BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Petition No:	**58 of 2026**
Date of Institution:	31.03.2026
Arguments Heard on:	10.04.2026
Decided on:	**18.04.2026**

CORAM

Yashwant Singh Chogal
MEMBER (Law)-cum-CHAIRMAN

Shashi Kant Joshi
MEMBER

In the matter of:-

The HP State Electricity Board Limited, through its
Chief Engineer (System Operation),
Vidyut Bhawan, Shimla, H.P-171004. **………Petitioner**

Versus

The Directorate of Energy, through its
Deputy Chief Engineer,
M.C. Parking Building, 2nd Floor,
Near Tutikandi Crossing,
Shimla, H.P.-171005. **……….Respondent No. 1**

The Satluj Jal Vidyut Nigam Limited, through its
Chairman-cum-Managing Director,
Shakti Sadan, Corporate Office Complex,
Shana, Shimla, HP-171006. **……….Respondent No. 2**

The Consumer Representative
Sh. Kameshwar Singh Dhaulta,
Registered Office at House No. A-62,
Phase-1, Sector-2, Main Road,

New Shimla, HP-171009. **……….Respondent No. 3**

Petition under Sections 86(1)(b) of the Electricity Act, 2003 read with Regulation 56 and 57 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 for the approval of Power Purchase Agreement to be executed by the Himachal Pradesh State Electricity Board Limited with the Directorate of Energy in respect of Equity power from Nathpa Jhakri and Rampur Hydro Electric Projects i.e. 330 MW and 107.53 MW respectively.

Present:-

Sh. Kamlesh Saklani, Authorised Representative for the Petitioner.
Sh. Arvind Kumar, Legal Consultant for the Respondent No. 1.
Ms. Sneh Bhimta, Ld. Counsel for the Respondent No. 2.
None for the Respondent No. 4.

ORDER

This Petition has been filed by the Himachal Pradesh State Electricity Board Limited (the Petitioner/ HPSEBL for short) under Section 86(1)(b) of the Electricity Act, 2003 (Act for short) read with Regulations 56 and 57 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 seeking approval of PPA in respect of Equity Power of the Government of Himachal Pradesh (GoHP for short) from Nathpa

Jhakri and Rampur Hydro Electric Projects (HEPs for short) i.e. 330 MW and 107.53 MW respectively.

2. According to the Petitioner, the GoHP re-constituted the Himachal Pradesh Energy Management Center as a single entity for management and trading of power in the State of Himachal Pradesh as part of the Directorate of Energy (DoE), MPP and Power Department vide notification dated 09.05.2025 (Annexure-P1). Further, the GoHP constituted an Empowered Committee for taking comprehensive decisions relating to power pricing and overall power management and other related matters on behalf of the HPSEBL and the DoE vide notification dated 25.07.2025 (Annexure-P2).

3. According to the Petitioner, the GoHP vide notification dated 08.01.2026 (Annexure P-3) notified the reallocation/ return on equity power to the extent of its equity share i.e. 330 MW and 107.53 MW respectively from Nathpa Jhakri (1500 MW) and Rampur (412 MW) HEPs for further sale through DoE w.e.f. 01.04.2025 which power was earlier being utilized by the Petitioner/ HPSEBL for meeting its demand. Consequent upon withdrawal of equity power by the GoHP from the above HEPs, the HPSEBL shared various revised

arrangements for the disposal of power and procurement proposal for FY 2026-27 with the DoE for initiating the process in line with notification dated 09.05.2025 vide letter dated 31.01.2026 (Annexure-P4) but, the Director, DoE (Respondent No. 1) asked the HPSEBL to float the disposal/ procurement/ Banking tenders for FY 2026-27 vide letter dated 17.02.2026 (Annexure-P5). Thus, the HPSEBL floated the banking, advance banking and procurement tenders but no bids for advance banking was gathered and only one bidder participated in the normal banking tender. The dates of tenders were extended thrice and the due date for opening the same is 31.03.2026. Further, in the procurement tender, the bidder for 1893 MUs of RTC power has been short listed after e-reverse auction. The weighted average rate discovered after e-RA is around Rs. 6.05 per unit which is under consideration and shall be brought up before the Commission for approval.

4. According to the Petitioner, the matter for diversion of equity power from Nathpa Jhakri and Rampur HEPs for the period 01.04.2026 to 15.05.2026 has been taken up with the GoHP at CERC/ negotiated tariff vide letter dated 17.03.2026 (Annexure-P6),

however, the Empowered Committee during the meeting dated 21.03.2026, inter alia, has decided as under:-

a) To sale equity power from Nathpa Jhakri and Rampur HEPs to HSPEBL through DoE for a period of one year, i.e. upto 31.03.2027 at a tariff of Rs. 5.92 per unit (Rs. 5.50 + Rs. 0.42 on account of GNA sharing) at ex-bus.
b) The Directorate of Energy (DoE) shall raise energy bills to the HPSEBL at the above rate on monthly basis. At the time of reconciliation on quarterly basis, adjustment on account of 50% actual GNA charges shall be made against Rs. 0.42 per unit component.
c) The HPSEBL shall be responsible for maintaining a Letter of Credit (LC) with SJVN, payment of transmission/ GNA charges, and settlement of bills for equity power raised by SJVN so as to have smooth transition of power.
d) The HSPEBL shall ensure timely payments to SJVN to avail a 1.5% rebate on energy bills, and the rebate amount so availed shall be passed onto the DoE on a monthly basis along with the energy bill payments.
e) The HPSEBL shall obtain necessary regulatory approvals, including approval of tariff/ rate from HPERC, wherever required, for purchase of power from the DoE.
f) Approval of the State Government is required, as the decision regarding reallocation of equity power from the HPSEBL to the Directorate of Energy (DoE) has been taken at the level of the Council of Ministers (CMM).
g) Considering the operational aspects involved, including sale of power directly, or any other suitable mechanism, the Director (Energy) is authorized to take all necessary follow-up actions.

The copy of the Minutes of Meeting of the Empowered Committee has been annexed as Annexure P-7.

5. According to the HPSEBL, the decision of the empowered committee dated 21.03.2026 such as opening of LC with the Satluj Jal Vidyut Nigam Limited by the HPSEBL, availing of full rebate and pass on the same to the DoE, Ex-bus charges plus additional GNA charges etc. are not in consonance with the prevailing regulations, rules and procedure. Further, it is in shortage of power only in the month of April and in the month of May upto 15.05.2026 and also in summer, monsoon and winter months. Further, the Ministry of Power (MoP) Government of India (GoI) has allocated 115.78 MW power from the pool of unallocated quota of Central Government Stations (CGSs) vide allocation order dated 27.03.2026 for the month of April, 2026. Therefore, in view of the prevailing scenario, the HPSEBL has requested the DoE to allocate/ divert GoHP equity power only in the months of April and May, 2026 in the best interest of the consumers of the State vide letter dated 28.03.2026.

6. In the circumstances, the draft PPA to be executed between the parties for the sale of power by the DoE to the HPSEBL from Nathpa

Jhakri (330 MW) and Rampur (107.53 MW) HEPs has been prepared and submitted for approval.

REPLY OF THE RESPONDENTS

7. During the course of the proceedings, the Commission gathered that the Satluj Jal Vidyut Nigam Limited (SJVNL for short) and the Consumer Representative were the necessary parties for the disposal of the Petition and accordingly, the Commission vide order dated 01.04.2026 impleaded the SJVNL and the Consumer Representative as Respondents No. 2 and 3 to the Petition and directed them to file reply.

