

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 340/MP/2022  
and  
Petition No. 341/MP/2022**

**Coram:  
Shri Jishnu Barua, Chairperson  
Shri I.S. Jha, Member  
Shri Arun Goyal, Member  
Shri P.K. Singh, Member**

**Date of order: 20<sup>th</sup> December, 2023**

**Petition No. 340/MP/2022**

**In the matter of**

Petition under Sections 79(1) (b) and 79(1) (f) of Electricity Act, 2003 read with Article 22.4 of Pilot Agreement for Procurement of Power dated 26.10.2018 executed between IL&FS Tamil Nadu Power Company Ltd. and PTC India Ltd. for recovery of (i) outstanding Monthly Invoices (ii) Delayed Payment Interest (iii) compensation for under-scheduling (iv) charges for minimum guaranteed off-take of 55% against the deemed full availability and (v) O&M Expenses and interest on debt.

**And**

**In the matter of**

**IL&FS Tamil Nadu Power Company Limited,  
4th Floor, KPR Tower,  
Old No. 21, New No. 2,  
1st Street, Subba Rao Avenue,  
College Road, Chennai-600006**

**..... Petitioner**

**Vs**

**1) PTC India Limited,  
2nd Floor, NBCC Tower,  
15 Bhikaji Cama Place,  
New Delhi-110066.**

**2) Tamil Nadu Generation and Distribution Corporation Limited,  
Second Floor, Eastern Wing,  
144, Anna Salai,**



Chennai-600002.

.... Respondents

**Petition No. 341/MP/2022**

**In the matter of**

Petition under Section 79, including Section 79(1) (b),79 (1)(f) and 79 (1)(k) of the Electricity Act 2003, seeking payment of the outstanding amount in terms of the Power Purchase Agreement (PPA) dated 12.12.2013 executed between the Petitioner (ITPCL) and the Respondent (TANGEDCO).

**And**

**In the matter of**

**IL&FS Tamil Nadu Power Company Limited,**  
4th Floor, KPR Tower,  
Old No. 21, New No. 2,  
1st Street, Subba Rao Avenue,  
College Road, Chennai-600006

.....Petitioner

**Vs**

**Tamil Nadu Generation and Distribution Corporation Limited,**  
Registered Office at 144,  
NPKRR Maaligai, Anna Salai,  
Chennai-600 002

.....Respondent

**The following were present:**

1. Shri Hemant Singh, Advocate, ITNPCL
2. Ms. Ankita Bafna, Advocate, ITNPCL
3. Ms. Sindhuja Rastogi, Advocate, ITNPCL
4. Ms. Supriya Rastogi, Advocate, ITNPCL
5. Shri Lakshyajit Singh, Advocate, ITNPCL
6. Ms. Anusha Nagrajan, Advocate, TANGEDCO
7. Shri Rahul Ranjan, Advocate, TANGEDCO
8. Shri Aakash Bhola, Advocate, TANGEDCO
9. Shri Ravi Kishore, Advocate, PTCIL
10. Shri Keshav Singh, Advocate, PTCIL

**ORDER**

Since a common issue of the jurisdiction of this Commission under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 (hereinafter referred to



as 'the Act') has been raised in both these Petitions, they are being dealt with by way of present common order. Both of these Petitions, as filed by the Petitioner, IL&FS Tamil Nadu Power Company Limited (ITPCL) essentially seeks directions upon the Respondent(s), namely, PTC India Limited (PTCIL) (Petition No. 340/MP/2022) and Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) (Petition No. 341/MP/2022) for recovery and/or payment of the outstanding amount under the contractual arrangements entered into between these parties.

### **Brief Background**

#### **Petition No. 340/MP/2022**

2. The Petitioner, IL&FS Tamil Nadu Power Company Limited (ITPCL), has set up a 1200 MW (2x600 MW) imported coal-based Thermal Power Project ('the Project') in the district of Cuddalore in the State of Tamil Nadu. In respect of the said Project, ITPCL has executed a Pilot Agreement for Power Procurement ('PAPP') with Respondent No. 1, PTCIL, on 26.10.2018 for the supply of 550 MW power for a period of 3 years. PTC India Limited (PTCIL) allocated the contracted capacity of 550 MW to be procured from ITPCL under PAPP to Respondent No. 2 ('TANGEDCO'), and for this purpose, PTCIL executed the Pilot Power Supply Agreement ('PPSA') dated 27.10.2018 with TANGEDCO for the supply of 550 MW procured from ITPCL. From 1.4.2019, ITPCL commenced the supply of contracted capacity to PTC in terms of PAPP. Insofar as the dispute involved in the matter is concerned, it is stated that Respondent No. 1, PTCIL failed to make payment of the monthly invoices raised from February 2021 until March 2022 and on account of this failure of PTCIL to perform reciprocal payment obligations within the payment due date, ITPCL was entitled to

claim delayed payment interest under Article 24 of the PAPP. According to the Petitioner, since it continuously declared its full availability in terms of the PAPP from October 2021 to March 2022, ITPCL is entitled to claim charges for a minimum guaranteed off-take of 55% against the deemed full availability under Articles 10 & 11 of PAPP read with the Minutes of Meeting dated 27.10.2018. ITPCL is also entitled to claim compensation for under-scheduling of power by PTCIL during May 2021, in terms of Article 10.2 of the PAPP and accordingly, ITPCL vide its demand notice dated 26.5.2022 has raised the claim of compensation upon PTCIL under Article 17.2 of PAPP. It has been further stated that despite the express prescription of law, PTCIL has not only failed to honour its payment obligations towards the monthly invoices but also failed to provide an unconditional Letter of Credit in terms of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading Licence and other related matters) Regulations, 2020 ('the Trading Licence Regulations') and the PAPP in order to enable ITPCL to recover its outstanding dues. In the above context, the Petitioner has made the following prayers:

