

**JOINT ELECTRICITY REGULATORY COMMISSION
(FOR THE STATE OF GOA AND UNION TERRITORIES)
GURUGRAM**

CORAM

Shri Alok Tandon, Chairperson
Smt. Jyoti Prasad, Member (Law)

Petition No.: 131/2025

Date of Hearing: 09.04.2025

Date of Order: 05.05.2025

In the matter of:

Petition for approval of "Power Sale Agreement for Power for Purchase of power through DG Sets to deliver 10 MW power continuously to the 33 KV grid of the Electricity Department at Sri Vijaya Puram" between Electricity Department, A&N Administration, Vidyut Bhawan, Sri Vijaya Puram – 744101 and NVVN.

And in the matter of:

The Electricity Department, A&N Administration,
Vidyut Bhawan Sri Vijaya Puram - 744101.

.....Petitioner

And in the matter of:

M/s NTPC Vidyut Vyapar Nigam, Core-7, SCOPE
Complex, 7, Institutional Area, Lodi Road,
New Delhi – 110003

.....Respondent

Present: -

For the Petitioner

1. Ms. Madhuri Shukla, Superintending Engineer
2. Ms. Rizwana, Executive Engineer
3. Mr. K Nageshwar Rao, Executive Engineer
4. Mr. Suresh Kumar, Assistant Engineer
5. Ms. Usha Kapoor, Assistant Engineer
6. Ms. K. Jayashree, Assistant Engineer

For the Respondent

1. Mr. Vijay Kumar, DGM/HOD(A&N)
2. Mr. Randeep Singh, AGM (BD)
3. Ms. KM Subhisha, Senior Manager (Law)

ORDER

1. The Petitioner has filed instant Petition on 24.12.2024 u/s 86(1)(b) of the Electricity Act, 2003 with following prayers:
 - a. The Hon'ble Commission is humbly requested to condone prior signing of the agreement without intimating the Commission due to unavoidable power crisis situation prevailing in the Islands.
 - b. Accord approval for the Power Sale Agreement with M/s NTPC Vidyut Vyapar Nigam Limited for purchase of Power through DG Sets to deliver 10 MW power continuously to the 33 KV grid of the Electricity Department at IPP Complex, Bambooflat, Port Blair at the rates as submitted in the petition.
2. The Petitioner's submissions in brief are as under:
 - a. The Petitioner herein i.e. Electricity Department of A&N Administration (hereinafter called Electricity Department or the petitioner) is a Government department engaged in the generation, transmission and distribution of electricity in the Andaman & Nicobar Islands. To meet its obligation for supply of electricity to its consumers, the petitioner sources energy from its own generating stations and by purchasing of power from other sources. In terms of section 62, 63 & 86 of the Electricity Act. 2003, the Commission has the jurisdiction to approve the purchase of power from different sources.
 - b. **Power Supply Status in region:** The Petitioner is responsible for ensuring a consistent power supply to meet the needs of consumers in Sri Vijaya Purum earlier known as Port Blair and surrounding areas. The generation capacity in the region relies heavily on Diesel Generator (DG) sets, solar PV plants, and limited alternative energy sources. The installed capacity at the time of the petition is insufficient to meet the peak demand of 40-43 MW during the summer and 36-38 MW during the monsoon.

During January 2018, the installed and available capacity of DG sets to meet power demand of Port Blair and adjoining South Andaman at the time of power crisis are tabulated below:

Sl. No.	Power Plant	Installed Capacity (MW)	Available capacity (MW)
1	Suryachakra Power Plant	20	6.5
2	Chatham Power house	15	6.2
3	Phoenix Bay Power house	9.8	5.4
4	HPP- II	12.5	10.8
5	HPP-I	5	4.95
	Total	62.3	33.85
<i>In addition to above, Solar PV Plant of at Garacharma (05 MWp). Raj Ninas (10.05 MWp) and Rooftop Solar plants at government buildings (01 MWp) shares the day load demand along with the DG Power Plant subject to the weather conditions</i>			