8. The Petition has been resisted by the Respondents No. 1 and 2 by filing separate replies.

REPLY OF RESPONDENT NO. 1

9. The Respondent No. 1/ DoE in its reply to the Petition has submitted by way of preliminary submissions as under:-

> *"**1.** The GoHP notification dated 08.01.2026 **(Annexure P-1)** vide which the Governor, Himachal Pradesh has notified the reallocation/return of equity power from SJVNL's Nathpa Jhakri Hydro Power Station (NJHPS) @25% (i.e. 22% of total generation) and Rampur Hydro Power Station (RHPS) @30% (i.e. 26.1 % of total generation) projects from Himachal Pradesh State Electricity Board Limited to the Government of Himachal Pradesh for further*

sale through the Directorate of Energy, GoHP with effect from 01.04.2026 as under:-

(i) The Directorate of Energy, GoHP shall handle this equity power from Nathpa Jhakri Hydro Power Station (NJHPS) & Rampur Hydro Power Station (RHPS) and pay all dues directly to SJVNL for the power utilized/scheduled. However, for the period prior to the issuance of this notification, all amounts, charges, Late Payment Surcharge (LPS), and related liabilities shall continue to remain with Himachal Pradesh State Electricity Board Limited (HPSEBL).

(ii) The payment of tariff bills, GNA charges, SLDC charges, and all other applicable liabilities shall be made through the State Treasury under the appropriate budgetary provision of the Directorate of Energy. This arrangement is to ensure that all dues are paid in a timely manner to avoid levy of Late Payment Surcharge (LPS).

(iii) HPSEBL shall continue to avail free power entitlement of GoHP in respect of projects directly connected with Himachal Pradesh State Electricity Board Limited system for all times to come.

(iv) The Directorate of Energy, shall finalize necessary arrangements in consultation with Finance Department, HPSEBL, HPSLDC NRLDC, CTUIL and SJVNL and regulatory concurrence, as required for smooth operational transition.

2. *GoHP vide notification dated 25.07.2025* ***(Annexure P-2)*** *had constituted a Empowered Committee under the Chairmanship of Administrative Secretary (Power), GoHP for taking comprehensive decision related to power pricing and overall power management, including trading on Power Exchanges, Bilateral transactions, Banking arrangements and other related matters on behalf of HPSEBL, HPPCL and DoE. Also, in the absence of regular meetings of Empowered Committee, the Director (Energy) was authorized to take necessary decision which may subsequently be placed before the Empowered Committee for ratification.*

3. *The Directorate of Energy, after assessing the availability of power from various sources and forecasting the demand for the State, prepared the Anticipated Power Supply Position (APSP) for the year 2026–27. Based on the APSP, HPSEBL was requested to initiate the process for banking arrangements, sale of surplus power during the summer season, and procurement of power to meet the anticipated deficit during the lean season.*

These requests were conveyed through emails dated 13.10.2025, 07.11.2025 and 20.11.2025, and subsequently vide Letter No. 8704–05 dated 19.12.2025 and Letter No. GoHP/Sale of Power/HPEMC/2025-9545-47 dated 14.01.2026.

Abstract of Power Supply Position for April 2026								
Month	***Days***	***Particulars***	***Hours (MW)***					***Energy (MU)***
			0-6	***06-09***	***09-18***	***18-22***	***22-24***	
Apr-26	***01.04.2026 to 07.04.2026***	***Average Demand (MW)***	*1205*	*1750*	*1617*	*1482*	*1270*	*248.5*
		Average Firm Availability (MW)	*636*	*1355*	*1149*	*1238*	*935*	*175.3*
		Surplus (+)/ Deficit (-)	*-569*	*-395*	*-468*	*-244*	*-336*	*-73.2*
		RTC						*0*
		Day						*0*
		Night						*0*
		Net Surplus (+)/ Deficit(-)	***-569***	***-395***	***-468***	***-244***	***-336***	***-73.2***
	08.04.2026 to 15.04.2026	***Average Demand (MW)***	*1263*	*1703*	*1644*	*1472*	*1316*	*288*
		Average Firm Availability (MW)	*750*	*1407*	*1282*	*1385*	*1073*	*223.5*
		Surplus (+)/ Deficit (-)	*-513*	*-296*	*-362*	*-87*	*-244*	*-64.5*

		RTC						*0*
		Day						*0*
		Night						*0*
		Net Surplus (+)/ Deficit (-)	***-513***	***-296***	***-362***	***-87***	***-244***	***-64.5***
	16.04.2026 to 22.04.2026	***Average Demand (MW)***	*1351*	*1791*	*1666*	*1551*	*1414*	*262.5*
		Average Firm Availability (MW)	*910*	*1579*	*1415*	*1495*	*1328*	*221*
		Surplus (+)/ Deficit (-)	*-441*	*-213*	*-251*	*-55*	*-87*	*-42*
		RTC						*0*
		Day						*0*
		Night						*0*
		Net Surplus (+)/ Deficit (-)	***-441***	***-213***	***-251***	***-55***	***-87***	***-42***
	23.04.2026 to 30.04.2026	***Average Demand (MW)***	*1358*	*1776*	*1577*	*1603*	*1460*	*296*
		Average Firm Availability (MW)	*1021*	*1620*	*1471*	*1594*	*1478*	*268*
		Surplus (+)/ Deficit (-)	*-337*	*-155*	*-106*	*-9*	*17*	*-28*
		RTC						*0*
		Day						*0*
		Night						*0*

		Net Surplus (+)/ Deficit (-)	***-337***	***-155***	***-106***	***-9***	***17***	***-28***	***-207***

4. *The Empowered Committee meeting was held on 31.01.2026, it was decided that the tendering process for procurement, sale and banking of power shall continue to be undertaken by HPSEBL.*

5. *In compliance with the above decision, HPSEBL floated tenders on 23.02.2026 and 24.02.2026 for banking arrangements and procurement of power. It is pertinent to mention here that the Advance Banking Tender for the month of April 2026 was floated by HPSEBL, however, due to non-participation by prospective bidders, the tender was extended.*

6. *In view of the extension of the tender, the Directorate of Energy (DoE), vide Letter No. 11736 dated 12.03.2026, requested HPSEBL to obtain necessary approvals from the HPERC and its management for the Approved Short-Term Power Procurement (APSP) for the month of April 2026, so as to facilitate procurement of power through the Long Duration Contract (LDC) route.*

7. *Subsequently, HPSEBL, vide email dated 13.03.2026, conveyed its consent for initiating procurement through the LDC mechanism in line with the above communication. Accordingly, the LDC process was initiated on both power exchanges, and the outcome of the bidding/e-Reverse Auction (e-RA) is summarized below:*

RTC Power (00:00–24:00 hrs)

Period	***Requirement***	***PXIL Offer***	***IEX Offer***
01.04.2026–30.04.2026	*275 MW*	*8 MW @ ₹8.21/unit*	*5 MW @ ₹6.70/unit*

It was observed that:

- *The discovered rates were significantly higher than the ceiling price specified by HPERC for short-term power procurement for FY 2025–26.*
- *The quantum offered was substantially lower than the assessed requirement of 275 MW.*
- *However, the discovered rate of ₹6.70/unit at IEX was comparatively lower than the rates observed in previous e-Reverse Auction results.*

8. *Further, prevailing trends in the Day Ahead Market (DAM) indicated elevated prices, with rates reaching up to ₹10 per unit during 17:00–24:00 hrs, 00:00–*

02:00 hrs and 05:00–08:00 hrs. Also, e-RA price discovery for April 2026 indicated the following indicative bands:

- ***RTC Power:*** *₹6.0 – ₹7.5 per unit*
- ***Peak / Night Power:*** *₹8 – ₹10 per unit*

9. *The current market trends indicate significantly high clearing prices, often reaching the maximum ceiling for extended hours, due to factors such as global geopolitical developments impacting the supply of gas, oil and coal, coupled with increased demand arising from the early onset of summer and prevailing dry spell conditions. The non-arrangement of adequate power in advance may lead to unavoidable financial exposure on account of procurement at higher rates in the Real-Time Market. In addition, under certain peak demand conditions, in the event that power is not available even through bidding at higher rates, the situation may necessitate load shedding to maintain grid security and system balance.*

10. *HPSEBL, vide its letter dated 17.03.2026* ***(Annexure P-6)*** *has requested diversion of equity power from Nathpa Jhakri and Rampur HEPs to HPSEBL and it was stated as under:*

i. *For the period from 01.04.2026 to 15.05.2026 at tariff determined by the Central Electricity Regulatory Commission or at mutually negotiated rates.*

ii. *There is an anticipated power deficit during April 2026 and the first fortnight of May 2026.*

iii. *For meeting the anticipated power deficit during April & May 2026, the tenders were floated but there was nil participation in the advance tender for power procurement.*

iv. *It has been further stated that, despite efforts made through various available avenues to procure power to bridge the deficit, the availability of power in the market remains uncertain, as also reflected from the inadequate response to the tenders floated by HPSEBL for mitigation of power shortages.*

v. *Further, HPSEBL also requested diversion of free power from all Hydro Power Stations where GoHP has entitlement, including Nathpa Jhakri, Rampur, Baira Siul, Chamera-I, Chamera-II, Chamera-III, Koldam, Parbati-III and Sawra Kuddu HPS, to HPSEBL for the period from 01.04.2026 to 15.05.2026 at rates approved by the Himachal Pradesh Electricity Regulatory Commission.*

vi. *Also informed that no bidder has participated in the tender for advance banking floated on 24.02.2026, despite the same being extended three time.*

vii. *Also pursued the matter of reallocation of its surrendered State of Region share (SOR share) of 94.87 MW with the Ministry of Power, which is due for restoration to the State w.e.f. 01.11.2024, but a decision was awaited.*

viii. *NTPC Limited was also requested for allocation of 68 MW thermal power from the common pool (created/to be created) against its surrendered share in Anta, Auraiya, Dadri and Unchahar Thermal Power Stations; however, no response has been received so far.*

ix. *The tenders floated under Long Duration Contracts (LDC), only a very small quantum (about 5 MW against 275 MW) was quoted by traders, and that too at substantially higher rates.*

x. *With the procurement of equity power by HPSEBL and in case HPSEBL opts for advance banking, the same can be scheduled during the months of April and May 2026, as per the tentative plan outlined below:*

April 2026 (Advance Banking):

Week	***Quantum (MW)***	***Energy (MU)***
Week–1	*175*	*29.4*
Week–2	*175*	*33.6*
Week–3	*175*	*29.4*
Week–4	*175*	*33.6*
Total	*—*	***126.0 MU***

May 2026 (Return Banking):

Week	***Quantum (MW)***	***Energy (MU)***
Week–1	*0*	*0*
Week–2	*(-150)*	*(-28.8)*
Week–3	*(-200)*	*(-33.6)*
Week–4	*(-300)*	*(-64.8)*
Total	*—*	*(-127.2 MU)*

xi. *It is observed that the advance energy availed during April 2026 (126.0 MU) is broadly balanced by the return obligation in May 2026 (127.2 MU), subject to minor variation on account of scheduling and operational factors.*

- xii. *Since procurement through the LDC mechanism and advance banking has not materialized, reliance on the Real-Time Market may not be a prudent option, particularly in view of prevailing high and volatile market rates.*
- xiii. *In case allocation from the unallocated quota is granted, the remaining requirement would need to be met through providing of equity power from NJHPS & RHPS and rest from procurement from the Real-Time Market (RTM) at prevailing market rates, which are expected to be on the higher side.*
- xiv. *In the event that allocation from the unallocated pool does not materialize, the following measures may be considered to ensure reliability of power supply in the State.*
- xv. *Reallocation/diversion of equity power to HPSEBL up to 31.05.2026, subject to HPSEBL undertaking advance banking of power during April with corresponding return by May, 2026. HPSEBL shall also review and suitably modify its banking arrangements/tender to operationalize the same in a timely manner.*
- xvi. *The applicable rates and mode of payment for the purchase of equity power shall be determined keeping in view the prevailing market conditions.*
- xvii. *That the HPSEBL has floated the banking, advance banking and procurement tenders, however, there is no participation in advance banking tender and only one bidder has participated in the normal banking tender. These tenders have been extended three times and now the due date to open the same is 31.03.2026. In the procurement tender, the bidders for 1893 MUs of RTC power have been short listed after e-Reverse Auction. The weighted average rate discovered after e-RA was around Rs. 6.05/unit.*

11. *That the matter for providing of equity power from Nathpa Jhakri and Rampur HEPs for the period 01,04,2026 to 15.05.2026 was taken up with the GoHP at CERC/ negotiated tariff vide letter dated 17.03.2026.*

12. *That the Empowered committee during the meeting held on 21.03.2026, inter alia, has decided that :*

- ***a)*** *To sale equity power from Nathpa Jhakri and Rampur HEPs to HPSEBL through DoE for a period of one year, i.e., up to 31.03.2027, at a tariff of Rs. 5.92 per unit (Rs.5.50 + Rs. 0.42 on account of GNA sharing) at ex-bus.*

b) *The Directorate of Energy (DoE) shall raise energy bills to HPSEBL at the above rate on monthly basis. At the time of reconciliation on quarterly basis, adjustment on account of 50% actual GNA charges shall be made against the Rs.0.42 per unit component.*

c) *HPSEBL shall be responsible for maintaining a Letter of Credit (LC) with SJVN, payment of transmission/GNA charges, and settlement of bills for equity power raised by SJVN so as to have smooth transition of power.*

d) *HPSEBL shall ensure timely payments to SJVN to avail a 1.5% rebate on energy bills, and the rebate amount so availed shall be passed on to DoE on a monthly basis along with the energy bill payments.*

e) *HPSEBL shall obtain necessary regulatory approvals, including approval of tariff/rate from HPERC, wherever required, for purchase of power from the DoE.*

f) *Approval of the State Government is required, as the decision regarding reallocation of equity power from HPSEBL to the Directorate of Energy (DoE) has been taken at the level of the Council of Ministers (CMM).*

g) *Considering the operational aspects involved, including sale of power directly, or any other suitable mechanism, the Director (Energy) is authorized to take all necessary follow-up actions.*

13. *In view of the Empowered Committee decision, the sale rate for the GoHP Equity Power in NJHPS (quantum 330 MW) & RHPS (quantum 107.53 MW) has been mutually agreed between HPSEBL and GoHP to be Rs. 5.50 & Rs. 0.42 paisa towards reimbursement of GNA charges for the entire GoHP equity power in SJVNL projects.*

14. *In the event that the proposed arrangement for procurement of GoHP equity power is not operationalized, the State is likely to face a significant shortfall in power availability, particularly during critical peak hours. The APSP assessment and recent tender outcomes indicate limited availability of power through market mechanisms, with negligible participation in advance banking and inadequate response under LDC and short-term procurement. This, coupled with prevailing high and volatile prices in the Day Ahead and Real-Time Markets, would constrain HPSEBL's ability to secure adequate power, resulting in a demand–supply gap.*