*“(a) Direct PTC to make payment to ITPCL of INR 4,31,97,75,722/- towards outstanding monthly invoices in terms of Article 11.5.3 of PAPP, as detailed in Annexure 19 of the present petition;*

*(a) Direct PTC to make payment to ITPCL towards Delayed Payment Interest accrued till the date of actual payment including INR 1,21,85,81,578-, calculated in terms of Article 24.4 of PAPP accrued as on 30th April 2022 as detailed in Annexure 19 of the present petition;*

*(b) Direct PTC to make payment of INR 5,60,23,96,800 to ITPCL towards charges for minimum guaranteed off-take of 55% against deemed full availability during October, 2021 to March, 2022 in terms of Articles 10 & 11 as provided in PAPP and MoP Order and as detailed in Annexure 19 of the present petition;*

*(c) Direct PTC to make payment of INR 21,31,86,375/- to ITPCL towards under-scheduling of power by PTC during May, 2021 calculated in terms of Article 10.2 of*

PAPP and MoM dated 27.10.2018 as detailed in Annexure 19 of the present petition;

*(d) Direct PTC to make payment to ITPCL of INR 4,88,63,00,000/- towards Interest on Debt and O&M Expenses in terms of Article 17.2 of PAPP, as detailed in Annexure 19 of the present petition;*

*(e) in the interim, direct PTC to release at least INR 8,12,01,20,238/- being 50% of the total outstanding amount of INR 16,24,02,40,475/- and secure the balance 50% amount by way of furnishing Letter of Credit;*

*(f) in the interim, pass appropriate orders/ directions restraining PTC from taking any coercive actions against ITPCL in terms of PAPP;*

*(g) direct initiation of license revocation proceedings against PTC for abusing its dominant position and for wilful non-compliance of Regulation 9 (10) of Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 read with Article 11.5.3 of PAPP read with Order dated 28.06.2019 issued by Ministry of Power, Government of India;*

*(h) suspension of trading license of PTC for violating Regulation 9 (10) of Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 read with Article 11.5.3 of PAPP read with Order dated 28.06.2019 issued by Ministry of Power, Government of India, during the pendency of the captioned petition; and.*

*(i) pass any other and further order or orders as this Commission may most graciously deem fit and proper in the aforesaid peculiar facts and circumstances of the present case and in the interest of justice.”*

### **Petition No. 341/MP/2022**

3. In respect of its Project, the Petitioner has also executed a Power Purchase Agreement (PPA) dated 12.12.2013 with the Respondent, TANGEDCO, for the supply of power for the period from 1.6.2014 to 30.9.2028 for a quantum of 540 MW on Round-The-Clock basis and the supply under the PPA commenced from 29.9.2015. Insofar as the dispute involved in the matter is concerned, it has been stated that TANGEDCO has failed to release the outstanding payment of approximately Rs. 855.69 crore towards monthly and weekly supply bills, bills for the Late Payment Surcharge (LPS) on monthly supply bills, and the Supplementary Bills towards Change in Law claims (as allowed by the Commission by Order dated

31.5.2021 in Petition No.380/MP/2018) and Point of Connection Charges that have been raised and have become due as on 26.10.2022. The Petitioner has submitted that while TANGEDCO vide letter dated 3.8.2022 has communicated its acknowledgement of an outstanding amount of Rs. 2070.68 crore, subject to reconciliation, to be released in accordance with the liquidation mechanism provided under the Electricity (Late Payment Surcharge and other related matters) Rules, 2022 ('LPS Rules'), the Petitioner through the present Petition has only claimed the balance amount remaining after the adjustment of the amount undertaken to be paid by TANGEDCO under the LPS Rules. In the above context, the Petitioner has made the following prayers:

*“(a) Direct the Respondent to make payment to the Petitioner of Rs. 855,69,60,223/- towards the outstanding amounts accrued under the PPA dated 12.12.2013, pending as on 26.10.2022 as detailed in the present petition;*

*(b)In the interim, direct the Respondent/ TANGEDCO to release payment in terms of Article 8.6.9 of the PPA dated 12.12.2013; and*

*(c)Pass any other order as this Commission may deem fit in the facts and circumstances of the present case and in the interest of justice”*

### **Submissions of the Petitioner**

4. On the issue of the jurisdiction, the Petitioner, in both of these Petitions, has mainly submitted that this Commission has the necessary jurisdiction to adjudicate upon the dispute(s) involved and to issue the appropriate directions against the Respondents that the generating station of ITPCL has a composite scheme under Section 79(1)(b) of the Act. The Petitioner has submitted that the Commission`s order dated 31.5.2021 in Petition No.380/MP/2018 (IL&FS Tamil Nadu Power Co. Ltd. v. TANGEDCO and Anr.) has, *inter-alia*, held that the Petitioner has a composite scheme under Section 79(1)(b) of the Act and that the Pilot Scheme by its nature is

an inter-State scheme for generation and sale of power and therefore, this Commission has the exclusive jurisdiction to adjudicate the dispute.

