be filed by the generating company for determination of tariff as per the applicable tariff regulations.

15.3. PSPCL did not challenge the Order dated 27.11.2013 for fixation of trading margin because the Commission held that for future, PTC will file appropriate application for determination of trading margin along with a tariff application and as such 5 Paise was being determined only till 31.03.2014. Further PTC also did not challenge the Order dated 27.11.2013 on this aspect and was bound by the directions to file appropriate application for determination of trading margin. Despite the same, PTC chose not to file it and continued to demand 5 Paise as a matter of right till the time PSPCL objected to it.

15.4 Further, PSPCL stated that it is a well settled position that a party cannot rely on a contract partly and rescind the other portion of the contract. If the PSA is binding with regard to 5 Paise, it will remain

binding on all aspects. A reference in this regard has been made with the following judgments –

1. New Bihar Biri Leaves Co. and Ors.v. State of Bihar and Ors. (1981) 1 SCC 537

“48.It is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim is qui approbate non reprobate, (one who approbates cannot reprobate). According to it, a party to an instrument or transaction cannot take advantage of one part of a document or transaction and reject the rest. That is to say, no party can accept and reject the same instrument or transaction (Per Scrutton L.J. Verschures Creameries, Ltd. v. Hull & Netherlands Steamship Co. [1921] 2 K.B. 608; See Douglas Menzies v. Umphel by [1908] A.C. 224 at P. 232; See also Stroud's Judicial Dictionary, Vol. I, page 169, 3rd Edn.)”

“55. Since we have held that the aforesaid Condition 13 is valid, this contention must fail. We, therefore, dismiss this appeal. The case shall now go back to the Sub-Divisional Magistrate for disposal in accordance with law. We advisedly abstain from making any observation with regard to the merits of the case.”

2. The Rajasthan State Industrial Development and Investment Corporation and Anr. v. Diamond and Gem Development Corporation Ltd. and Anr., (2013) 5 SCC 470

“15. A party cannot be permitted to “blow hot-blow cold”, “fast and loose” or “approbate and reprobate”. Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience.”

3. State of Punjab v. Dhanjit Singh Sandhu2014 SCC Online SC 232

“25. It is evident that the doctrine of election is based on the rule of estoppel the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among

the species of estoppel in pais (or equitable estoppels), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had.”

4. Suresh Chand Jainv. M/s. Phalpor Builders P. Ltd AIR (2012) DEL 73

“16. Here the plaintiff has approached the Court for equitable relief of cancellation of documents executed in favour of third parties. The basis for the action is that such conveyance was affected on the strength of unregistered documents. The plaintiff, further, is not disputing some portions of the agreement, which were finalized by the parties and which are not in question in these proceedings. These are inter alia the steps taken by the first three defendants, to construct upon the property; including obtaining sanctions and completion certificate; depositing the compounding fee; spending their money etc. and what is most important, the plaintiff's acceptance of 5000 sq.ft. of the constructed portion in early March 1994. The plaintiff has also not established that the amount of 39 lakhs, payable as construction fee (₹. 300/-per sq.ft.) was ever offered or tendered to the first three defendants at the relevant time. Having accepted an important and substantial part of the obligations arising out of the very same documents, i.e. Ex.PW-1/6, and not having performed their part of the bargain, this Court is of the opinion that the plaintiff cannot approbate and reprobate. In other words, the plaintiff having accepted the performance in respect of the documents cannot question the consequence flowing from the other part, particularly arising out of its non-adherence to the contract. In this regard, the doctrine of approbate and reprobate has been explained as a species of estoppel, where, a party to a contract, elects to appropriate benefits out of it, after which, he would not be allowed to repudiate other parts.”

“21. We find no merit in the appeal which is dismissed and since the respondents are not before us, there shall be no order as to costs.”

5. UttamBhikaroNaik v. Goa University &Ors. (2009) 2 Bom CR 471

“14. In this view of the matter, it is crystal clear that the challenge of excessive delegation is devoid of any merit and wholly unsustainable. As a matter of fact, the petitioner cannot be permitted to challenge the action on the part of the respondents in so called termination of his services for the reason that termination

of the petitioner from the Post of Finance Officer is under the terms of appointment order. The appointment order categorically stipulates the term of the office to be of 5 years, renewable for the same period up to age of 60 years. Knowing fully well that the term is of 5 years stipulated in the appointment order itself, the petitioner has chosen to accept the appointment and only at the fag-end of the term has, in the first place, requested for a renewal and thereafter filed the present petition, calling in question the vires of Section 23(2) of the University Act. The learned Counsel for the respondent University is justified in contending that the petitioner is blowing hot and cold at the same time and cannot be permitted to approbate and reprobate. The petitioner has taken advantage of the benefit provided by the appointment order and after availing of the benefit in full, he is questioning the authority of the respondents in issuing the said order. The principle of approbation and reprobation is based on the doctrine of election, which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage". To substantiate the said proposition, the respondent has placed reliance on a judgment in the case of R.N. Gosain v. Yashpal Dhira reported in MANU/SC/0078/1993MANU/SC/0078/1993 : AIR1993SC352 .

We accept the submission made on behalf of the respondents that the petitioner cannot be permitted to question the so called termination which is consequent upon the expiry of the term for which the petitioner was appointed. In this regard, the learned Counsel for the petitioner has submitted that there cannot be an estoppel against the statute. Though the proposition of law is correct, its application to the fact situation is wholly misplaced. In the facts of the present case, the petitioner cannot be permitted to question the action of the respondents in discontinuing the services of the petitioner on expiry of the term for which he was appointed and which he had accepted.

".....In the result, there being no merit in the petition, the same deserves to be dismissed and we dismiss the petition with no order as to costs".

15.5. Once PTC has specifically agreed to amend the PPA and PSA on the trading margin provision, there cannot be any reliance on the PPA and PSA to claim that trading margin of 5 Paise per unit should be paid. The reliance on the Statement of Reasons for the CERC Trading Margin Regulations is completely misplaced and rather it supports PSPCL. CERC has noted that in long term contracts, there is no risk mitigation and hence, the trading margin cannot be fixed. This precondition is not at all applicable to the present case since there is no risk taken by PTC at all. PTC contended that the weighted average trading margin works out to be 6.1 paise/kwh whereas the short term trading margin fixed by the CERC is 7 Paise per Kwh if the sale price exceeds Rs. 3 per Kwh and 4 Paise if sale price is upto Rs. 3 per kwh. The submission regarding 7 Paise and 4 Paise being a cap over which the traders cannot charge any margin. Therefore, to be competitive, the traders may choose to have even 1 Paise as margin or not have a margin at all. More importantly, these caps are for short term trading activities where various risks are assumed by the trading company. In the present case, there is no risk taken by PTC. Further, the short term trading margin caps are not the relevant wrong parameters to compare a long term transaction such as the present one which is a sale and purchase for over 35 years.