- c. **Closure of Existing Power Purchase Agreements:** The expiry of the Power Purchase Agreement (PPA) with Suryachakra Power Corporation Limited (SPCL) on 1st April 2018, created a severe power crisis in Port Blair. M/s SPCL, a 20 MW generating unit, was the main source of electricity for the region. Its closure significantly reduced the power supply, necessitating immediate action to secure additional power sources. Further, bearing in mind that on closure of M/s SPCL will lead to severe power crisis, Electricity Department with approval of A&N Administration had floated a tender to supply 15 MW Power for 05 MW at Chatham Power House complex (Tender no. EL/PR/124A/T- 18/2017/4249 dated: 23-11-2017) and 10 MW at Bambooflat (Tender no. EL/PR/124A/T-19/2017/4250 dated: 23-11-2017). As this is the only viable solution as a stop gap arrangement till a regular base load Power Plant like proposed 30MW extendable to 50 MW LNG is commissioned. However, this was not fruitful as the LI bidder retracted at the last moment.
- d. Furthermore, other existing power plants, like Chatham and Phoenix Bay, were facing frequent breakdowns and performance issues, exacerbating the power shortage. Both power houses had DG sets that had outlived their useful life, requiring urgent replacement or capacity augmentation.
- i. **Chatham Power House:** Commissioned during 1990-91 and hence the DG Sets have already outlived its useful life and all the DG sets are heavily de-rated and have tendency of frequent breakdown.
- ii. **Phoenix Bay Power House** Installed immediately after tsunami in 2004 on war footing has utilized up to its optimum loading and prone to frequent failure. The 11 KV switchgears and panels are also failing and needs sufficient time to rectify the failure. The situation got further worsened after the major damage of one of the four MTU engine (2.4 MW) on 03.09.2017, which were commissioned during February 2015.
- iii. **M/s SPCL (4 x 5MW):** The agreement expired on 01.04.2018.
- e. To address the looming power deficit as the generating capacity needs to be augmented on war- footing basis to meet the deficit of power reached due to expiry of agreement with M/s SPCL, a meeting was held under the chairmanship of Hon'ble Minister of State (I/C) for Power and New & Renewable Energy on 10th January, 2018 at 10:30 AM in New Delhi, wherein it was decided that as a part of immediate & short term arrangement, A&N Administration may issue letter of award to NTPC for installation of 15 MW power plant. NTPC Ltd. shall complete the installation of 15 MW generation capacity, so as to enable power supply in A&N by 31.03.2018. The ED, A&N Administration has sought exemption of section 63 of Electricity Act 2003 for selection of NTPC on nomination basis, this decision was taken by Ministry to resolve the power crises at Sri Vijaya Puram due to closure of 20 MW IPP at Bambooflat during April 2018.
- f. That, subsequently a meeting was held at Sri Vijaya Puram (formerly named as Port Blair) between M/s NTPC and Electricity Department, at Sri Vijaya Puram from

13.01.2018 to 18.01.2018, wherein it was agreed that Electricity department will sign a power sale agreement with NVVN (NTPC Vidyut Vyapar Nigam Limited (NVVN), a 100% subsidiary of NTPC Ltd) for sale of 10 MW power initially for a period of three years plus one year extendable. NTPC/NVVN will sign 'back to back' Power Purchase Agreement (PPA) with DG Power Supplier. NTPC/NVVN shall be a trader and charge trading margin of 07 paisa per KWh. The trading margin shall be in addition to the power unit charge arrived through bidding process as per terms and conditions of the bid. It was also agreed in the meeting that 10 MW DG power plant will be installed at IPP Complex at Bambooflat for which NVVN will issue a tender to invite bid for selection of DG set Generator.