**Hearing Date 16.3.2023**

5. The Petitions were heard on 16.3.2023. In response to the specific query of the Commission regarding the existence of a composite scheme *qua* generating station of the Petitioner, the learned counsel for the Petitioner handed over a copy of a tabular detail indicating the various contracts/arrangement of sale of power from the Petitioner's generating station and referred to the Commission's order dated 31.5.2021 in Petition No. 380/MP/2018 in support thereof. The learned counsel submitted that the Commission, in its order dated 31.5.2021, has already held that the generating station of the Petitioner has a composite scheme of generation & supply in more than one State, and this Commission has the jurisdiction with respect to the Petitioner's generating station.

6. The learned counsel for the Respondent, TANGEDCO submitted that in the order dated 31.5.2021 in Petition No. 380/MP/2018, as relied upon by the Petitioner, the Commission had only rejected the contention of TANGEDCO that the Petitioner did not have any long-term/medium-term PPAs to constitute a composite scheme. However, presently, the generating station of the Petitioner does not have arrangements of any kind for the generation and sale of electricity in any State apart from the State of Tamil Nadu. The learned counsel for Respondent, PTCIL, submitted that the jurisdiction of this Commission is attracted when there is the generation and sale of electricity in more than one State.

7. The Petitioner vide its additional affidavit dated 29.3.2023 has mainly submitted on the issue of jurisdiction as under:

(a) Section 79 of the Act categorically states that if a generating company enters into a composite scheme of generation and sale of electricity in more than one State, in that case, this Commission shall have the jurisdiction to regulate inter-State transmission of electricity as well as to adjudicate upon disputes arising between generating companies and the PPA holder. The word composite scheme does not have any special meaning.

(b) As interpreted by the Hon`ble Supreme Court in the case of Energy Watchdog v. CERC, the phrase 'composite scheme' does not connote any special meaning under Section 79(1)(b) of the Act but simply means a 'scheme' for the generation and sale of electricity in more than one State. The principle laid down in the above judgment of the Hon`ble Supreme Court was duly followed by this Commission in the Order dated 31.5.2021 passed in Petition No. 380/MP/2018 titled IL&FS Tamil Nadu Power Company Ltd. v. TANGEDCO & Ors. (between the same parties).

(c) The Petitioner has been supplying power outside the State of Tamil Nadu, and therefore, it duly complies with the requirement of having a composite scheme for the generation and sale of electricity in more than one State in terms of Section 79 of Act read with the above judgment of the Hon`ble Supreme Court and of this Commission. The following table sets out the arrangements of the Petitioner for generation and sale in more than one State:

S. No.	PPA	DISCOM	Period	Quantum
1.	Long-term PPA dated 12.12.2013	TANGEDCO (Bilateral)	1.6.2014 to 30.09.2028 (15 years)	540 MW
2.	PAPP dated 26.10.2018	TANGEDCO through PTC India Limited  (Pilot Medium Term Scheme/ Deemed Inter-State as per 351 MP & 380 MP of 2018)	1.4.2019 to 31.3.2022	550MW



3.	LOA dated 8.4.2022	TANGEDCO (through Manikaran Power Limited)	10.4.2022 to 20.5.2022	300 MW
4.	LOA dated 28.9.2022	KSEB (through NVVN)	0.3.2023 to 31.3.2023	100 MW
5.	PPA dated 29.3.2022	HPPC (through Subheksha Advisors Pvt. Ltd. (trader))	1.6.2022 to 30.9.2022	300 MW
6.	PPA dated 12.03.2019	PTC India Ltd. (for sale on Power Exchanges in Day Ahead as well as in Term Ahead Market)	Till March, 2023	Upto 1114 MW (Based on the surplus quantum available).

(d) The Petitioner has scheduled the energy to the Power Exchange on various occasions during the period from May 2022 to December 2022, under Section 11 of the Act directions issued by the Ministry of Power.

(e) Since the Petitioner has a composite scheme in terms of Section 79 of the Act and the principles settled by the Hon`ble Supreme Court in the case of Energy Watchdog Judgment (Supra) and by this Commission in Petition No. 380/MP/2018 (Supra), this Commission has the necessary jurisdiction to adjudicate upon the dispute involved in the present Petition.

### **Hearing Dated 10.5.2023**

8. The matters were mentioned by the learned counsel for the Respondent, TANGEDCO and submitted that the Commission, while reserving the order on the issue of jurisdiction/ admissibility, vide ROP dated 16.3.2023 had granted liberty to the parties to file their replies. Learned counsel further submitted that the Respondent, TANGEDCO could not file its reply within the specified time indicated in the said ROP. Accordingly, the learned counsel requested weeks' time to file a reply to the Petitions. Learned counsel for the Petitioner had no objection in this regard and prayed that the Petitioner may also be permitted to file their response to the reply to be filed by the Respondent.

9. Considering the submissions of the learned counsels for both parties, the Commission directed the parties to file their replies. Accordingly, the matters were set down for a further hearing. Pursuant to the liberty granted by the Commission, the Respondent, TANGEDCO vide its affidavit dated 10.5.2023, has submitted its reply. The Respondent, TANGEDCO has mainly submitted as under:

**Temporary short-Term Arrangement of Inter-State Supply**

(a) In the arrangements tabulated by the Petitioner in its affidavit dated 29.3.2023, only two arrangements were for inter-State supply for a period between 1 to 3 months. None of these arrangements were in place when the Petition was filed, and further, even as on the date, the said arrangements are not subsisting.

(b) The only other arrangement relied upon by the Petitioner is at Sr. No. 6 of the said table, which is an arrangement with Respondent No. 1 for the supply of electricity to Power Exchanges. This too, is not a firm arrangement for any specified quantum of power, as it is only for the supply of surplus quantum available from time to time.