15.6 PSPCL submitted that there is no merit in the contention of PTC that PSPCL has not raised an objection to fixation of trading margin at 5 Paise. The Order dated 24.01.2007 in Petition No. 11 of 2006 has long been superseded by the subsequent orders of the Commission and cannot continue to be binding only on the aspect of trading margin. The Commission is not bound by the PSA in any manner and may determine the trading margin (which could even be 0 paisa) after considering what is the risk being assumed by PTC.

15.7. PSPCL made the following submissions regarding the obligations mentioned by PTC-

- Opening and maintaining LC- This is a responsibility of PSPCL under the PPA and not of PTC.
- Scheduling of power- Scheduling of power is done by the RLDC / SLDC and not by PTC.
- Payment of the generator monthly bills and supplementary bills- Any payment made to the generator is by PSPCL not by PTC.
- Maintaining the long term open access- The payment security mechanism to the CTU is not established by PTC and PTC is only a facilitator.
- Maintaining trading license- Trading is a licensed activity under the Electricity Act, 2003 and irrespective of whether the present sale and purchase takes place, PTC will have to maintain its trading license.
- Operational / control room, so called risks of late payment or nonpayment, contract dishonor etc. PTC is completely protected and does not run any risks whatsoever. Any late payment attracts interests and any non - payment is to the risk of PSPCL and not of PTC.
- Increased net worth requirements by CERC and return on net worth- Whether or not PTC would be involved in the present transaction, it has to maintain the required net worth as per CERC Regulations.
- Attending REA /commercial committee meetings- This is a general obligation and all parties including PSPCL attends these meetings. No money needs to be paid to PTC for the same.
- Administrative and Legal Expenses –These have nothing to do with the present petition.

PTC's contention that regular payments have been made by PTC to EPPL to protect EPPL from becoming an NPA in spite of the defaults of PSPCL, is misleading as the advances which have been claimed to

have been made by PTC to EPPL were as a commercial entity and on the payment of interest and has nothing to do with the payments under the PPA. The perversity in the claim of PTC is evident from the fact that PTC is claiming trading margin for the purpose of maintaining its trading license. The other expenses which are claimed to be incurred by PTC are wrong. PSPCL stated that the KPMG report has no relevance and was in a completely different context to arrive at the short term caps on trading margin. This being a long term transaction, the KPMG report has no bearing on the same.

15.8 PSPCL submitted that there ought to be no trading margin for PTC as they had not taken any responsibility nor rendered any service. The PPA and PSA have been claimed to be on back to back basis and there is no role or responsibility of PTC. The tariff petition is by the generator and defended by PSPCL. There is no purpose in PTC acting as a trader to justify any trading margin at all being payable. It is also stated that there is no service rendered or cost incurred by PTC for open access. PTC also acted contrary to the interest of the consumers by seeking higher tariff for the generator and trading margin for itself and there is no justification for the state consumers to be burdened for the same. PTC has sought that they had acted on a principal basis and provided tariff and Letter of Credit in favour of EPPL, without producing the Letter of Credit copy.

16.1. PTC filed its rejoinder to PSPCL's reply and submitted that the contention of PSPCL was erroneous. Clause 10.1 of the PSA was approved by the Commission vide Order dated 24.01.2007 in petition No 11 of 2006 and the same was not challenged and has attained finality. The Commission followed the terms of the un-amended PSA while fixing the trading margin for the period FY 2012-13 and FY 2013-14. Despite

the non-applicability of the trading margin prescribed by CERC, PTC's levelled Trading Margin for 40 years, i.e. Rs. 6.1 paise /kWh in terms of the PSA, is within the cap prescribed by CERC and hence is just and reasonable. Further PTC denied that it had not filed any application for the determination of Trading Margin for the period 2014 to 2015. In this regard it was submitted that on 17.08.2015, PTC filed Application No. 8 of 2015 for seeking fixation of trading margin before the Commission. The Trading Margin in terms of the PSA was justified and the Commission ought to adopt the same for the period 2014 to 2015. PSPCL contention that PTC and EPPL were using those agreements that are more convenient to them, was denied. The provisions in relation to Trading Margin in the PPA and the PSA having no effect was also denied. It was submitted by PTC that there was no objection from their side in filing of an Application for the determination of Trading Margin which does not mean that the Trading Margin in terms of the PPA and PSA was not justified and unreasonable.

16.2. The major risks undertaken by PTC under the present transaction are: (a) risks pertaining to contract dishonor by purchaser; (b) risks pertaining to late payment by purchaser; and (c) risks pertaining to non-payment by the purchaser. PSPCL had made all efforts to dishonor the terms of the PSA and not complied with its contractual obligation to schedule power from the Project which resulted in long drawn legal proceedings. Despite the issue in relation to removal of cap on tariff and approval of the PPA/PSA, by way of dismissal of PSPCL's Civil Appeal No. 3346-3347 of 2015 by Hon'ble Supreme Court of India, attaining finality, PSPCL filed Petition No. 54 of 2015 before the Commission seeking fresh approval of the PSA, which was done with the intention to initiate fresh legal proceedings, on an issue which was already been settled.

16.3. PSPCL did not release payments to EPPL, due to which EPPL failed to meet its statutory obligations towards project financiers and plant O&M. In this regard, PTC had to release advance payments to EPPL at least on 13 occasions since start of power supply and the corresponding payments have been received by PTC from PSPCL sometimes as late as 160 days. For instance, PTC had released a payment of Rs. 20 crore to EPPL on 07.12.2015 whereas the corresponding payment was received by PTC from PSPCL on 22.03.2016. Apart from above, on 3 occasions PTC released advance payment directly to the lenders of the project in order to meet EPPL's obligations to repay loan and accrued interest thereon. On 04.04.2016, PTC has released Rs. 534.41 crores to EPPL since start of power supply, whereas PSPCL released only Rs. 516.36 crores to PTC (including PTC trading margin) during the same period and inspite of several requests by PTC, PSPCL has not shown any inclination for reconciliation of accounts with PTC even once since start of power supply.