15. *In such circumstances, the utility may be compelled to resort to load shedding and scheduled power cuts, especially during peak demand periods, to maintain grid stability. Further, reliance on costly real-time market purchases would not only impose a substantial financial burden but also fail to ensure assured availability of power, thereby adversely affecting all consumer categories and undermining the obligation of uninterrupted supply.*

16. *In view of the facts and circumstances elaborated hereinabove, it is respectfully submitted that the proposed arrangement for procurement of GoHP equity power from Nathpa Jhakri and Rampur Hydro Power Stations through the Directorate of Energy is a prudent, necessary, and cost-effective measure to address the imminent power deficit in the State. The arrangement not only ensures availability of reliable hydro power during the critical period but also safeguards the financial interests of the utility by mitigating exposure to highly volatile and elevated market prices prevailing in the power exchanges and short-term procurement avenues.*

17. *The Petitioner has demonstrated that despite undertaking all possible measures, including floating of tenders for banking and procurement, participation in Long Duration Contracts, and exploring alternative sources such as central allocations and market mechanisms, the availability of adequate power at reasonable rates remains constrained. In such a scenario, the sourcing of equity power at the mutually agreed tariff provides a viable and balanced solution to maintain grid security, avoid load shedding, and ensure continuity of supply to consumers across all categories.*

18. *It is further submitted that the proposed mechanism has been duly deliberated and approved by the Empowered Committee constituted by the Government of Himachal Pradesh, and the terms of supply, billing, and payment have been structured to ensure transparency, financial discipline, and operational feasibility. The arrangement also aligns with the broader objective of optimal utilization of State resources in the larger public interest.*

19. *In light of the above, it is, therefore, most respectfully prayed that the Hon'ble Commission may kindly accord its approval to the procurement of GoHP equity power by HPSEBL through the Directorate of Energy for the period from 01.04.2026 to 31.05.2026, at the agreed tariff between HPSEBL and GoHP on the terms and conditions as specified in the minutes* *of the Empowered Committee meeting dated 21.03.2026. Also, the Hon'ble Commission in the tariff order dated 25.03.2026 on HPSEBL petition for Annual Revenue Requirement approval for FY 2026-27 has approved the cost of power purchase from Open Market @ Rs. 5.50 per unit for FY 2026-27. Therefore, Hon'ble Commission is most respectfully prayed to pass such further orders as may be deemed fit and proper in the interest of justice and ensuring reliable power supply in the State."*

10. On merits, it is submitted that the HPSEBL may be allowed to purchase the GoHP Equity Power share at mutually agreed rate decided in the empowered committee meeting held on 21.03.2026 (Annexure P-7). It is also submitted that withdrawal of Equity power share by the GoHP from the HPSEBL and its further allocation to the DoE vide notification dated 08.01.2026 was communicated to the Commission by the HPSEBL during the 21st State Advisory Committee (SAC) meeting of the Commission held on 27.02.2026, the minutes whereof were circulated vide letter No. HPERC-A04/1/2022-4689-4720 dated 18.03.2026 that in view of the decision of the GoHP to withdraw the equity power, the HPSEBL need to resort to short term PPA to meet power procurement and that the exact quantum/ rate of such purchase cannot be estimated but the average market purchase rate of Rs. 4.56 per unit has been escalated by 20% for arriving at an average rate of Rs. 5.50 per unit

for estimation purpose. The consequences of equity power withdrawal were also highlighted to the Commission as under:-

a. Banking support would be limited to approximately 450 MU.
b. Entire winter deficit would need to be met through short-term purchases.
c. There is a risk of abnormal increase in power purchase cost.
d. Working capital requirements would increase.
e. Reliability concerns and potential load shedding risks may arise.

The Commission, therefore, directed the HPSEBL to undertake scenario based financial analysis and develop mitigation strategies to minimize tariff impact and take up the matter with the State Government giving full scenario of power availability. Accordingly, the matter was taken up by the HPSEBL vide letter dated 17.03.2026 which was deliberated in the Empowered Committee meeting held on 21.03.2026.

11. Further submitted that vide notification dated 25.07.2025, Director Energy, DoE has been authorized to take necessary decision and place before the Empowered Committee for ratification. It is averred that matter of floating Banking, Advance Banking and Power Procurement tenders by the HPSEBL was deliberated in the

Empowered Committee meeting held on 21.03.2026 and decision of sale of GoHP equity power in Nathpa Jhakri and Rampur Hydro Power Stations to the HPSEBL at a mutually agreed rate of Rs. 5.92 per unit was taken.

12. Further averred that for the scheduling of GoHP equity power in the Nathpa Jhakri and Rampur Hydro Power Stations w.e.f. 01.04.2026 to the HPSEBL, the requirement of payment security mechanism in terms of LPS Rules, 2022 framed by the Ministry of Power, Government of India was intimated by the SJVNL. Hence, the same was insisted upon by the Replying Respondent.

REPLY OF RESPONDENT NO. 2

13. The Respondent No. 2/ SJVNL in its reply has submitted that being a Navratana Central Public Sector Enterprise, it is a Joint Venture of the Government of India (GoI) and the GoHP. As per it, the Replying Respondent has entered into a PPA on 31.10.2005 for Nathpa Jhakri Hydro Power Station (1500 MW) with the GoHP and has also entered into a separate PPA with the GoHP on 04.06.2015 in respect of Rampur Hydro Power Station (412 MW). Both the PPAs have been annexed as Annexure R2/1 and Annexure R2/2

respectively. It is averred that as per Clause 6.1 of the PPAs, the tariff charges and its associated terms and conditions for the energy to be supplied by SJVN from the projects shall be as per the Tariff Notifications/ orders/ directions issued/ to be issued by the CERC (Central Electricity Regulatory Commission) from time to time. The PPAs have been signed for a period of 35 years.

14. Further submitted that Clauses 7 and 8 of the PPAs dated 31.10.2005 and 04.06.2015 provide the mechanism for billing and payment and as per said Clauses, the Replying Respondent shall raise monthly bills to the GoHP and the responsibility to maintain LC and settlement of bills lies with the GoHP since the equity power of Replying Respondent is being sold to the GoHP from the aforesaid stations.

15. Further, in the Notification dated 08.01.2026 (Annexure R-3), it has been clarified that the responsibility for *"payment of tariff bills, GNA charges, SLDC charges and all other applicable liabilities shall be made through the State treasury under the appropriate budgetary provision of the Directorate of Energy (HPEMC)".* Therefore, the responsibility for payment of Energy bills, maintenance of LC etc. lies

with the GoHP (DoE) and the rebate as per CERC Regulations shall be given to the GoHP and Late Payment Surcharge shall also be borne by the GoHP.

16. It is also averred that the tariff of the aforesaid stations is being determined as per Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations (CERC Regulations for short). Hence, the GoHP (DoE) shall be responsible for payment of bills, maintenance of LC, availing of rebate and payment of LPS and payment of arrear bills w.e.f. 01.04.2026.

17. On merits, it is submitted that the GoHP notified the reallocation/ return on equity power from the aforesaid stations from the HPSEBL vide notification dated 08.01.2026 for further sale w.e.f. 01.04.2026 that the DoE shall handle the power and pay all dues to the Replying Respondent. Further, the monthly bills in respect of equity power as per the PPAs shall be raised to the GoHP (DoE) and the DoE shall be responsible for payment of arrears as per the tariff of both the power stations and under the CERC Regulations.