- g. Further, the exemption of section 63 of Electricity Act 2003 for selection of NTPC on nomination basis for installation of 10MW & 5 MW at Chatham due to severe power crisis at Port Blair (presently Sri Vijaya Puram) in A & N Islands was conveyed by Ministry of Power, Gol vide letter **4/4/2017-Th-Idated 08.05.2018**.
- h. As per the agreement reached between the parties, M/s NTPC/NVVN has floated open tender notice for purchase of power through DG Sets to deliver 10 MW power continuously to the 33 KV grid of Electricity department at IPP Complex, Bambooflat, Sri Vijaya Puram. That M/s NVVN vide its letter No. NVVN/BD/A&N/DG dated: 12.04.2018 intimated that in the tenders floated by NVVN for supply of 10 MW Power at IPP Complex, Bambooflat bidder viz., M/s Express Engineers & Spares Private Ltd., has been selected at a tariff of Rs 1.38/KWh (Rs.1.31/- + Rs. 0.07/- NVVN Margin) including trading margin of 07 Paisa/KWh. GST on quoted tariff (Rs/KWh), if applicable shall be paid extra on submission of documentary evidence.
- i. Further, as per Clause 2.0 (a) of the Power Sale Agreement on signing of the agreement between ED, A&N & NVVN, the letter of award was issued to the finalized bidder.
- j. Accordingly, the Power Sale Agreement (PSA) for 10 MW at IPP Complex, Bambooflat to be executed between Electricity Department, A & N Administration and NTPC Vidyut Vyapaar Nigam Ltd. was approved by the competent authority at A & N Administration and conveyed vide letter No. EL/PL/1-43/(15MW)/2018 (PF) dated 24.04.2018.
- k. However, the Electricity Department was saved from huge embarrassment by timely commissioning and operation of 05 MW Power Plant at Chatham Power House by Ms NVVN during April 2018. The power situation during 2018 is tabulated as below:

Sl. No.	Power Plant	Installed Capacity (MW)	Available capacity (MW)
1	Chatham Power house	15	5
2	Phoenix Bay Power house	9.8	5
3	HPP- II	12.5	12

4	HPP-I	5	5.8
5	M/s NVVN (05 MW)	7	5.6
6	Suryachakra Power Plant	Closed	
	Total	49.3	33.4
<i>In addition to above, Solar PV Plant of at Garacharma (05 MWp). Raj Ninas (0.05 MWp) and Rooftop Solar plants at government buildings (01 MWp) shares the day load demand along with the DG Power Plant subject to the weather conditions</i>			

- l. In spite of the above work, there was still a power deficit and the seasonal peak demand is tabulated below:

Season	Power Requirement
Summer	40 - 43 MW
Monsoon	36 - 38 MW

- m. NTPC/NVVN will sign back-to-back power purchase agreement (PPA) with DG Power Generator. NTPC/NVVN shall be trader & charge trading margin of 07 paise per KWh. The trading margin shall be in addition to the per unit energy charge arrived through bidding process as per terms & conditions of the bid.
- n. Further, the JERC vide Tariff Order dated 13th June, 2024 for Petition No. 119 of 2023 in the matter of "**True-up for the FY 2021-22, Annual Performance Review (APR) for FY 2023-24, and Aggregate Revenue Requirement (ARR) and Determination of Retail Tariff for FY 2024-25**" directed following:

"3. The Commission decided not to carry out the true-up for FY 2021-22 since the Petitioner has not been able to submit the requisite information asked for in TVS The Commission directs the Petitioner to submit a separate petition for true-up for FY 2021-22."

- o. The approval of the True-up for FY 2021-22 is a top priority for the Electricity Department, A&N Administration. This is crucial in light of the ongoing efforts for privatization of ED in UT of A & N Islands under Atma Nirbhar Bharat Abhiyan (ANBA) Scheme of GoI and for the release of Grants under Revamped Distribution Sector Scheme (RDSS). The grant from the Ministry of Power is dependent on the approval of True-up for FY 2021-22 by the Commission.
- p. That the release of RDSS grant is crucial for the Electricity Department as the scheme includes Loss Reduction Works, Interconnection of Islands and the Smart Metering project. These initiatives broadly include the replacement of old Conductors, augmentation of transformers, introduction of covered conductors, creation of new Sub-Stations, Up-gradation of the grid from 33 KV to 66 KV, Inter-Connection of South, Middle, and North Andaman for optimal utilization of power resources and Smart metering. Thus, this scheme aims to improve and strengthen the Transmission &

Distribution infrastructure which is in dilapidated condition being very old more than 3 decades in entire A & N Islands thereby reducing T&D losses.