16.4. Further, PTC denied the contention of PSPCL that the advances released by PTC to EPPL were on payments of interest and PTC has never charged any interest in this regard on any of the advance payment released to EPPL. PSPCL was obliged to provide LC to PTC under the PSA. However, despite repeated reminders PSPCL had not fulfilled its obligation to open LC to PTC till date. As per the prevailing procedure, EPPL provides daily availability to PTC and PTC provides the daily availability to PSPCL which submits it to RLDC. In case of any discrepancy in daily scheduling or otherwise, PTC takes up the matter with all the concerned entities including RLDC for revision/rectification of the same. PTC is the Long Term Access (LTA) customer in the present transaction and has signed the Bulk Power Transmission Agreement

(BPTA) dated 31.07.2009 with Powergrid Corporation of India Limited. PSPCL is only making payments for LTA charges. However, all the obligations and risks under the said BPTA still lie with PTC. For maintaining a Trading license, Operational/control room expenses, administrative expenses, increased Net Worth requirements etc. are indirect expenses which was incurred by PTC and the same has to be necessarily recovered from all the transactions being undertaken by PTC. Legal Expenses pertaining to the present transaction are direct costs which are being incurred by PTC in this transaction as there have been long drawn legal proceedings from 2011 onwards at various forums, in addition to the regular legal expenses in various petitions being filed Petitioner/ Respondent/ Generator. KPMG report would have a bearing and the Trading Margin Regulations are in terms of the KPMG report.

17.1. During the hearing on 05.05.2016, Counsel for PSPCL, submitted that there was no additional submission apart from the submissions already made in its reply and the same have been only reiterated in the written submissions so filed. PTC filed a brief note reiterating the submissions made in the petition. Counsel for PTC led the Commission through the provisions of PSA dated 23.03.2006, Tripartite Agreement dated 03.01.2013 and Orders dated 27.11.2013 and 31.08.2015 passed by the Commission in Petition No. 54 of 2012 and Petition No. 37 of 2014 respectively, on the aspect of Trading Margin.

17.2. The Commission noted that there was no calculations / details provided by the petitioner in the petition/rejoinder/brief note in support of the Trading Margin for prudent confirmation by the Commission. The Counsel for PSPCL while doing counter arguments stated that there is practically no risk or obligation on the petitioner which can be justified and supported their case for Trading Margin. It was further submitted

that PSPCL paid interest on the delayed payments against the invoices raised by PTC and also availed rebate for payments made within specified time. This was disputed by the representatives of PTC . EPPL made no submissions.

17.3. The Commission vide Order dated 10.05.2016 directed PTC to submit detailed calculations justifying the Trading Margin for prudence check and directed PSPCL to file statement of the bills (copies of the bills has to be annexed with the statement) paid to PTC showing that payments of interest or rebate as the case be, had been actually made / claimed by PSPCL. Further PSPCL was also directed to give justification for the payments released after 01.04.2014 for Trading Margin at the rate of Rs.0.05 per kWh.

18.1. In reply to the query raised by the Commission vide Order dated 10.05.2016, PSPCL submitted that it has availed the rebate whenever the advanced payments were made and to substantiate the same the statement of bills raised and paid from July 2012- March 2016 was duly submitted and was taken on record. The procedure in the Agreement, provides that in case of delayed payment the late payment surcharge has to be billed in the subsequent invoice raised. Such late payment surcharge/interest was paid by PSPCL as and when the bill for the same was raised by the trading licensee. So far as the present petition is concerned, the Petitioner had not raised any bill for late payment surcharge/interest for delayed payments made by PSPCL. Therefore, the default has arisen on the part of the Petitioner. PSPCL paid all the invoices strictly in the terms of the PPA/PSA and as raised by PTC.

18.2. Further with regard the payments released after 01.04.2014 for Trading Margin at the rate of Rs. 0.05 kWh it was submitted that PSPCL continued to pay the trading margin after 01.04.2014 as provisional/ad-hoc payments until the issue was adjudicated by the Commission vide

Order dated 27.11.2013. This was done by PSPCL in order to avoid any default on its part in making payments to the Petitioner. The trading margin has been paid by PSPCL till 31.03.2016 on ad-hoc basis to PTC subject to the determination by the Commission. In view of the payment on ad-hoc basis for two years now, PSPCL has discontinued such payments from the monthly bills of April, 2016 onwards.

18.3. The petitioner is therefore, not entitled to the claimed trading margin, and the basis for claiming the rate of Rs. 0.05 per kWh is not justified as the earlier PPA is no longer binding on the parties after the Tripartite Agreement has been entered into by the parties and as such the Petitioner does not undertake any risk whatsoever under the Tripartite Agreement. Thereby PSPCL prayed the Commission to fix the trading margin as nil or at the minimum possible rate for avoiding an unnecessary burden on the consumers.

19. In reply to the query raised by the Commission vide Order dated 10.05.2016, PTC submitted that the Commission in the present petition does not have the jurisdiction to 'determine' the Trading Margin, in the manner it seeks to, in terms of the Order dated 10.05.2016 and further provided that in terms of Section 79(1)(j) of the Electricity Act, 2003, CERC, has the power to fix the trading margin (if considered necessary) in inter-state trading of electricity. The relevant portion quoted below:

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

...

(j) to fix the trading margin in the inter-state trading of electricity, if considered necessary.”

In terms of Section 86(1)(j) of the Electricity Act, 2003 also the appropriate state commission has the power to fix the trading margin in intra-state trading of electricity. Therefore, the present case involves an

inter-state trading of electricity, wherein the Commission does not have the jurisdiction to fix the Trading Margin.

Notwithstanding the fact that the Commission does not have the jurisdiction to determine the trading margin of the Petitioner, it is trite law that parties can confer jurisdiction to one of several judicial or *quasi-judicial* bodies but cannot confer jurisdiction on a forum which has not been bestowed with it. The said position has been upheld by the Hon'ble Supreme Court in the case *AVM Sales Corporation vs. Anuradha Chemicals* reported as (2012) 2 SCC 315. The Hon'ble Supreme Court has further held that the issue of jurisdiction of a court can be raised by any party at any stage of the proceedings, in the case of *Sarwan Kumar vs. Madan Lal*, reported as (2003) 4 SCC 147 and in the case of *Jagmittar Sain Bhagat vs. Health Services, Haryana*, reported as (2013) 10 SCC 136. It was further clarified by the Petitioner that the reason for raising the issue of jurisdiction presently, is because the Commission does not have the jurisdiction to get into an exercise of determination of trading margin. In the past, the Commission has approved the trading margin of Rs. 0.05/kWh, without going into a process of determination, as the Commission seeks to do, by the Order dated 10.05.2016. In any event, it is a settled position of law that the issue of jurisdiction can be raised at any stage of proceedings. Even if assumed, without prejudice to the submissions made, that the Commission has the jurisdiction to determine the trading margin of the Petitioner, the same would be limited to prudence check based on market forces for the trading margin, being sought by the Petitioner. However, the information sought for, vide Order dated 10.05.2016, is tantamount to, going into a process of determination of trading margin, for which the Commission does not have jurisdiction. The Commission has already conducted a prudence check for the trading margin being claimed by the Petitioner (which has

been deliberated and agreed to between the Parties) at the time of approval of the power procurement documents, specifically the terms of the PSA. The Trading Margin is the only consideration, which PTC receives for all its services including the efforts at the marketing stage itself for concluding the PPA as well as the PSA. Based on the Trading Margin that would accrue to PTC during the term of the PSA, PTC decided to execute the PSA. Subjecting the Trading Margin, which has already been approved, to year on year review/ fixing would not only hit the interest of PTC under the PPA/PSA, but would also be contrary to the scheme of the Act.