18. Also averred that the Replying Respondent reserves it right to challenge the decision of the Empowered Committee in so far as it is

inconsistent with the terms of the PPAs and notification dated 08.01.2026, if need arises in the future.

19. No reply has been filed by the Respondent No. 3.

SUBMISSIONS OF THE PARTIES

20. We have heard Sh. Kamlesh Saklani, Authorised Representative for the Petitioner, Sh. Arvind Kumar, Legal Consultant for the Respondent No. 1 and Ms. Sneh Bhimta, Ld. Counsel for the Respondent No. 2.

21. Sh. Kamlesh Saklani, Authorised Representative for the Petitioner has submitted that the approval of tariff is in the exclusive domain of the Commission and the power procurement as prayed in the application be approved.

22. Sh. Arvind Kumar, Legal Consultant for the Respondent No. 1 has submitted that the decision in the Empowered Committee meeting held on 21.03.2026 to sell the equity power to the HPSEBL was taken in the presence of the representative of the HPSEBL at a tariff of Rs. 5.92 per unit during the months of April and first fortnight of May, 2026 and, therefore, the power procurement of the equity power of Nathpa Jhakri and Rampur HEPs be approved for the

HPSEBL at a mutually agreed tariff of Rs. 5.92 per unit so that reliable power is supplied to the HPSEBL and the application filed by the HPSEBL be allowed.

23. Ms. Sneh Bhimta, Ld. Counsel for the Respondent No. 2 on the other hand has submitted that the tariff has to be in accordance with the tariff notification(s) and directions issued by the CERC from time to time and as also Clauses 6.1 of the PPAs signed by the Respondent No. 2 with the GoHP on 31.10.2005 and 04.06.2015 in respect of Nathpa Jhakri Hydro Station and Rampur Hydro Electric Projects respectively. She has also submitted that in the notification dated 08.01.2026 (Annexure R-3), it has been clarified that the responsibility for "payment of tariff bills, GNA charges, SLDC charges and all other applicable liabilities shall be made through the State treasury under the appropriate budgetary provision of the Directorate of Energy (HPEMC)" and, therefore, the responsibility for payment of Energy bills, maintenance of LC etc. lies with the GoHP (DoE) and the rebate as per CERC Regulations shall be given to the GoHP and Late Payment Surcharge shall also be borne by the GoHP. It is also submitted that the tariff of the aforesaid stations is being determined

as per Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations (CERC Regulations for short) by the CERC from time to time.

POINTS FOR DETERMINATION

24. We have gone through the submissions of Sh. Kamlesh Saklani, Sh. Arvind Kumar and Ms. Sneh Bhimta, and perused the entire record carefully. The following points arise for determination in the Petition:-

Point No. 1: Whether the power procurement of equity power from Nathpa Jhakri (330 MW) and Rampur (107.53 MW) HEPs for the HPSEBL may be allowed on a mutually agreed tariff of Rs. 5.92 per kWh as claimed?

Point No. 2: **Final Order**

25. For the reasons to be recorded hereinafter in writing, our point wise findings are as under:-

Point No. 1: No.

Point No. 2: (Final Order) The Petition dismissed per operative part of the Order.

REASONS FOR FINDINGS

Point No. 1:

26. The Commission in exercise of powers vested in it under Section 86 (1) (b) of the Act has the power to regulate electricity purchase and procurement process of the Distribution Licensee including the price at which the electricity shall be procured from the generating company or licensee or from other sources through agreement for purchase of power for distribution and supply within the State. Section 86 (1) (b) of the Act is reads as under:-

> *"(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;"*

27. The Electricity Act, 2003 was enacted by the Parliament of India to consolidate the laws and transform the power sector into a competitive consumer centric industry. The primary purpose of enactment is to create comprehensive legal framework by distancing the government from direct regulation and promoting private sector participation. The key objectives of the Act as outlined in the preamble and the provisions of the Act include promotion of competition, de-licensing of generation, **protection of consumer interest, rationalization of tariff**, establishing and strengthening of

the institutional framework and to improve technical and financial viability of the DISCOMs. The protection of consumers's interest involves availability of reliable and high quality electricity at fair and competitive prices to them through transparent regulations.

28. It is the case of the Petitioner that consequent upon the withdrawal of equity power by the GoHP vide notification dated 08.01.2026, it shared various revised arrangements for disposal of power and procurement proposal for FY 2026-27 with the DoE and requested the DoE vide letter dated 31.01.2026 (Annexure P-4) to initiate necessary process in accordance with notification dated 09.05.2025 for procurement of power for the HPSEBL and the DoE in response to the aforesaid letter dated 31.01.2026, asked the HPSEBL to float the disposal/ procurement/ banking tenders for FY 2026-27. Consequently, the HPSEBL floated the banking, advance banking and procurement tenders but no participation in advance banking tenders was received and only a bidder in respect of normal banking tender participated. It is also the case of the Petitioner that simultaneously, the matter was taken up with the DoE for the diversion of equity power from Nathpa Jhakri and Rampur Hydro

HEPs for the period w.e.f. 01.04.2026 to 15.05.2026. It is also apparent form the Petition that a meeting of the Empowered Committee was held on 21.03.2026 wherein it was resolved to sell the equity power of the GoHP from the Nathpa Jhakri and Rampur Hydro HEPs to the HPSEBL through DoE for a period of one year at a mutually agreed tariff of Rs. 5.92 per unit at Ex-bus as under:-

a) To sale equity power from Nathpa Jhakri and Rampur HEPs to HSPEBL through DoE for a period of one year, i.e. upto 31.03.2027 at a tariff of Rs. 5.92 per unit (Rs. 5.50 + Rs. 0.42 on account of GNA sharing) at ex-bus.
b) The Directorate of Energy (DoE) shall raise energy bills to the HPSEBL at the above rate on monthly basis. At the time of reconciliation on quarterly basis, adjustment on account of 50% actual GNA charges shall be made against Rs. 0.42 per unit component.
c) The HPSEBL shall be responsible for maintaining a Letter of Credit (LC) with SJVN, payment of transmission/ GNA charges, and settlement of bills for equity power raised by SJVN so as to have smooth transition of power.
d) The HSPEBL shall ensure timely payments to SJVN to avail a 1.5% rebate on energy bills, and the rebate amount so availed shall be passed onto the DoE on a monthly basis along with the energy bill payments.
e) The HPSEBL shall obtain necessary regulatory approvals, including approval of tariff/ rate from HPERC, wherever required, for purchase of power from the DoE.
f) Approval of the State Government is required, as the decision regarding reallocation of equity power from the HPSEBL to the

Directorate of Energy (DoE) has been taken at the level of the Council of Ministers (CMM).

g) Considering the operational aspects involved, including sale of power directly, or any other suitable mechanism, the Director (Energy) is authorized to take all necessary follow-up actions.

29. According to the Petitioner, it is in shortage of power upto 15.05.2026 and had requested the DoE vide letter dated 28.03.2026 to allocate/ divert the GoHP equity power from the above stated HEPs to the HPSEBL for the months of April and May, 2026, in the best interest of the consumers and the draft PPA has been prepared accordingly, and the permission be accorded.

30. As indicated above, the Electricity Act, 2003 provides a complete and exhaustive statutory framework for the tariff determination. While Section 62 of the Act provides for tariff determination by the Commission, Section 63 of the Act provides for adoption of tariff discovered through competitive bidding. These are the only permissible routes for tariff determination under the Electricity Act, 2003 which does not recognize any concept of negotiated/ mutually agreed tariff outside statutory mechanism and

the power purchase has to be regulated keeping in view the aforesaid framework.