(c) Thus, the only arrangement by which the Petitioner has supplied power outside the State of Tamil Nadu has been temporary and very short-term. Out of the total power generated by the Petitioner`s plant, the majority is sold to Respondent No. 2 for distribution in the State of Tamil Nadu.

(d) The Black`s Law Dictionary (8<sup>th</sup> Ed.), defines `scheme` as `a systemic plan; a connected or orderly arrangement, esp. of related concepts. Thus, for something to qualify as a `scheme`, it is necessary that it must be systemic and orderly. None of the Petitioner`s arrangements for inter-State supply of power can be termed as a `scheme`, much less a composite scheme within the meaning of the Act. As highlighted above, all such arrangements by the Petitioner have been intermittent, temporary, and on a very short-term basis.

(e) The Petitioner has placed reliance upon this Commission`s order dated 15.4.2021 in Petition No. 52/AT/2021 wherein this Commission has taken a view that only temporary arrangements for sale outside the States cannot be treated as such inter-State sale, which amounts to a `composite scheme` under the Act. The only medium-term and long-term arrangements for generation and sale of power that the Petitioner had entered into are with Respondent No. 2 for sale in the State of Tamil Nadu. Hence, the arrangements for inter-sale are not subject-matter to the dispute.

### **Composite Scheme**

(f) Under Section 79(1) (b) of the Act, this Commission regulates the tariff of generating companies, if such generating companies enter into or otherwise have a composite scheme for the generation and sale of electricity in more than one State. In a case where the tariff is to be determined under Section 62 of the Act, Section 79(1)(b) would have to be interpreted in a manner that is generating company-centric, as the tariff is determined for the generating station, and is applicable irrespective of the parties to which power is sold. Therefore, when the generating company has arrangements for the generation and sale of electricity in more than one State, this Commission is the Appropriate Commission to determine the tariff for such generating company.

(g) Regulation of tariff in the context of PPAs entered into pursuant to a competitive bidding process under Section 63 of the Act, is a PPA-centric exercise and not a generating station-centric exercise. Each PPA entered into by the generating company is pursuant to a separate competitive bidding process, and tariff is separately adopted in respect of each such PPA. Therefore, in that context, the test of composite scheme would have to be applied qua each PPA, i.e., whether the PPA constitutes a composite scheme for the generation and sale of electricity in more than one State.

(h) The `composite scheme` referred to under Section 79(1)(b) of the Act, must be determined with reference to the PPA under which the dispute arises; the fact that the generating company, through arrangements completely

separate from the PPA, is supplying power through inter-State sale is irrelevant for this purpose.

(i) The Hon`ble Supreme Court in its judgment in the case of Energy Watchdog v. CERC while defining the 'composite scheme, has observed that 'It will be seen that Section 79 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 the 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 take place within the State. On the other hand, the moment generation and sale take place in more than one State, the Central Commission becomes the appropriate Commission under the Act.'

(j) From the above, it is clear that the State Commission exercises jurisdiction where the generation and sale of power take place in one State, and this Commission exercises jurisdiction if such generation and sale of power is inter-State. The incidence which determines whether the State Commission or this Commission exercises jurisdiction is the incidence of generation and sale of power over which jurisdiction is to be exercised. This is further made clear by the specific finding of the Hon`ble Supreme Court that it is the PPA which is governed by either the State Commission or the Central Commission. Therefore, it is amply clear that what this Commission exercises jurisdiction over is the PPA under which disputes have arisen and not the generator.

(k) The generating company may have several arrangements for inter-State supply of power; but if the dispute between the generator and the licensees arises under a PPA or another arrangement where there has occurred no inter-State sale of power, the State Commission is the proper forum for adjudication of disputes between the parties. The Electricity Commissions under the Act

exercise jurisdiction over the PPAs/ arrangements under which disputes have arisen, and not the generating company.

(l) As per the Hon`ble Supreme Court in the case of Energy Watchdog, if the generation and sale of power is taking place within one State, the State Commission is the relevant forum to adjudicate disputes pertaining to this transaction. The disputes lead to no impact outside the particular state. This is more so in the case of Section 63 competitively bid PPAs, where the tariff bid by the generators is simply adopted by the State Commissions, after ascertaining that the bidding process was independent. The costs incurred by the generator for any operations outside the State, if any, are neither relevant nor considered by the Commissions while adopting the discovered tariff. Therefore, if disputes arise under a PPA as per which power is generated and supplied in the same State, the effect is limited to the said State only.

(m) Therefore, the fact that the Petitioner as a generating company, had certain other arrangements under which it was selling power outside the State of Tamil Nadu, is irrelevant (if no dispute has been raised under those arrangements in the present Petition), for determining whether there exists a 'composite scheme' under Section 79 of the Act, over which this Commission may exercise jurisdiction. As under the subject PPA, power is only being generated in and supplied to Tamil Nadu; the State Commission is the proper forum for adjudication of disputes thereunder.

**The issue raise in the instant counter-affidavit was not considered by this Commission in Petition No. 380/MP/2018.**

(n) While challenging the jurisdiction of the Commission in Petition No. 380/MP/2018, Respondent No. 2 had contended that for a composite scheme to exist, the Petitioner was required to have entered into a long-term or medium-term PPAs prior to the date of commissioning of the project. The Commission had dismissed this contention, holding that no such qualification was prescribed by the Hon`ble Supreme Court in the case of Energy Watchdog (supra).