20. The Commission noted that the petitioner was directed vide Order dated 10.05.2016 to file its detailed calculations justifying the trading margin for prudence check by the Commission, the same was not submitted by the petitioner and vide Order dated 08.02.2017. and 11.07.2017, the petitioner was again directed to furnish the information. Further the petitioner was directed to file comprehensive written submissions and respondents were directed to file reply to such written submission.

21.1. PTC filed written submission in response to the queries raised by the Commission vide Order dated 11.07.2017 while reiterating the submissions earlier made in the Petition and stated that the Hon'ble Supreme Court in PTC India Limited v. CERC, (2010) 4 SCC 603 has held that once regulations have been framed in respect of a particular subject, the exercise of power has to be in accordance with such regulations and once CERC has framed the regulations which have left trading margin for long-term arrangements to be decided by the parties, any further proceeding seeking to determine trading margin is impermissible. The Commission does not have the jurisdiction to

determine the trading margin of the Petitioner including going into a cost-plus determination thereof.

21.2. It was submitted that PTC has entered into Power Sale Agreements with the Distribution Utilities of Haryana, Rajasthan, Uttar Pradesh and Punjab for supply of cumulative capacity of 704 MW of power from the 1000 MW Karcham Wangtoo Hydroelectric Plant located in Kinnaur District of Himachal Pradesh on long term basis. In all such cases, Tariff has been determined under section 62 of the Electricity Act, 2003 and power is being supplied to Distribution Utilities of Haryana, Rajasthan and Uttar Pradesh from 2014 onwards. PSPCL has not yet started scheduling their share of power from the Project. PTC Trading Margin payable by the Distribution Utilities of Haryana, Rajasthan and Uttar Pradesh under their respective Power Sale Agreement is Rs. 0.05/kWh for the Tariff Years 1 to 12 and Rs. 0.10/kWh for the Tariff Years 13 to 35. PTC and Punjab State Electricity Board (PSEB) had also signed a PSA dated 23.03.2006 for supply of power from 22.5 MW Bhilangana Hydroelectric Project of M/s Swasti Power Engineering Limited in Tehri Garhwal District of Uttarakhand. The PSA provides for the PTC Trading Margin of Re. 0.05/kWh for the Tariff Year 1 to 12 and Re. 0.10/kWh for the Tariff Years 13 to 35, which has been approved by the Commission by its order dated 31.07.2007 in Petition No. 9 of 2006. However, the supply of power to PSPCL could not commence as the matter is subjudice and is presently pending before the Commission. Ministry of New and Renewable Energy (MNRE) has fixed a trading margin of Re. 0.07/kWh for procurement and supply of power under the Guidelines for Selection of 3000 MW Grid-Connected Solar PV Power Projects under Batch-II of National Solar Mission Phase-II "State Specific Bundling Scheme" in March, 2015, wherein NTPC Vidyut Vyapar Nigam Limited (NVVN) will be charging Re. 0.07/kWh for entire duration of the

Power Sale Agreements of 25 years.

21.3. MNRE has notified a trading margin of Re. 0.07/kWh for Solar Energy Corporation of India for a period for 25 years for projects being set up under:-

(a) Order No. 32/2/2014-15/GSP, dated 04.08.2015 for setting up of 2000 MW of Grid-connected Solar PV Power Projects under Batch-III of Phase-II of National Solar Mission with Viability Gap Funding support from National Clean Energy Fund.

(b) Order No. 32/3/2014-15/GSP dated 14.03.2016 for implementation of the Scheme for Setting up of over 5000 MW Grid-connected Solar PV Power Projects with Viability Gap Funding under Batch-IV of Phase-II of the National Solar Mission.

PSPCL is presently paying Trading Margin of Re. 0.07/ kWh to NVVN for supply of bundled solar power under 25 year long term PPA as per National Solar Mission Phase-I scheme of Govt. of India. Therefore the trading margin being claimed by PTC in the present case is in line with the trading margin prevailing for long-term contracts in the country reiterated that the trading margin claimed is just and reasonable.

22. EPPL submitted reply to the written submission filed by PTC and reiterated the submissions earlier made in its reply so filed and submitted that they support the claim of PTC for trading margin as prayed by the Petitioner.

23.1. PSPCL submitted reply to the written submission filed by PTC and reiterated the earlier submissions made in its reply filed and submitted that as regards the jurisdiction of the Commission, PTC has been taking the stand that the Commission does not have the power to determine the trading margin, but only a limited jurisdiction to fix the trading margin is baseless and unreasonable. PTC is trying to avoid the

determination of trading margin on the basis of merits and if the case of PTC is that the Commission cannot determine the trading margin, the present petition is liable to be dismissed. There is no trading margin fixed by law. The law only provides for the ceiling if applicable. The parties by Agreement have left it for the Commission to consider and determine the trading margin while determining the tariff. In terms of the Tripartite Agreement, there is no trading margin payable de-hors the determination to be made. If the petitioner does not seek any determination, there is no trading margin payable. It is also not open to PTC to contend that the Commission approve the trading margin without going into the merits of the trading margin and only on the basis of the Order dated 24.01.2007, which has long been superseded by the subsequent orders passed by the Commission and hence, cannot continue to bind only on the aspect of trading margin. Further, there is some kind of illusory distinction sought to be drawn between determination and fixation. The Commission is required to determine and approve the trading margin. Even assuming that Commission only has jurisdiction to fix the trading margin, the Commission cannot be compelled to fix the trading margin at 5 paise in accordance with the Order dated 24.01.2007 which does not stand applicable in toto as of date.