- q. In view of above-submitted facts the petitioner is now filing the petition before the JERC with a request to condone previous jurisdictional issues and approve the PSA in the public interest which is utmost required for privatization and to obtain a grant under RDSS project of the GoI.
3. The Petition was heard on 16.01.2025. The Commission after hearing admitted the Petition. Further during the hearing, the Commission sought certain information vide deficiency note dated 13.02.2025. The Petitioner was directed to furnish the following information:
- a. The Contract modalities between ED A&N and NVVN were for 3 (three) years with one year extendable. Therefore, to indicate under which provision of PSA/PPA the 10 MW DG sets contract is being extended for an unlimited period.
 - b. Furnish the LoA/LoI (letter of the award) issued to NVVN/NTPC.
 - c. Justification for trading margin of 07 paise/KWh being charged by NVVN and paid by ED A&N.
 - d. Whether the NVVN has followed the bidding guidelines while awarding the contract for 10 MW DG sets. Any details/documents with respect to selection & L-1 bidder to be placed on record.
 - e. What is the present load in the area and how it is managed?
4. The Petitioner submitted its reply on 07.03.2025 against the information sought by the Commission. The details of information submitted by the Petitioner is given here under;
- a. **The Contract modalities between ED A&N and NVVN were for 3 (three) years with one year extendable. Therefore, to indicate under which provision of PSA/PPA the 10 MW DG sets contract is being extended for an unlimited period.**

Reply: 10 MW DG power plant was established by NVVN in compliance to the decision taken by the Hon'ble Minister of State (I/C) for Power & NRE MoP in the meeting held on 10.01.2018. The Minutes of the meeting vide letter dated 25.01.2018. Accordingly, the Ministry of Power vide letter no. 4/4/2017-Th-1 dated 08.05.2018 had conveyed approval for exemption of Section 63 of the Electricity Act 2003 for selection of NTPC on nomination basis for installation of the 10 MW DG Power Plant. The initial contract (i.e. PSA) modalities between ED A&N and NVVN were established for a period of three years, with a provision for a one-year extension.

However, the PSA does not contain provisions for further extensions beyond this one-year extension period. Due to the ongoing power shortage and the urgent need to provide reliable electricity to the citizens of Sri Vijayapuram especially in the light of delay in commissioning of 50 MW LNG plant which was set aside by MoP during the meeting held on 25.05.2023. Due to the prevailing scenario, the 10 MW contract by NVVN has been extended further beyond Oct 2022 with mutual consent and agreed terms and conditions between NVVN and Electricity Department, A&N Administration with due

approval-of-competent authority to mitigate the power shortage and to provide reliable and uninterrupted power supply to the citizens and general public. Hence it may not be wrong to say that this extensions were deemed necessary to ensure continuous power supply during this critical period in Sri Vijayapuram.

Moreover, the Hon'ble Minister of Power and Housing & Urban Affairs, New Delhi had visited these Islands on 25.10.2024 and during the meeting, the need for continuation of power supply from the 15 MW (10+5 MW) DG based power plants of NVVN as a short term solution till 50 MW LNG power plant is commissioned was discussed and is recorded in MoM dated 13.11.2024.

b. Furnish the LoA/LoI (letter of the award) issued to NVVN/NTPC.

Reply: The project of 10 MW was assigned to NVVN on nomination basis by MoP as per the Minutes of the meeting held on 10.01.2018 for which exemption of section 63 of Electricity Act 2003 was conveyed by the Ministry. No LOA/LOI was issued. PSA was signed between NVVN and Electricity Department, A&N Administration subsequently after competitive bidding due to the emergent situation surrounding the power crisis as a short term arrangement in view of inception of 50 MW LNG power plant in next three years i.e. by 2021-22. The decision to proceed with the deployment of the 10 MW DG sets was taken as an immediate measure to mitigate the impact of the power shortfall following the closure of the 20 MW IPP at Bambooflat, Sri Vijayapuram.

c. Justification for trading margin of 07 paise/KWh being charged by NVVN and paid by ED A&N.

Reply: The trading margin was based on mutually agreed terms and conditions between NVVN and Electricity Department, A&N Administration in the Power Sale Agreement. The trading margin of 07 paise/kWh charged by NVVN is based on the operational and administrative costs incurred by NVVN in facilitating the trading of power and ensuring to provide reliable service to the Electricity Department while covering operational expenses.