31. The Hon'ble Supreme Court in PTC India Ltd. v. Central Electricity Regulatory Commission (2010) 4 SCC 603 has held that the tariff determination is a statutory function and forms part of the regulatory powers of the Commission. Further, the interpretation of Sections 62 and 63 of the Electricity Act came up for consideration before the Hon'ble APTEL in Appeal No. 518 of 2023 & IA No. 215 of 2024 decided on 13.02.2025 in the case of Kerela State Electricity Board Limited v. Kerela State Electricity Regulatory Commission and Ors. wherein it is held that the Appropriate Commission does not act as a mere post office under Section 63 of the Electricity Act and unlike Section 62 read with Section 61 and 64 of the Act, the Commission under Section 63 of the Act only adopts the tariff already determined, if the same has been discovered through competitive bidding guidelines. The relevant paras of the above judgment as appeared in Pages 47, 48, 49 and 50 are reproduced as under:-

> *"Section 63 of the Electricity Act obligates the Appropriate Commission to adopt only such tariff as has been determined through a transparent process of bidding and in accordance with the*

guidelines issued by the Central Government. Section 63 begins with a non obstante clause, but it is a non obstante clause covering only Section 62. Unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not "determine" tariff but only "adopts" the tariff, already determined, under Section 63. Such "adoption" is only if such tariff has been determined through a transparent process of bidding, and this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. The appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government.

In Tata Power Co. Ltd. Transmission v. Maharashtra Erc, (2023) 11 SCC 1), the Supreme Court summarized the observations in Energy Watchdog v. CERC, (2017) 14 SCC 80, as under: (i) the appropriate Commission while "adopting" the tariff determined through bidding is not a mere "post office"; (ii) the Commission is mandated by Section 63 to adopt the tariff determined through bidding only if the bidding process was transparent, and such a process has been held in accordance with the guidelines issued by the Central Government under Section 63.

Section 63 of the Electricity Act has five significant features: (i) Section 63 begins with a non obstante clause. The non obstante provision overrides Section 62 alone and not all the provisions of the Act; (ii) as opposed to Section 62 where the Commission is granted the power to determine the tariff, under the Section 63 route, the bidding process determines the tariff; (iii) the Commission is mandated to adopt such tariff that is determined by the bidding process; (iv) the Commission has the discretion to not adopt the tariff determined through the bidding process only if the twin conditions as mentioned in the provision are not fulfilled; and (v) the twin conditions are that (a) the bidding process must have been transparent; (b) the bidding process must have complied with the guidelines issued by the Central Government.

Section 63 indicates that the provision would be invoked after the tariff has been determined by the bidding process. The non obstante clause in Section 63 must be read in the context of Sections 61 and 62. Section 62 bestows the Commission with wide discretion to determine tariff. Section 63 seeks to curtail this discretion where a bidding process for tariff determination has already been conducted. Section 63 contemplates that, in such situations where the tariff has been determined through the bidding process, the Commission cannot, by falling back on the discretion provided under Section 62, *negate the tariff determined through bidding. This interpretation of Section 63 is fortified by the use of the phrase "such" in Section 63 — the Commission is bound to "adopt" "such" tariff determined through bidding* ***. (Tata Power Co. Ltd. Transmission v. Maharashtra Erc, (2023) 11 SCC 1)***

The appropriate Commission has the jurisdiction to look into whether the tariff determined through the process of bidding accords with the Central Govt Guidelines. (Energy Watchdog v. CERC, (2017) 14 SCC 80). The regulatory powers of the State Commission, so far as tariff is concerned, are specifically mentioned in Section 86(1). When the Commission adopts tariff under Section 63, it does not function dehors its general regulatory power under Section 86(1)(b). Such regulation takes place under the Central Government's guidelines. ***(Energy Watchdog v. CERC, (2017) 14 SCC 80; Jaipur Vidyut Vitran Nigam Ltd. v. MB Power (M.P.) Ltd., (2024) 8 SCC 513).***

The TBCB Guidelines issued by the Central Government under Section 63 of the Act prescribe the mechanism of the bidding process. (Tata Power Co. Ltd. Transmission v. Maharashtra Erc, (2023) 11 SCC 1). In a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 86(1)(b), only in accordance with those guidelines. ***(Energy Watchdog v. CERC, (2017) 14 SCC 80)."***

32. The provisions of Sections 62 and 63 of the Electricity Act, 2003 and powers of the appropriate Commission were also considered by the Hon'ble Supreme Court in the case of Energy Watchdog v. CERC, (2017) 14 SCC 80. Paras 19 and 20 of the judgment are reproduced as under:-

"19. The construction of Section 63, when read with the other provisions of this Act, is what comes up for decision in the present appeals. It may be noticed that Section 63 begins with a non obstante clause, but it is a non obstante clause covering only Section 62.

Secondly, unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not "determine" tariff but only "adopts" *tariff already determined under Section 63. Thirdly, such "adoption" is only if such tariff has been determined through a transparent process of bidding, and, fourthly, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. What has been argued before us is that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. One thing is immediately clear, that the appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government. Guidelines have been issued under this section on 19-1-2005, which guidelines have been amended from time to time. Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.*

20. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions dehors its general regulatory power under Section 79(1)(b). For one thing, such regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to "regulate" tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various sections must be harmonised. Considering the fact that the non obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways — either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to *determine or adopt tariff. In fact, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff. Whereas "determining" tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is a wider source of power to "regulate" tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) can then be used."*

33. The ratio laid down by the Hon'ble Supreme Court in Energy Watchdog v. CERC, (2017) 14 SCC 80 especially Paras 19 and 20 thereof were also quoted with approval by the Hon'ble Supreme Court in Jaipur Vidyut Vitran Nigam Ltd. and Ors. v. MB Power (Madhya Pradesh) Ltd. and Ors. in Civil Appeal No. 6502 of 2022 and Civil Appeal No. 4612 of 2023 decided on 08.01.2024 by observing that the Section 86(1) (b) of the Electricity Act gives ample power to the State Commission to regulate electricity purchase and procurement process of distribution licensees. It also empowers the State Commission to regulate the power procurement including the price at which electricity shall be procured from the generating companies. It is further held that Section 86 (1) (b) of the Act is analogous to Section 79 of the Act which determines the functions of

the Central Commission. Paras 67, 68, 69, 70 and 71 are relevant and reproduced as under:-

> *"67. It could thus be seen that it has been held by this Court that unlike Section 62 read with Sections 61 and 64, under the provisions of Section 63 of the Electricity Act, the appropriate Commission does not "determine" tariff but only "adopts" tariff already determined under Section 63. It has further been held that, such "adoption" is only if such tariff has been determined through a transparent process of bidding, and that, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. It was sought to be contended before this Court in the said case that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. However, rejecting the said contention, this Court observed that the appropriate Commission does not act as a mere post office under Section 63. It has been observed that, Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.*
>
> *68. This Court in the said case, in paragraph 20, further observed that the entire Act shall be read as a whole. It has been held that, all the discordant notes struck by the various sections must be harmonized. It has been held that, considering the fact that the non obstante clause advisedly restricts itself to Section 62, there is no reason to put Section 79 out of the way altogether. It has been held that, either under Section 62, or under Section 63, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. It has been held that, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff. It has further been held that, in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. It has further been held that, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the*