23.2. PSPCL contended that the Commission ought to fix the trading margin as zero in the absence of any justification whatsoever of the trading margin being 5 paise. It was denied by PSPCL that it is approbating and reprobating with respect to Trading Margin. PSPCL continued to pay the trading margin after 01.04.2014 as provisional/ad-hoc payments until the issue was adjudicated by the Commission, as directed vide Order dated 27.11.2013. It is for this reason that the 5 paise was claimed in the ARR for 2014-15 and 2015-16, and the same

will be adjusted in terms of the further Orders of the Commission as PSPCL is a revenue-neutral entity. 7 paise and 4 paise are a cap and it is not that the traders automatically get these amounts. It is only a cap over which the traders cannot charge. Therefore, to be competitive, the traders may choose to have even 1 paisa as margin or not have a margin at all. The other expenses which are claimed to be incurred by PTC are not correct. The increased net worth requirement of CERC is a mandate under the CERC Trading Licensing regime and has nothing to do with the present transaction. This was irrespective of the trading margin being charged and this cannot be used to either maintain or increase the trading margin.

23.3. The proceedings before the Hon'ble Supreme Court against AD Hydro, EPPL, has directly impleaded PSPCL for the payments to be made bypassing PTC. This itself establishes that even as per EPPL, there is no role whatsoever of PTC. There is no justification for payment of any trading margin to PTC which places the burden on the consumers in the State. As regards the payment of trading margin by Haryana, Rajasthan and Uttar Pradesh for procurement of power from 1000 MW Karcham Wangtoo project is concerned, the said procurement and corresponding payments are yet to be approved by the Commission. PSPCL on its part is acting bona fide and has been trying to negotiate the trading margin. Further, the landed cost of electricity in the case of Karcham Wangtoo is much less than the present case. In any event, merely because a particular trading margin is paid in a particular case does not give any vested right to PTC to claim the same trading margin in other cases.

24. The Commission noted that the information submitted by PTC regarding the trading margin for various long term sale agreements was not sufficient and vide Order dated 26.07.2018 directed PTC to submit

the detailed information/ data regarding the trading margin being charged for other long term PSA entered into by it with other purchasers as also by traders other than PTC with various utilities in India. PSPCL was also directed to submit the similar information/data.

25.1. PTC filed written submission in response to the queries raised by the Commission vide Order dated 26.07.2018 while reiterating the submissions earlier made in the Petition and stated that in terms of Regulation 9 (b) of the CERC (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations 2009 ("Trading license Regulations"), trading licensees are required to furnish and post on their website, monthly information (in Form IV-D) in respect of long term trading transactions undertaken. Form IV-D of Trading License Regulations does not provide for furnishing information related to trading margin for long term transactions. The trading margins for long term transactions are strategic in nature and confidential for business purposes and are therefore not required to be published by trading licensees. Trading margin payable by various Utilities to the Petitioner are in the range of 4 paisa/kWh to 10 paisa/kWh under various long term power sale agreements of total capacity of 5186 MW. The agreements entered into by the PTC are confidential documents containing commercially sensitive information. Further, as per the information for long term transactions published by NTPC Vidyut Vyapar Nigam Ltd. ("NVVN") on its website for the month of June 2018, NVVN is charging a trading margin of 7 paisa/kWh from various Utilities under 21 long term transactions.

25.2. Solar Energy Corporation of India Ltd. ("SECI") has also been charging a trading margin of 7 paisa/kWh from Haryana Power Purchase Centre ("HPPC") in relation to procurement of 250 MW wind power on long term basis from SECI in 2nd Phase of MNRE Scheme of 1000 MW

ISTS Grid connected Wind Projects. Haryana Electricity Regulatory Commission (“HERC”) has approved the aforesaid arrangement for procurement of power vide order dated 24.11.2017. Further, vide order dated 03.05.2018 HERC approved procurement of 350 MW wind power on long term basis from SECI in Tranche-III of MNRE Scheme of 2000 MW ISTS-connected wind projects, wherein trading margin payable to SECI is 7 paisa/kWh. PSPCL has also signed a PPA with SECI for procurement of 150 MW wind power on long term basis from SECI in 2nd Phase of MNRE Scheme of 1000 MW ISTS Grid connected Wind Projects. It is understood that trading margin payable by PSPCL to SECI under the scheme is also 7 paisa/kWh and the same may be confirmed by PSPCL. Vide order dated 01.03.2018 in Petition No. 48 of 2014 titled Punjab State Power Corporation Ltd. v. PTC India Ltd & Anr, the Commission approved the PSA entered between PSPCL and the Petitioner for procurement of 200 MW power from 1000 MW Karcham Wangtoo Hydel Project, including the trading margin stipulated in the PSA which provides for trading margin of Rs. 0.05/kWh for Years 1 to 12 and Rs. 0.10/kWh for years 13 to 35.

26.1. PSPCL filed the additional written submission in response to the queries raised by the Commission vide Order dated 26.07.2018 while reiterating the submissions earlier made in its reply and submissions and stated that the basic objection of PSPCL was that there needs to be a determination of trading margin by the Commission in accordance with the Agreements entered into by the respective parties. Such determination can obviously be based on the costs incurred and the risks taken by the Petitioner with regards to the sale of power from EPPL to PSPCL. According to the Annual Market Monitoring Report published by CERC for FY 2017-18, it can be seen that from 2008-09 to 2017-18, the prevalent weighted average trading margin in the Short-term power

market has dropped from Rs. 0.04/Kwh to Rs. 0.031/Kwh (@ Page 36 of the Report). The Power Market Regulations, 2010 (framed by CERC) provides that the member service charges while performing the identical roles by them are being charged by the associate members of the Indian Energy Exchange as the trading licensees over the counter markets and exchange markets.

26.2. Therefore, the member service charge levied is capped at 0.75% of the transaction value. If the said formula is applied to the case at hand, it would turn out to be much less than 5 paisa. As regards the long term transactions, it is submitted that in West Bengal, PTC is being paid the trading margin of 4 paisa even when the power is being procured from the sources outside India. There is a substantial issue and risk involved in procuring power from outside the country for resale hearing, including dealing with sovereign states, payment if foreign exchange etc.

26.3. PTC relied on the data published by NTPC Vidyut Vyapar Nigam Limited ("NVTN") on its website for the month of June 2018 stating that NVTN is charging trading margin of 7 paisa from various utilities under 21 long term transactions and the stand of the petitioner is misplaced. NVTN is a Govt. Company (a subsidiary of NTPC) which is engaged in the business of trading of power for the purpose of bundling of power through various sources and sale of unallocated quota of NTPC. NVTN purchases the power under the scheme, bundles it with the unallocated share of other NTPC Stations and then sells it to the Distribution Utilities. NVTN takes substantial risks in this process. The present case is not at all comparable to NVTN wherein the Petitioner is engaged in a bilateral transaction and is incurring no commercial risk whatsoever.