(o) At the relevant time when the said decision was passed, the Petitioner had some subsisting arrangements, which was noted by this Commission at paragraph 21 of the order. However, the Commission did not consider whether the subsistence of short-term and intermittent arrangements would suffice to constitute a composite scheme for the generation and sale of electricity in more than one State.

(p) The Commission did not, in any event, have the opportunity to consider the issue as to whether a composite scheme has to be construed in the context of the PPA, which is the subject matter of adjudication and hence necessarily requires the inter-State sale of power under such PPA. The Commission, in its order dated 31.5.2021 in Petition No. 380/MP/2018, has not disapproved of this purposive interpretation of the law laid down in the case of Energy Watchdog.

(q) In light of the Hon`ble Supreme Court`s decision in the case of Energy Watchdog, this Commission cannot exercise jurisdiction to adjudicate the disputes raised in the present Petition. Towards this, its previous order in Petition No. 380/MP/2018 cannot be considered *res judicata*, as the said order will allow something which is impermissible under statute (Canara Bank v. N.G. Subbaraya Setty, [(2018) 16 SCC 228, para 5]).

10. The Petitioner, vide its rejoinder dated 6.6.2023 in response to the reply filed by the Respondent, TANGEDCO, has mainly submitted as under:

(a) TANGEDCO has failed to appreciate the following principles of law as laid down by the Hon`ble Supreme Court in the case of Energy Watchdog Judgment as well as by this Commission in a series of its judgments. It was categorically made clear by the Hon`ble Supreme Court under paras 24 to 29 of the Energy Watchdog judgment that a `composite scheme` does not mean anything more than a scheme for the generation and sale of electricity in more than one State. Therefore, the composite scheme under Section 79(1)(b) of the Act is nothing but a mere `scheme` or arrangement which can be executed in any manner be it PPA/ LoA/ LoI, etc., for short, medium or long-term. However,

the only requirement is that the said arrangement should be for the generation and sale of electricity in more than one State. Therefore, TANGEDCO has failed to appreciate that all transactions be it short, medium or long-term, qualify the test of composite scheme so long as the same involves the generation and sale of electricity in more than one State.

(b) This Commission under para 21 of Order dated 31.5.2021 passed in Petition No. 380/MP/2018, considered/ perused various agreements/ arrangements executed by the Petitioner (between the same parties as in the present case) for demonstrating the composite scheme. From the said table of agreements/ arrangements, it is evident that this Commission considered short-term, medium-term and long-term agreements/ arrangements, including the sale of power through Power Exchanges, for the purpose of qualifying the Petitioner as having a composite scheme.

(c) With respect to the contention of TANGEDCO that the test of 'composite scheme' has to be applied qua each PPA in dispute and not in relation to the generating company, Section 79 (1) (b) of the Act categorically provides that for this Commission to have jurisdiction, the generating companies must enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State. Therefore, the test of the 'composite scheme' has to be satisfied by the 'generating company'. The expression used in Section 79(1) (b) of the Act i.e., 'otherwise', allows 'generating companies' to qualify the test of 'composite scheme' as provided under the Act, in a manner that all inter-State transactions/ arrangements irrespective of the time period i.e., short/ medium/ long-term executed with the Power Exchange or third party, are qualified under the test of 'composite scheme'. Further, the argument of TANGEDCO qua the term of the contract has already been dealt with by this Commission in its order dated 31.5.2021 in Petition No. 380/MP/2018 wherein, it was *inter-alia* held that as long as the generating company has PPAs/any other arrangements for generation and sale of power in more than one State, this Commission has exclusive jurisdiction in the matter of regulation of tariff of a generating company, in terms of the decision of the Hon`ble Supreme Court in the case of Energy

Watchdog. For the same reason, the contention of TANGEDCO that the Petitioner did not have a composite scheme at the time of filing of the Petition is also incorrect as it is also an effort to link a composite scheme with the term of the PPA.

(d) The Hon`ble Supreme Court, in para 26 of the Energy Watchdog judgment, categorically held that for having a composite scheme, it is enough that 'generating companies' have, in any manner, a scheme for the generation and sale of electricity which must be in more than one State. In view of this, it is clear that the test of the composite scheme has to be determined vis-à-vis the 'generating company' and not the PPA and the said test can be qualified 'in any manner' irrespective of the term of the transaction (short/ medium or long term).

(e) The Respondent, TANGEDCO has failed to appreciate that this Commission vide its order dated 31.5.2021 in Petition No. 380/MP/2018, in paras 20 to 23 has held that there was no need of having a composite scheme at the time of filing of a Petition, as holding otherwise would be an effort to link composite scheme with term of the PPA which is impermissible in light of the judgment of the Hon`ble Supreme Court in the case of Energy Watchdog. Hence, the aforesaid finding of this Commission categorically means that the scheme/ arrangement to generate and sell in more than one State, need not be in existence at the time of filing of the Petition. Even otherwise, TANGEDCO failed to appreciate the factual position stated in the affidavit of compliance that at the time of filing of the captioned Petition in October, 2022, the Petitioner had been scheduling power to the Power Exchange during the period of May 2022 to December 2022, pursuant to the Section 11 directions issued by the Ministry of Power, which are deemed inter-State in nature as Clause 4(h) of the Notification dated 5.5.2022 specifically mandates selling power in the Power Exchange in the event the distribution company does not schedule.