Further, it is imperative to mention that at present all the notified guidelines for procurement of Renewable energy through tariff based competitive bidding contains the provision of 07 paisa trading margin in the following guidelines:

- i) Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects **Page-15. Clause 3 (Applicability of Guidelines) under (c)(i-iii) Intermediary Procurer**
- ii) Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Power Projects - **Page-17. Clause 4 (c)(i-iii) - Intermediary Procurer**

The clause of the above guidelines is reproduced below:

"Quote

10 The intermediary procurer shall enter into a Power Purchase Agreement (PPA) with the WPG(s) and also enter into a Power Sale Agreement (PSA) with the End procurer. The PSA shall contain the relevant provisions of the PPA on a back to back basis. Trading margin of 0.07/Kwh shall be payable by the End Procurer to the Intermediary Procurer.

Unquote"

- d. Whether the NVVN has followed the bidding guidelines while awarding the contract for 10 MW DG sets. Any details/documents with respect to selection & L-1 bidder to be placed on record.

Reply: Open tender competitive bidding and tendering was done for both 10MW & 5MW DG Power Projects by NVVN. The RFS document floated by NVVN for inviting bids regarding selection process and the Lol bidder. This includes the bidding timeline, evaluation criteria etc.

- e. What is the present load in the area and how it is managed?

Reply: The present load in the area of Sri Vijayapuram is approximately 42 MW-45 MW. Load management is carried out through a combination of grid supply, DG sets, and demand-side management strategies. Regular monitoring of load patterns and contingency measures are in place to ensure stability and reliability of power supply in the areas of Sri Vijayapuram.

Sl. No.	Power Plants in Sri Vijayapuram		Guaranteed Generation as per PPA (MW)	Power Drawal as on date (MW)
1	Chatham Power House (maximum output)	Departmental	0.9	0.9
2	Phoenix Bay Power House (maximum output)	Departmental	2.7	2.7
3	M/s NVVN Aggreko Energy Rental India (P) Ltd-Chatham	Hiring Plant	5.0	6.0
4	M/Sudhir Reddy Genset Consortium (P) Ltd-Phoenix Bay	Hiring Plant	5.0	5.4
5	M/s NVVN Express Genset Consortium (P) Ltd Bambooflat	Hiring Plant	10.0	11.0
6	M/s Sudhir Sales & Services Bambooflat	Hiring Plant	10.0	11.6
7	M/s Aggreko Energy Rental India (P) Ltd-Bambooflat	Hiring Plant	5.0	5.4
Total			38.6	43.0

During summer the peak load has touched up-to 49-50MW in last year. Moreover, the defence load is kept on captive generation during evening peak hours. From the above format it is evident that all the hiring power plants are supplying more than the guaranteed generation to meet the power demand.

5. The Petition was listed for hearing on 09.04.2025. The Commission after hearing directed parties submit their written submission within a week. The Petitioner's submission dated 21.04.2025 is here under:

- a. **The Contract modalities between ED, A&N and NVVN were for 03 years with one year extendable.**

10MW & 05 MW DG power plant was established by NVVN at Bambooflat & Chatham in compliance to the decision taken by the Hon'ble Minister of State (I/C) for Power & NRE MoP in the meeting held on 10.01.2018. The Minutes of the meeting vide letter dated 25.01.2018. Accordingly, the Ministry of Power vide letter no. 4/4/2017-Th-1 dated 08.05.2018 had conveyed approval for exemption of Section 63 of the Electricity Act 2003 for selection of NTPC on nomination basis for installation of the 10 MW & 05 MW DG Power Plant. The initial contract (i.e. PSA) modalities between ED A&N and NVVN were established for a period of three years, with a provision for a one-year extension.

- b. **Provision of PSA for the 10 MW& 05 MW DG Plants is being extended for an unlimited period.**

The PSA does not contain provisions for further extensions beyond this one-year extension period. Due to the ongoing power shortage and the urgent need to provide reliable electricity to the citizens of Sri Vijaya Puram especially in the light of delay in commissioning of 50 MW LNG plant which was set aside by MoP during the meeting held on 25.05.2023. Due to the prevailing scenario, the 5 MW & 10 MW contract by NVVN has been extended further beyond April 2022 & October 2022 with mutual consent and agreed terms and conditions between NVVN and Electricity Department, A&N Administration with due approval of competent authority to mitigate the power shortage and to provide reliable and uninterrupted power supply to the citizens and general public. Hence it may not be wrong to say that these extensions were deemed necessary to ensure continuous power supply during this critical period in Sri Vijaya Puram. However, the contract period has been extended for 06 months beyond 27.01.2025 for 05 MW DG Plant and 06 months for 10 MW DG Plant w.e.f 15.03.2025, However, all the Administrative approvals/Supplementary PSAs for extensions are submitted for 10 MW and 05 MW DG Power Plants installed at Bambooflat & Chatham.