26.4. PTC further relied upon the trading margin of 7 paisa charged by SECI. The said reliance is also misplaced since SECI is also a govt. enterprise set up by MNRE to facilitate multiple inter-state sale and purchase of solar power. SECI floats tender for competitive bidding, invites generators to participate in the bidding processes of various states, and coordinates the inter-state procurement by establishing the payment security mechanism and transmission charges etc. which involves substantial risks. But it is reiterated that no such risk is being borne by the Petitioner herein.

26.5. PTC further relied on the 5 paisa trading margin allowed to the Petitioner by the Commission for procurement of 200 MW power from the 1000 MW Karcham Wangtoo project. The said transaction is also not comparable to the present case because in the Karcham Wangtoo project, the sale is being made to four states and the Petitioner has undertaken all the risks associated with the sale of power in multiple states. Since the Petitioner has not been able to demonstrate even a single risk taken despite the directions of the Commission during the course of hearings in last two years, it is amply clear that the Petitioner cannot be placed on the same footing as in the Karcham Wangtoo project and is therefore, not entitled to the trading margin of either 5 paise or 4 paise.

27. The matter was heard and the parties were directed to submit their respective written arguments, wherein PSPCL was directed to file its reasoned proposal for trading margin which is to be given to PTC including the basis on which the proposed trading margin has been arrived and PTC to file its response and its own proposal for trading margin and basis thereof. PSPCL filed its written arguments in compliance of the directions given by Commission vide order dated 23.10.2018 reiterating the submissions made in its reply and other

submissions filed and asked for the dismissal of the petition as no trading margin is warranted in the present petition. However, PTC has not filed their written arguments so far.

Commission’s Observations, Findings and Decision

The Commission has carefully gone through the petition, replies thereto by EPPL & PSPCL, rejoinder to the reply of PSPCL by the petitioner, written submissions and other documents filed by the parties.

PTC entered into a PPA with EPPL on 25.07.2005 for the purchase of the entire capacity and electricity generated from the Malana-II HEP and further signed a back to back PSA with the erstwhile PSEB (now PSPCL) on 23.03.2006 for sale of power to be supplied by EPPL. Clause 10.1 of the PSA regarding trading margin states as under:

“.....PTC’s Trading Margin shall be Rs. 0.05/kWh for the Tariff Years 1 to 12 and Rs. 0.10/kWh for the Tariff Years 13 to 40 and shall be payable by the Purchaser to PTC for the entire Billable Energy. Such margins shall be in compliance with any norms applicable to transactions of the nature and duration as captured in this PSA, as may be laid down by CERC from time to time.....”

The said clause 10.1 of the PSA alongwith other clauses was amended vide the Tripartite Agreement dated 03.01.2013 signed between PSPCL, PTC and EPPL which is reproduced below:

“TRIPARTITE AGREEMENT

(AMENDMENT TO POWER PURCHASE AGREEMENT DATED 25-07-2005 AND POWER SALE AGREEMENT DATED 23-03-2006)

THIS Tripartite Agreement is made on this 3rd Day of January, 2013 by and between:

.....

AND WHEREAS the Power Sale Agreement dated 23.03.2006 (PSA) has been entered into between PTC and erstwhile PSEB

now succeeded by PSPCL for the sale and purchase of the above 100 MW contracted capacity from EPPL on the terms and conditions contained in the PSA;

.....
AND WHEREAS in pursuance of the above the parties have finalised the amendment to the PSA and have agreed that consequential amendments shall be made to the PPA.

.....
2. AMENDMENT TO ARTICLE 10.1 OF THE PSA

Article 10.1 shall be substituted as under:

“The tariff for the contracted capacity payable by PSPCL to PTC including all aspects of tariff element would be determined by the Commission and also trading margin, and other charges payable additionally to PTC shall be as per the decision and approval of the Commission.”

.....
4. AMENDMENT TO ARTICLE 14.3, 14.4, 14.5, 14.6 and 14.7 OF THE PSA SHALL STAND DELETED AND THE FOLLOWING SHALL STAND SUBSTITUTED IN THEIR PLACE AS ARTICLE 14.3

“The parties agree that the Punjab State Electricity Regulatory Commission shall be the Appropriate Commission in regard to adjudication of all disputes arising both under the PPA and PSA in view of the nexus existing on the sale of the contracted capacity by EPPL to PTC and by PTC to PSPCL. EPPL hereby accepts such nexus.”

5. AMENDMENT TO ARTICLE 15.6.1 OF THE PSA

Add at the end the following:

“Further, PTC shall not sell the contracted capacity to any third party till such termination payment has been made by PTC to PSEB (PSPCL) subsequent to the termination of the Agreement by the PSEB (PSPCL) consequent to PTC’s Event of Default.

6. In addition to the applicable tariff as mentioned in clause 2 hereinabove, the trading margin to PTC shall be as per the

decision and approval of the Commission.

7.The PPA and PSA shall be read with the above modification. Except for the above, all the terms and conditions of the PPA and PSA shall continue to apply with full effect and subject to the decision and orders of the Commission.

.....”

The Commission vide Order dated 27.11.2013 in petition no. 54 of 2012 filed by EPPL for the determination of tariff, fixed the trading margin for FY 2012-13 and FY 2013-14 in line with the original provision in the PSA dated 23.03.2006 as 5.0 paise per kWh for the Billable Energy supplied / to be supplied during this period by PTC to PSPCL from Malana-II HEP. It was decided that trading margin beyond this period shall be fixed by the Commission on filing of an application by PTC alongwith the tariff application to be filed by the generating company for determination of tariff as per the applicable tariff regulations.

EPPL filed petition no. 37 of 2014 on 10.02.2015 for approval of annual fixed cost of 100 MW Malana II Hydro-Electric Project for the period from 01.04.2014 to 31.03.2015 and truing up of expenses for FY 2012-13 and FY 2013-14. PSPCL raised objections regarding the fixation of trading margin during the course of proceedings of the aforesaid petition. Thereafter, PTC filed Application No. 8 of 2015 on 17.08.2015 seeking fixation of trading margin belatedly at the closing stage of the petition. PSPCL also opposed the submissions of PTC for the payment of trading margin. In view of the same, the Commission opined that in the interest of justice, the matter needs to be examined in detail. The Commission, therefore, decided in its Order dated 31.08.2015 in petition no.37 of 2014 that a separate petition is required to be filed by PTC for determination of trading margin for FY 2014-15 for

decision by the Commission on merits after due process.

Accordingly, PTC filed the instant petition and prayed to fix the Trading Margin at Rs. 0.05/kWh for the period from 01.04.2014 to 31.03.2015 with respect to sale of 100 MW power from Malana-II Hydro Electric Project to PSPCL in terms of the PSA read with the PPA, Tripartite Agreement and Orders dated 27.11.2013 & 31.08.2015 in petition nos. 54 of 2012 & 37 of 2014 respectively passed by the Commission.