(f) TANGEDCO in its reply has referred to the Commission's order dated 15.4.2021 in Petition No. 52/AT/2021 which is entirely misplaced as the said Petition involved the issue of determination of a 'composite scheme' whereby



the entire capacity was contractually tied up with UPPCL within the one State i.e. Uttar Pradesh. In that case, if the temporary sale of power was taking place to any other entity in the event of default by UPPCL, the said temporary sale shall not change the ratio of arrangement of sale of power to UPPCL. Hence, in the aforesaid context, the Commission held that such a temporary sale shall not amount to a composite scheme. In this factual backdrop, TANGEDCO has failed to appreciate that the Petitioner herein, has contracted the inter-State sale of a 'specified' quantum of power with the Power Exchange/ third party, which was completely separate and unconnected to the quantum tied up by the Petitioner with TANGEDCO either under the Pilot Scheme or Long-Term Arrangement. Therefore, the Petitioner is regularly issued a 'No Objection Certificate' from SRLDC for the sale of surplus Power in the Power Exchanges. Therefore, the transactions/ arrangements tabulated by the Petitioner in the Compliance Affidavit do not fall under the arrangement contemplated by this Commission while passing the above order dated 15.4.2021.

(g) The contention of TANGEDCO that this Commission has not addressed the issue of whether subsistence of short-term and intermittent arrangements would suffice to constitute a composite scheme for the generation and sale of electricity in more than one State is completely untenable and bereft of actual legal position laid down by this Commission.

(h) In view of the facts and legal principles as set out above, this Commission has appropriate jurisdiction under Section 79 of the Act to adjudicate upon the issues involved in the captioned petition.

### **Hearing Dated 11.8.2023**

11. During the course of the hearing, learned counsels for the Petitioner and Respondents made their respective detailed submissions and concluded their arguments on the issue of jurisdiction/ admissibility of the matter. Based on the request of the learned counsels for the parties, the Commission permitted the parties

to file their respective written submissions, if any. Pursuant to the liberty granted by the Commission vide Record of Proceeding for the hearing dated 11.8.2023, the Respondent TANGEDCO and the Petitioner have submitted their respective written submissions and reiterated the submissions made in the Petitions and replies and rejoinders and the same are not repeated herein for the brevity.

### **Analysis and Decision**

12. We have considered the submissions of the Petitioner and Respondents and perused the documents available on record. The issue that arises for consideration at this stage is whether this Commission has jurisdiction to deal with the instant Petitions under Section 79(1), particularly, under Section 79(1)(b) read with Section 79 (1)(f) of the Act in view of the objections raised by Respondent, TANGEDCO.

13. The Petitioner has submitted that this Commission has the necessary jurisdiction to entertain the present Petition and to provide the reliefs as sought in the Petition. According to the Petitioner, it has arrangements for the generation and sale of power in more than one State inasmuch as it has a long-term PPA with TANGEDCO, and it has also entered into various contracts/agreements for the sale of power from the Petitioner`s generating station. Further, the Petitioner placed on record the Commission`s order dated 31.5.2021 in Petition No. 380/MP/2018 (IL&FS Tamil Nadu Power Co. Ltd. v. TANGEDCO and Anr.). The Petitioner has submitted that in an order dated 31.5.2021, this Commission has already held that the generating station of the Petitioner has a composite scheme of generation & supply in more than one State, and this Commission has the jurisdiction with respect to the Petitioner`s generating station. Furthermore, the Commission has acknowledged the

Pilot Scheme under which PAPP has been signed by its nature is an inter-State scheme of generation and sale of power. Therefore, this Commission has jurisdiction to entertain the present Petition.

14. The Petitioner has placed on record the following agreements/ arrangements which indicated the generation and sale of power in more than one State, thereby constituting a composite scheme qua the generating station of the Petitioner:

S. No.	PPA	DISCOM	Period	Quantum
1.	Long-term PPA dated 12.12.2013	TANGEDCO (Bilateral)	1.6.2014 to 30.9.2028 (15 years)	540 MW
2.	PAPP dated 26.10.2018	TANGEDCO through PTC India Limited (Pilot Medium Term Scheme/ Deemed Inter-State as per 351 MP & 380 MP of 2018)	1.4.2019 to 31.3.2022	550MW
3.	LOA dated 08.04.2022	TANGEDCO (through Manikaran Power Limited)	10.4.2022 to 20.5.2022	300 MW
4.	LOA dated 28.09.2022	KSEB (through NVVN)	1.3.2023 to 31.3.2023	100 MW
5.	PPA dated 29.03.2022	HPPC (through Subheksha Advisors Pvt. Ltd. (trader))	1.6.2022 to 30.9.2022	300 MW
6.	PPA dated 12.03.2019	PTC India Ltd. (for sale on Power Exchanges in Day Ahead as well as in Term Ahead Market)	Till March, 2023	Up to 1114 MW (Based on the surplus quantum available.

15. According to the Petitioner, it has arrangements for the generation and sale of power in more than one State inasmuch as it has a long-term PPA with TANGEDCO, and it has also entered into agreements/ arrangements with the Haryana Power Purchase Centre, Kerala State Electricity Board Ltd., PTC India Limited. Further, the Petitioner has submitted that during the period starting from May, 2022 to December 2022, the Petitioner scheduled the energy to the Power Exchange in terms of the

directions issued by the Ministry of Power under Section 11 of the Act. It is to be noted that selling power under Section 11 is a deemed inter-State transaction, as the same is a Central Scheme. Therefore, in view of the fact that the Petitioner has agreements/ arrangements for the generation and sale of power in more than one State, the Commission has jurisdiction to entertain the present Petition.