> *Commission's general regulatory powers under Section 79(1)(b) can be used.*
> *69. The aforesaid view of this Court in the case of Energy Watchdog (supra), which is a judgment delivered by two Judge Bench, has been approved by three Judge Bench of this Court in the case of Tata Power Company Limited Transmission (supra).*
> *70. We have already referred to Section 86(1)(b) of the Electricity Act, which is analogous to Section 79 of the Electricity Act. Section 79 determines the functions of Central Commission, whereas Section 86 provides for the functions of the State Commission. Section 86 of the Electricity Act empowers the State Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.*
> *71. It can thus be seen that Section 86(1)(b) of the Electricity Act gives ample power on the State Commission to regulate electricity purchase and procurement process of distribution licensees. It also empowers the State Commission to regulate the matters including the price at which electricity shall be procured from the generating companies, etc."*

34. The SJVNL being a joint venture of the GoI and the GoHP, and being a generating company having composite scheme for generation and sale of electricity in more than one State, the tariff of the aforesaid Projects has been determined by the CERC as per CERC Tariff Regulations, 2024 and Section 62 of the Act. The Ld. Counsel of the Respondent No. 2 has placed on record copy of order dated 31.03.2026 in Petition No. 700/GT/2025 whereby the tariff/ annual fixed charges for the period FY 2026-29 have been determined by the CERC in respect of Rampur HEP under Section 62

of the Act. Similarly, the Ld. Counsel for the Respondent has also placed on record the copy of order dated 31.03.2026 in Petition No. 54/GT/2025, whereby annual fixed charges for the period FY 2019-24 have been trued up.

35. It is thus, apparent from the aforesaid that the CERC under the provisions of Section 62 of the Electricity Act, 2003 and the CERC Tariff Regulations, 2024 has determined the tariff in respect of the aforesaid two HEPs. Being a partner State, the DoE, GoHP is a party as Respondent No. 11 to Petition No. 700/GT/2025 and Petition No. 54/GT/2025. Similarly, the HPSEBL is also a party in the above two Petitions being Respondent No. 6.

36. Thus, there is a determined tariff for both the Projects by the CERC which is known to the Petitioner and the Respondent No. 1. Therefore, a question arises as to whether the parties can adopt mutually agreed tariff than the tariff determined by the CERC in respect of above said Projects especially when both the Petitioner and the Respondent No. 1 were parties to the Petitions before the CERC in tariff determination process of both the Projects. The answer is in negative as any power procurement from the aforesaid

HPERC

generating stations by the HPSEBL has to be in accordance with the tariff determined by the CERC for the above Projects and the Petitioner and the Respondent No. 1 cannot choose a mutually agreed tariff contrary to the scheme of the Act. Therefore, the proposed purchase and sale of equity power from the aforesaid HEPs at a mutually agreed tariff of Rs. 5.92 per unit (Rs. 5.50 + Rs. 0.42 on account of GNA sharing) at Ex-bus is contrary to the tariff determined by the CERC in the Petitions No. 700/GT/2025 and Petition No. 54/GT/2025, as the CERC in Petition No. 700/GT/2025 dated 31.03.2026 the CERC has determined the annual fixed charges (AFC) of the Rampur HEP for the control period FY 2024-29 for the FY 2026-27 as 75,858.64 lakh rupees. The design energy of the Rampur HEP has been 1878.08 MUs. Accordingly, the average tariff for the FY 2026-27 based on the normative parameters fixed by the CERC for the Rampur HEP works out to be around Rs. 4.70 per unit. For the Nathpa Jhakri HEP, though the CERC has not approved the AFC for the control period FY 2024-29 till date, yet the CERC vide order dated 31.03.2026 in Petition No. 54/GT/2025 has approved the revised AFC for the control period FY 2019-24. In said order, the AFC for FY 2023-24 has been approved as 146157.54 lakh rupees. The design energy of the Nathpa Jhakri HEP has been 6612 MUs. Accordingly, the average tariff for the FY 2023-24 based on the normative parameters fixed by the CERC for Nathpa Jhakri HEP works out to be Rs. 2.54 per unit only. It is relevant to mention that the aforesaid tariff may be slightly different as exact tariff has not been mentioned by the Respondent No. 2 in its reply but that is not a dispute before the Commission. As observed above, both the Petitioner and the Respondent No. 1 being parties to the tariff determination process before the CERC are aware of the same but despite this, both have resorted to a mutually agreed tariff of Rs. 5.92 per kWh, contrary to the provisions of the Act.

37. Though, it is mentioned in the reply by the Respondent No. 1 that in view of the Empowered Committee decision, the sale rate of the GoHP equity power in Nathpa Jhakri and Rampur HEPs (quantum of 330 MW and 107.53 MW) has been mutually agreed between the GoHP and the HPSEBL at Rs. 5.92 per unit and in case the proposed arrangement is not operationalized, the State is likely to face power deficiency particularly in peak hours but certainly said

mutually agreed tariff is not aligned to the CERC determined tariff and, therefore, the same certainly cannot be termed in the best interest of the consumers. Similarly, the other contention of the Respondent No. 1 that the APSP assessment and tender outcomes indicate limited availability of power with negligible participation in advance banking and inadequate response under LDC and short-term procurement is also not tenable as the Respondent No. 1 is well aware that the ARR of the Petitioner is met by the consumers of the State who cannot be burdened with the excessive tariff. Similarly, the procurement of power at a mutually agreed tariff which is not CERC aligned tariff cannot be allowed merely because the denial of the proposed arrangement will result in load shedding and scheduled power cuts during peak hours. Similarly, the other contention of costly real time market purchase also does not justify the proposed power arrangement at a tariff other than the CERC aligned tariff for the above Projects.

38. Significantly, a careful perusal of the letter dated 17.03.2026 (Annexure P-6) shows that the HPSEBL had requested for supply of the equity power from the above two Projects at CERC determined

tariff. However, ignoring said letter, a decision was taken to supply said power at a mutually agreed tariff of Rs. 5.92 per unit, clearly in violation of the tariff determined by the CERC and provisions of Sections 62 and 63 of the Electricity Act, 2003.

39. A careful perusal of the record further shows that the HPSEBL had been continuously utilizing the equity power of the above said two Projects eversince the commissioning of the Projects but vide notification dated 08.01.2026, the said power has been withdrawn abruptly which has compelled the HPSEBL to look for short term power purchases. Once, the GoHP had contemplated to withdraw the equity power, the HSPEBL was required to be informed in advance (atleast six (6) months) enabling the HPSEBL to make appropriate arrangement in advance in the interest of the consumers but the decision of withdrawal has been taken only on 08.01.2026. This is likely to cause grave hardship to the HPSEBL and the consumers of the State. Even the further assertion of the Respondent No. 1 that in view of the unavailability of adequate power at reasonable rate, the mutually agreed tariff provides viable and balanced solution to maintain grid security, avoid load shedding and ensure continuity of

power supply across all categories cannot be accepted for the reason that the CERC has determined the tariff in respect of Nathpa Jhakri and Rampur HEPs and any sale to DISCOM has to be within the ceiling limit of tariff as determined by the CERC and power purchase from the aforesaid HEPs for the DISCOM cannot be approved at the aforesaid mutually agreed tariff.

40. Equally, the assertion of the Respondent No. 1 that the HPSEBL in the 21st SAC meeting of the Commission held on 27.02.2026 had claimed that withdrawal of equity power would result in purchase of equal power at an average tariff of Rs. 5.50 per unit cannot be accepted for justifying the mutually agreed tariff other than the CERC aligned tariff as the HPSEBL had rightly highlighted the ensuing consequences of the abrupt withdrawal of power by the GoHP and consequent increase of power purchase cost.