Jurisdiction of the Commission

The Commission notes that PTC has challenged the jurisdiction of the Commission in the instant petition stating that the jurisdiction for fixing the trading margin for an inter-State project like Malana-II lies with CERC under section 79(1)(j) of the Electricity Act, 2003 whereas the jurisdiction of the Commission for fixing trading margin under section 86(1)(j) is limited to intra-State trading of electricity. Therefore clause 10.1 of the PSA as modified in the Tripartite Agreement is void *ab initio*.

In support, PTC submitted that it is trite law that parties can confer jurisdiction to one of several judicial or quasi-judicial bodies but cannot confer jurisdiction on a forum which has not been bestowed with it. The said position has been upheld by the Hon'ble Supreme Court in the case of AVM Sales Corporation Vs. Anuradha Chemicals reported as (2012) 2 SCC 315. The Hon'ble Supreme Court has further held in the case of Sarwan Kumar Vs. Madan Lal, reported as (2003) 4 SCC 147 that the issue of jurisdiction of a court can be raised by any party at any stage of the proceedings. PTC also referred to the Order of the Hon'ble Supreme Court in the case of Jagmittar Sain Bhagat Vs. Health Services, Haryana, reported as (2013) 10 SCC 136 with respect to jurisdiction. PTC further submitted that even assuming that this Commission has the

jurisdiction to determine its trading margin, the same would be limited to prudence check based on market forces for the trading margin being sought by it.

The Commission observes that the entire electricity generated from the Malana-II HEP is being supplied to PSPCL in terms of PPA/PSA. In the Tripartite Agreement signed on 03.01.2013 between PSPCL, PTC and EPPL, it has been provided that the tariff for the contracted capacity payable by PSPCL to PTC including all aspects of tariff element would be determined by the Commission and also trading margin, and other charges payable additionally to PTC shall be as per the decision and approval of the Commission. It is also provided in the Tripartite Agreement that the parties agree that the PSERC shall be the Appropriate Commission in regard to adjudication of all disputes on the sale of the contracted capacity by EPPL to PTC and by PTC to PSPCL and the PPA & PSA are to be read with the above modifications. The Commission further notes that in the instant case, the trading margin was not fixed by CERC, rather it was provided in the PSA. As such, the issue of trading margin has originated from the provision in the PSA.

The Commission in its Order dated 27.11.2013 in petition no. 54 of 2012 besides determining the capital cost of the project and AFC for FY 2012-13 (w.e.f. COD of the project on 12.07.2012) and FY 2013-14 and deciding other issues, with regard to trading margin held as under:

“It is observed that the CERC Trading Margin Regulations are applicable to the short term buy-short term sell contracts for the inter-state trading of electricity undertaken by a licensee. As per these regulations, a trading licensee shall not charge trading margin exceeding seven (7.0) paise per kWh in case the sale price is exceeding ₹ three (3.0) per kWh and four (4.0)

paise per kWh where the sale price is less than or equal to ₹ three (3.0) per kWh. CERC has not fixed the trading margin for long term buy-long term sell contracts in the said regulations. In para-7 of the Statement of Reasons to these regulations issued by CERC vide No. L-7/25(5)/2003- CERC dated 11.01.2010, it has been brought out that since the long term power procurement market is witnessing competitive forces at work, the determination of an appropriate trading margin be best left to the market forces.

Decision of the Commission

Keeping in view the above and the fact that CERC has not fixed the trading margin for long term buy-long term sell contracts, the Commission considers it appropriate to fix trading margin for FY 2012-13 and FY 2013-14 in line with the original provision in the PSA dated 23.03.2006 as 5 paise per kWh for the Billable Energy supplied / to be supplied during this period by PTC to PSPCL from Malana-II HEP. Trading margin beyond this period shall be fixed by the Commission on filing of an application by PTC alongwith the tariff application to be filed by the generating company for determination of tariff as per the applicable tariff regulations.”

Further, the Commission in its Order dated 31.08.2015 in petition no. 37 of 2014 qua the trading margin held as under:

“The Commission notes that PTC filed the application dated 17.08.2015 for fixation of trading margin by the Commission belatedly, almost at the closing stage of the petition when all the submissions by the parties had been made and arguments concluded. The hearing in the petition was closed on 18.08.2015 and Order reserved. However, in order to give an opportunity to PSPCL to submit its reply to the Application filed by PTC, the Commission in its Order dated 19.08.2015 allowed PSPCL to file additional written submissions in respect of trading margin of PTC by 21.08.2015. The Commission observes that PSPCL has vehemently opposed the submissions of PTC for the payment of trading margin to PTC in its reply. In view of the same, the Commission opines

that in the interest of justice, the matter needs to be examined in detail. The Commission, therefore, decides that a separate petition is required to be filed by PTC for determination of trading margin for FY 2014-15 for decision by the Commission on merits after due process. Accordingly PTC is directed to file a petition for determination of trading margin for FY 2014-15 by the Commission.”

These Orders were never challenged by PTC and have attained finality. Subsequently, PTC filed this petition for determination of trading margin for FY 2014-15 and two other petitions for the same for FY 2015-16 & FY 2016-17. Moreover, PTC has accepted the trading margin paid by PSPCL upto April, 2016 i.e. even beyond the period for which the trading margin was approved by the Commission. PTC itself has pleaded that CERC has still not fixed the trading margin for long-term contracts for inter-State trading of electricity. PTC while challenging the jurisdiction of the Commission for fixing the trading margin has however submitted that the jurisdiction of the Commission would be limited to prudence check based on market forces for the trading margin sought by it. It is not open to PTC to approbate and reprobate the issue of determination/fixing of trading margin by the Commission. Under the circumstances as explained above, the case law submitted by PTC would not be applicable.

Considering the above, the Commission does not find any substance in PTC's contention that this Commission has no jurisdiction in determining/fixing the trading margin and the plea of PTC in this regard is rejected.

Trading Margin

PTC submitted that in terms of PPA and PSA, it has incurred the costs for opening and maintaining a letter of credit (LC),

operational/control room expenses for scheduling of power and real time revisions in schedule, obtaining long term open access from the Central Transmission Utility (CTU) on behalf of PSPCL for adequate transmission capacity and provision of payment security mechanism to the CTU, obtaining and maintaining the Trading Licence, increased net-worth requirements by CERC & return on net worth and administrative & legal expenses. These costs have to be necessarily apportioned/recovered from all the transactions being undertaken by PTC. PTC further submitted that it released advance payments to EPPL for meeting the statutory obligations and did not charge interest on the same. The major risks undertaken by PTC pertain to contract dishonour, late payment and non-payment by the purchaser. Though PSPCL is making payments for long-term open access charges, all the obligations and risks under the Bulk Power Transmission Agreement signed with PGCIL lie with PTC.