16. Respondent, TANGEDCO has submitted that in the order dated 31.5.2021 in Petition No. 380/MP/2018, as relied upon by the Petitioner, the Commission had only rejected the contention of TANGEDCO that the Petitioner did not have any long-term/medium-term PPAs to constitute composite scheme. However, presently, the generating station of the Petitioner does not have arrangements of any kind for the generation and sale of electricity in any State apart from the State of Tamil Nadu.

17. Respondent TANGEDCO, while placing the reliance on the findings of the Energy Watchdog (*supra*), has submitted that the Electricity Commissions under the Act exercise jurisdiction over the PPAs/ arrangements under which disputes have arisen and not the generating company. The composite scheme has to be construed in the context of the PPA, which is the subject matter of adjudication. The State Commissions exercise jurisdiction where the generation and sale of power take place in one State, and this Commission exercises jurisdiction if such generation and sale of power is inter-State. The incidence which determines whether the State Commission or this Commission exercises jurisdiction is the incidence of generation and sale of power over which jurisdiction is to be exercised. It is the PPA which is governed by either the State Commission or the Central Commission. Therefore, it is

amply clear that what this Commission exercises jurisdiction over is the PPA under which disputes have arisen and not the generator.

18. Respondent, PTCIL submitted that the jurisdiction of this Commission is attracted when there is generation and sale of electricity in more than one State.

19. We have considered the submissions of the parties and perused documents available on the record. According to the Petitioner, since in terms of Section 79(1)(b) of the Act, it has a composite scheme for the generation and sale of electricity in more than one State, this Commission has the jurisdiction to adjudicate the disputes in question. The Respondent, TANGEDCO, has submitted that the composite scheme, as specified under Section 79(1)(b) of the Act, means a scheme by a generating company for the generation and sale of electricity in more than one State. According to TANGEDCO, the generating station of the Petitioner does not have arrangements of any kind for the generation and sale of electricity in any State apart from the State of Tamil Nadu.

20. The relevant extract of Section 79(1) of the Act, which provides for the functions of the Central Commission, reads as under:

*“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;*

\*\*\*\*\*”

*(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;”*

21. Under Section 79(1)(b) of the Act, this Commission is entrusted with the function of regulating the tariff of generating companies if such generating companies enter into or otherwise have a composite scheme for the generation and sale of electricity in more than one State. Moreover, under Section 79(1)(f) of the Act, this Commission is entrusted with the function of adjudication upon the disputes involving the generating companies or transmission licensee with regard to the matter connected with clauses (a) to (d). Hence, the dispute involving generating companies, which enter into or otherwise have a composite scheme for the generation and sale of electricity in more than one State would fall within the jurisdiction of this Commission.

22. The aspect of ‘composite scheme’ under Section 79(1)(b) of the Act has been dealt with, in detail, by the Hon’ble Supreme Court in the case of Energy Watchdog v. CERC, [reported as (2017) 14 SCC 80]. The relevant extract of the said judgment is reproduced 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 itself in Subsections (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.*

23. *This also follows from the dictionary meaning [(Mc-Graw-Hill Dictionary of Scientific and Technical Terms (6th Edition), and P.Ramanatha Aiyar's Advanced Law Lexicon (3rd Edition)] of the expression "composite":*

(a) "Composite" – "A re-recording consisting of at least two elements. A material that results when two or more materials, each having its own, usually different characteristics, are combined, giving useful properties for specific applications. Also known as composite material.

(b) 'Composite character'-A character that is produced by two or more characters one on top of the other.

(c) 'Composite unit'-A unit made of diverse elements.

*The aforesaid dictionary definitions lead to the conclusion that the expression 'composite' only means 'consisting of at least two elements'. In the context of the present case, generation and sale being in more than one State, this could be referred to as 'composite'.*

24. *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.*

25. *The aforesaid dictionary definitions lead to the conclusion that the expression 'composite' only means 'consisting of at least two elements'. In the context of the present case, generation and sale being in more than one State, this could be referred to as 'composite'.*

*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.*

\*\*\*\*

28. *Another important facet of dealing with this argument is that the Tariff Policy dated 6-6-2006 is the statutory policy which is enunciated under Section 3 of the*

*Electricity Act. The amendment of 28-1-2016 throws considerable light on the expression 'composite scheme', which has been defined for the first time as follows:*

*"5.11 (j) Composite Scheme: Clause (b) of Section 79(1) of the Act provides that Central Commission shall regulate the tariff of generating company, if such generating company enters into or otherwise have a composite scheme for generation and sale of electricity in more than one State.*

*Explanation.-The composite scheme as specified under Section 79(1) of the Act shall mean a scheme by a generating company for generation and sale of electricity in more than one State, having signed long-term or medium-term PPA prior to the date of commercial operation of the project (the COD of the last unit of the project will be deemed to be the date of commercial operation of the project) for sale of at least 10% of the capacity of the project to a distribution licensee outside the State in which such project is located."*

*29. That this definition is an important aid to the construction of Section 79(1)(b) cannot be doubted and, according to us, correctly brings out the meaning of this expression as meaning nothing more than a scheme by a generating company for generation and sale of electricity in more than one State. Section 64(5) has been relied upon by the appellant as an indicator that the State Commission has jurisdiction even in cases where tariff for inter-State supply is involved. This provision begins with a non obstante clause which would indicate that in all cases involving inter-State supply, transmission, or wheeling of electricity, the Central Commission alone has jurisdiction. In fact this further supports the case of the respondents. Section 64(5) can only apply if, the jurisdiction otherwise being with the Central Commission alone, by application of the parties concerned, jurisdiction is to be given to the State Commission having jurisdiction in respect of the licensee who intends to distribute and make payment for electricity. We, therefore, hold that the Central Commission had the necessary jurisdiction to embark upon the issues raised in the present cases."*