41. A question of allowing compensatory tariff that went beyond the four corners of the PPA was considered by the Hon'ble Supreme Court in Energy Watchdog v. the CERC (2017) 14 SCC 30 wherein it was held that while the Commission can regulate tariff but cannot rewrite the contract to create entirely new bargain unless there is a

specific regulatory provision. Since, the Petitioner and the Respondent No. 1 were parties to the Petitions determining the tariff before the CERC in respect of the aforesaid two Projects, the power procurement by the HPSEBL has to be certainly within the said tariff from the aforesaid two Projects failing which it would amount to re-writing of the contracts.

42. Significantly, the question of tariff not aligned to the market tariff/ rate came up for consideration before the Hon'ble Supreme Court in Civil Appeal No. 6503 of 2022 in Jaipur Vidyut Vitran Nigam Ltd. & Ors. v. MB Power (Madhya Pradesh) Ltd. and Ors. decided on 08.01.2024 wherein it is held that in case the prices are not market aligned, the power purchase cannot be allowed. Paras 71, 77, 78 and 105 are reproduced as under:-

> ***"71.*** *It can thus be seen that Section 86(1)(b) of the Electricity Act gives ample power on the State Commission to regulate electricity purchase and procurement process of distribution licensees. It also empowers the State Commission to regulate the matters including the price at which electricity shall be procured from the generating companies, etc.*
>
> ***77.*** *If the contention of the respondent No.1-MB Power that the procurer is bound to accept all the bids emerged in a competitive bidding process once the bidding process was found to be transparent and in compliance with the Bidding Guidelines is to be accepted, in our view, it will do complete violence to clause 5.15 of the Bidding Guidelines itself. If that view is accepted, the DISCOMS will be compelled to purchase electricity at a much higher rate as compared*

> *with other suppliers. The said higher rate will be passed on to the consumers. As such, accepting the contention of the respondent No.1 would result in adversely affecting the interests of the consumers and, in turn, would be against the larger public interest. For example, if in a bidding process for 1000 MW power, 10 persons emerged as "qualified bidders". L-1 bidder quotes Rs.2 per unit for 100 MW power and L-2 bidder quotes Rs.2.25 per unit for another 100 MW power and from L-3 bidder onwards, they start quoting Rs.10 per unit and above for balance 800 MW power, could the public interest be subserved by compelling the procurer to buy balance 800 MW power at Rs.10 per unit and above when the prices quoted are totally not aligned to market prices.*
>
> ***78.*** *We are, therefore, of the considered view that the learned APTEL has grossly erred in holding that the State Commission has no power to go into the question, as to whether the prices quoted are market aligned or not and also not to take into consideration the aspect of consumers' interest.*
>
> ***105.*** *In any case, the High Court, by the impugned judgment and order, could not have issued a mandamus to the instrumentalities of the State to enter into a contract, which was totally harmful to the public interest. Inasmuch as, if the power/electricity is to be procured by the procurers at the rates quoted by the respondent No.1-MB Power, which is even higher than the rates quoted by the SKS Power (L-5 bidder), then the State would have been required to bear financial burden in thousands of crore rupees, which would have, in turn, passed on to the consumers. As such, we are of the considered view that the mandamus issued by the Court is issued by failing to take into consideration the larger consumers' interest and the consequential public interest. We are, therefore, of the view that the impugned judgment and order passed by the High Court is not sustainable in law and deserves to be quashed and set aside."*

43. Thus, the power purchase at a mutually agreed tariff of Rs. 5.92 per kWh cannot be allowed for the HPSEBL being not in the interest of the consumers.

44. Significantly, the Hon'ble Supreme Court in its recent judgment in KKK Hydro Power Ltd. vs. the HPSEBL in Civil Appeal No. 3005 of

2015 decided on 29.08.2025 has also deprecated the practice of price determination by a private negotiation at a mutually agreed tariff that the parties cannot unilaterally and mutually decide the tariff payable for electricity supply without obtaining prior approval of the State Electricity Regulatory Commission. Paras 26, 27 and 28 of the judgment are reproduced as under:-

> *"26. This provision puts it beyond the pale of doubt that fixing of the price for the purchase of electricity is not a matter of private negotiation and agreement between a generating company and a distribution licensee. The price as well as the agreement, i.e., PPA, incorporating such price and providing for purchase of electricity at that price necessarily have to be reviewed and approved by the State Commission under this provision. The order dated 09.02.2010 passed by the Commission, without reference to the appellant's case, required only those existing PPAs which stipulated the tariff of ₹2.87/- per kWh to be amended so as to give effect to the enhancement of tariff from ₹ 2.87/- per kWh to ₹ 2.95/- per kWh. This order had no application at all to the case of the appellant as its PPA dated 11.03.2008 did not stipulate the tariff of ₹2.87/- per kWh. In this scenario, the appellant and the HPSEB were bound to approach the Commission to secure its approval before they could effect any enhancement of the tariff stipulated in the PPA dated 11.03.2008. Without doing so, the appellant and the HPSEB, on their own and without the Commission's review and approval, enhanced the tariff from ₹2.50/- per kWh to ₹ 2.95/- per kWh under their supplementary PPA dated 10.09.2010!*
> *27. Viewed thus, the Commission was fully justified in ignoring the supplementary PPA dated 10.09.2010 and asserting that it could not enforce it. However, the APTEL overlooked this crucial aspect and held that, insofar as the additional 1.90 MW plant was concerned, the supplementary PPA dated 10.09.2010 can be given effect to, by applying to it the tariff of ₹2.95/- stipulated therein. The observation of the APTEL that no adverse inference could be drawn against the appellant for not obtaining the approval of the Commission for the tariff agreed to by the parties under this supplementary PPA 10.09.2010*

> *completely overlooked the binding mandate of Section 86(1)(b) of the Act of 2003.*
> *28. However, as the HPSEB did not choose to file an appeal against the APTEL's order and mutely accepted the direction therein to go before the Commission for computation of the weighted average so as to quantify the tariff for the entire 4.90 MW power project of the appellant, we choose not to interfere with the same at this late stage. It may be noted that the revised tariff of ₹ 2.60/- per kWh, on the basis of the weighted average computed by the Commission, stipulated in the supplementary PPA dated 03.11.2015 has been acted upon for a long time now and we would not wish to upset the apple cart and start the process all over again. More so, as the HPSEB did not even choose to file an appeal against the impugned order. We, however, hasten to clarify the legal position so as to obviate a similar error being committed in future."*

45. In view of the aforesaid, the power procurement by the HPSEBL from the aforesaid two Projects at mutually agreed tariff of Rs. 5.92 per unit, which is not aligned to CERC determined tariff in respect of the aforesaid Projects, cannot be allowed being violative of statutory mandate. Point No. 1 is accordingly decided against the Petitioner.

FINAL ORDER

46. In view of the above discussions and findings, Petition fails and is accordingly dismissed.

47. Before parting, it is made clear that in case the HPSEBL approaches the Commission for the procurement of aforesaid equity

power on the CERC determined tariff of the aforesaid two Projects, the Commission would consider the same.

48. The HPSEBL being a regulated entity, it is expected that the decision for procurement of reasonable, reliable and high quality electricity at competitive prices through transparent process is taken at the earliest in the best interest of the consumers of the State and the HPSEBL and any delay would certainly lead to increase in power purchase cost and higher tariff.

49. Let a copy of the order be supplied to the parties forthwith. The file after needful be consigned to the records.

Announced
18.04.2026

-Sd-	**-Sd-**
(Shashi Kant Joshi)	**(Yashwant Singh Chogal)**
Member	**Member (Law)-cum-Chairman**

HPERC