EPPL supporting PTC's claim for trading margin submitted that PSERC vide Notification No. PSERC/Secy/29 dated 18.05.2007 *inter-alia* held as under:

“3. Trading Margin: The maximum intra-state trading margin shall not exceed 6 paise/KWH including all charges except the charges for scheduling energy and open access.”

Based on this, PTC is entitled to trading margin and such trading margin can be fixed upto 6.0 paise/kWh.

EPPL further submitted that prior to CERC (Fixation of Trading Margin) Regulations 2010, CERC fixed trading margin based on earlier regulations i.e. CERC (Fixation of Trading Margin) Regulations, 2005. Such Regulations did not differentiate between long-term and short-term trading of electricity and trading margin was capped at 4.0 paise per

kWh. As per the provisions of the PSA, PTC is eligible for a trading margin.

PSPCL submitted that the PPA and PSA are back to back contracts and there is no role/responsibility of PTC. Opening and maintaining LC is the responsibility of PSPCL. Scheduling of power is done by the RLDC/SLDC. The payment security mechanism to the CTU is not established by PTC, it is only a facilitator. Trading is a licensed activity under the Electricity Act, 2003 and irrespective of whether the present sale and purchase takes place, PTC has to maintain its trading licence. Attending REA/commercial committee meetings is an obligation and all parties including PSPCL attend these meetings. Any late payment attracts interest and any non-payment is to the risk of PSPCL and not of PTC. The late payment surcharge is billed in the subsequent invoice(s) and paid by PSPCL as and when the bill for the same is raised by PTC. PTC has not raised any bill for late payment surcharge/interest.

PSPCL continued to pay the trading margin after 01.04.2014 as provisional/adhoc payments to avoid any default on the part of PSCPL. The trading margin has been paid by PSPCL till 31.03.2016 on adhoc basis to PTC subject to the determination by the Commission. PTC is not incurring any of the risks mentioned in the Statement of Reasons issued by CERC while framing the CERC (Fixation of Trading Margin) Regulations, 2010 i.e. default risk, late payment risk, contract dishonour risk and inflationary risk. PSPCL submitted that in West Bengal, PTC is being paid the trading margin of 4.0 paise for power procured from the sources outside India which involves substantial risk in the form of resale, dealing with sovereign States and payment in foreign exchange etc. In response to PTC's submissions regarding trading margin paid to NVVN, PSPCL submitted that NVVN is selling bundled power from various sources of unallocated quota of NTPC for selling to distribution

utilities which entails substantial risk in this process. Also such transactions involve coordination with many States incurring all the risks and the relevant open access charges. Similarly, SECI is also a govt. enterprise set up by MNRE to facilitate multiple inter-State sale and purchase of solar power. SECI floats tenders for competitive bidding, invites generators to participate in the bidding processes of various States and coordinates the inter-State procurement by establishing the payment security mechanism and transmission charges etc. which involves substantial risks. As regards, Karcham Wangtoo project, PSPCL submitted that the sale is being made to four States and PTC has undertaken all the risks associated with the sale of power in multiple States. In the instant case, PTC is not rendering any valuable service and there is no effective role of PTC warranting any trading margin to be paid.

The Commission observes that CERC did not fix the trading margin for long-term transactions and left it to market forces. In the Statement of Reasons of the CERC (Fixation of Trading Margin) Regulations, 2010, it was stated that the traders are required to be compensated for the risks inherent in the trading business i.e. Default risk, Late payment risk, Contract dishonor risk and Inflationary risk. However, CERC expressed the view that where traders enter into long-term power purchase agreements of duration exceeding a year, the risks cannot be completely mitigated through a trading margin. Also, since the long-term power procurement market is witnessing competitive forces at work, the determination of an appropriate trading margin be best left to the market forces.

Accordingly, in order to determine the trading margin in the instant petition, PTC was directed to clarify the basis on which it is

demanding the trading margin of Rs. 0.05 per kWh, submit detailed calculations justifying the same and the information regarding the trading margins the petitioner is getting from power utilities in other States pertaining to long term PSAs. Despite repeated requests by the Commission, PTC did not furnish the requisite information as sought by the Commission.

The Commission notes that PTC has mentioned three major risks being under taken by it i.e. contract dishonour, late payment and non-payment by PSPCL. The Commission finds that these are fully taken care of in various clauses of the contract documents. As regards various expenses enumerated by PTC, the Commission finds that these are apportioned to all transactions done by PTC. As such, PTC is not incurring any substantial expenditure specific to this project.

The Commission also notes that as submitted by PSPCL, PTC has not been involved in the various legal cases related to the transactions between EPPL and PSPCL. The petition for determination of AFC is filed by EPPL and defended by PSPCL. Also in the proceedings against AD Hydro Power Ltd. in the Hon'ble Supreme Court of India, EPPL had directly impleaded PSPCL for payment of transmissions charges and not PTC as intermediary.

Further, the Commission is not convinced of the submissions of PTC with regard to trading margin being paid to it in various other transactions in the range of Rs. 0.05 per kWh. In one case, it is an international transaction, in second, the power is being supplied to multiple States and in other cases, it is bundling of renewable power with conventional power or exclusively renewable power and therefore bear no similarity to the case in hand.

In view of the above and considering the submissions and contentions of the parties, the Commission notes that PTC did not furnish the requisite information as sought by the Commission to facilitate fixing of the trading margin for PTC. The Commission is of the considered opinion that in the instant case, PTC's role is limited and risks are marginal as all the risks are sufficiently covered in the contract documents and a secure payment mechanism is provided in the PSA ensuring payment to PTC by PSPCL. Accordingly, the Commission finds it just and fair in the present scenario of declining trading margins, to fix the PTC's trading margin as Rs. 0.01 per kWh from FY 2014-15 onwards which shall be payable by PSPCL for the entire billable Energy. However, PSPCL shall recover/adjust the amount of excess trading margin already paid by it to PTC beyond 31.03.2014, upto which the Commission had allowed the trading margin to be paid in its Order dated 27.11.2013 in petition no. 54 of 2012. Further, the Commission finds it prudent to hold that this trading margin of Rs. 0.01 per kWh shall be applicable upto the end of the 12th tariff year. For fixing the trading margin from the 13th tariff year onwards, PTC shall approach the Commission at the appropriate time.

The petition is disposed of in terms of above.

Sd/-
(Anjuli Chandra)
Member

Sd/-
(S.S. Sarna)
Member

Sd/-
(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: 11.02.2019