23. *In the above judgment, the Hon`ble Supreme Court has clearly held that the expression 'composite scheme' used in Section 79(1)(b) of the Act does not have some special meaning, and it is enough that generating companies have, in any manner, a scheme for generation and sale of electricity in more than one State. It has also been clearly held that the moment the generation and sale take place in more than one State, the jurisdiction of the Central Commission will be attracted. While returning the aforesaid decision, the Hon`ble Supreme Court has duly considered the provisions of the Tariff Policy, 2016, and further held that the meaning of the word 'composite scheme' is nothing more than a scheme by a generating company for generation and sale of electricity in more than one State."*

It is also apparent from a bare perusal of the phrase **"the enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State"**; that the composite scheme has a wider meaning i.e. even if



the generator has not entered into but otherwise has a scheme for generation and sale of electricity in more than one state, it is covered under Section 79(1)(b) of the Act. In the instant case, the generator has from time to time, entered into for such supply and sale of electricity in more than one State. Thus, the generator, even if not having such a subsisting agreement, it has otherwise a scheme for sale in more than one State.

24. From the above findings of the Hon`ble Supreme Court that it is enough that generating companies have, in any manner, a scheme for the generation and sale of electricity which must be in more than one State, it can be further inferred that the scheme/ arrangement to generate and sale power in more than one state, cannot be construed in a limited sense and that the same needs to be liberally construed. As long as the generating company has PPAs/ any other arrangements for the generation and sale of power in more than one State, this Commission has exclusive jurisdiction in the matter of regulation of tariff of a generating company, in terms of the decision of the Hon`ble Supreme Court in the Energy Watchdog Case.

25. Further, in view of the principles laid down in the Energy Watchdog Judgment, the Commission, in its order dated 31.5.2021 in Petition No. 380/MP/2018, in the matter of Petitioner herein i.e. IL&FS Tamil Nadu Power Company Ltd. v. TANGEDCO & Anr., also dealt with TANGEDCO`s objection of the jurisdiction of this Commission over the Petitioner`s Project and overruled such objections. In

26. Moreover, in order dated 31.5.2021, which has not been challenged or overruled so far, the Commission has also categorically rejected the contentions of

TANGEDCO to link composite scheme with long-term or medium-term PPA or the requirement of having a composite scheme at the time of filing of the Petition since it was also an effort to link composite scheme with term of the PPA. Hence, similar arguments as again raised by TANGEDCO in the present case relating to the short-term nature of the arrangement of inter-State, non-existence of the long-term or medium-term PPAs prior to commercial operation of the Project etc., are not sustainable.

27. In the present case, the Petitioner/ ITPCL has brought on record the long-term PPA with TANGEDCO and other agreements/ arrangements/ schemes executed with Haryana Power Purchase Centre, Kerala State Electricity Board Ltd., PTC India Ltd. etc. for supply of power outside the State of Tamil Nadu, at present and in the past, which demonstrates that the Petitioner has a scheme for generation and sale in more than one State. In light of the aforesaid arrangements in respect of the Petitioner's generating station, we are of the view that, since the Energy Watchdog judgment of the Hon'ble Supreme Court does not establish any qualifying criteria with regard to the term of the contract for a scheme to be classified as "composite scheme", therefore, the Petitioner meets the criteria of generation and sale of power to more than one State under Section 79(1)(b) of the Act.

28. TANGEDCO has further contended that the test of the 'composite scheme' has to be applied qua each PPA in dispute and not in relation to the generating company. In terms of Section 79 (1) (b) of the Act, which categorically provides that for this Commission to have jurisdiction, the generating companies must enter into or otherwise have a composite scheme for the generation and sale of electricity in more

than one State. Therefore, the test of the 'composite scheme' has to be satisfied by the 'generating company'. The expression used in Section 79(1)(b) i.e., 'otherwise', allows 'generating companies' to qualify the test of 'composite scheme' as provided under the Act, in a manner that all inter-State transactions/ arrangements, irrespective of the time period i.e., short/ medium/ long-term executed with Power Exchange or third party, are qualified under the test of 'composite scheme'. The Hon'ble Supreme Court, in para 26 of the Energy Watchdog judgment, has categorically held that for having a composite scheme, it is enough that "generating companies" have, in any manner, a scheme for the generation and sale of electricity which must be in more than one State. Hence, it is clear that the test of the composite scheme has to be determined vis-à-vis the 'generating company' and not the PPA. In our view, once we have already decided in our order dated 30.5.2021 in Petition No. 380/MP/2021 that this Commission is the Appropriate Commission to decide the case of the Petitioner, there appears no case for revisiting the question.

29. Thus, in the light of the above and in terms of the Energy Watchdog Case, we are of the considered view that the Petitioner has a "composite scheme" and, therefore, this Commission has the jurisdiction to adjudicate upon the disputes raised in the present Petition in terms of Section 79(1)(b) read with Section 79(1)(f) of the Act

30. It is clarified that this order is limited to a determination of the 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. Accordingly, the parties are directed to complete the pleadings on merit, if any, within

eight weeks. No further extension of time for completion of pleadings shall be permitted.

31. The Petitions shall be listed for the hearing on **10.4.2024**.

**Sd/-**  
**(P.K. Singh)**  
**Member**

**sd/-**  
**(Arun Goyal)**  
**Member**

**sd/-**  
**(I.S. Jha)**  
**Member**

**sd/-**  
**(Jishnu Barua)**  
**Chairperson**