Also, the Hon'ble Minister of Power and Housing & Urban Affairs, New Delhi had visited these Islands on 25.10.2024 and during the meeting, the need for continuation of power supply from the 15 MW (10+5 MW) DG based power plants of NVVN as a

short term solution till 50 MW LNG power plant is commissioned was discussed and is recorded in MoM dated 13.11.2024.

c. Submission of LoA (Letter of Award) issued by NVVN/NTPC for 05 MW & 10 MW DG Power Plant.

- i. NVVN/NTPC vide letter No. NVVN/C&M/2018-19/LOA-03 dated: **20.04.2018** issued letter of Award (LoA) to M/s Express Engineers & Spares Private Limited for establishment of 10 MW DG Plant installed at Bambooflat.
- ii. NVVN/NTPC vide letter No. NVVN/C&M/2018-19/LOA-01/106 dated: 08.03.2018 issued letter of Award (LoA) to M/s Aggreko Energy Rental India Private Limited for establishment of 05 MW DG Plant installed at Chatham.

d. Submission of CoD (Commercial Date of Declaration) issued by NVVN/NTPC for 05 MW & 10 MW DG Power Plant.

- i. Commercial Date of Declaration (CoD) for 10 MW DG Power Plant was declared on **17.10.2018** and communicated vide letter dated: 29.10.2018.
- ii. Commercial Date of Declaration (CoD) for 05 MW DG Power Plant was declared on 29.04.2018 and communicated vide letter dated: 01.05.2018.

e. Utmost requirement of Approval of PSAs for 10 MW & 05 MW Plants by NVVN.

It is submitted that the approval of both PSAs is utmost necessary for the true up of FY 2021-22 filed by the Electricity Department, A&N Administration before Hon'ble Commission, which is upheld at the Commission due to non-availability of approval of above PSAs by NVVN. The approval of True-up 21-22 is required for the on-going efforts for privatization of ED in UT of A&N Islands under Atma Nirbhar Bharat Abhiyan (ANBA) Scheme of Gol and for the release of Grants under Revamped Distribution Sector Scheme (RDSS), the scheme of Gol. The grant from the Ministry of Power is dependent on the approval of True-up for FY 2021-22 by the Commission. Under three components of RDSS, the MoU of Smart Metering and PIA Agreement of loss reduction & interconnection has been signed on 17.03.2025. Kind consideration for approval of PSAs of 10 MW & 05 MW DG Plants would be highly obliged.

Analysis and Decision

6. It is noted that the Petitioner is responsible for ensuring a consistent power supply to meet the needs of consumers in the Andaman & Nicobar Islands. The Islands are separated from the rest of India (mainland) by more than 1000 Km. The generation capacity in the region relies heavily on Diesel Generator (DG) sets, limited solar PV plants, and limited alternative energy sources. The installed capacity at the time FY2017-18 was insufficient to meet the peak demand of 40-43 MW during the summer and 36-38 MW during the monsoon.

7. It is noted that the Power Purchase Agreement (PPA) with Suryachakra Power Corporation Limited (SPCL) expired on 01.04.2018. The departmental DG sets at Chatham Power House had already outlived their useful life (Commissioned during 1990-91). Hence, all the DG sets were heavily de-rated and have tendency of frequent breakdown. Another departmental DG sets at Phoenix Bay Power House (Commissioned in February 2015), had major damage to one of the four MTU engines (2.4 MW) on 03.09.2017. Therefore, it created a power crisis in Port Blair.
8. It is noted that the Petitioner with approval of A&N Administration had floated a tender to supply 15 MW Power i.e 05 MW at Chatham Power House complex (Tender no. EL/PR/124A/T- 18/2017/4249 dated: 23-11-2017) and 10 MW at Bambooflat (Tender no. EL/PR/124A/T-19/2017/4250 dated: 23-11-2017). As this is the only viable solution as a stop gap arrangement till a regular base load Power Plant like proposed 30MW extendable to 50 MW LNG is commissioned and as further briefed by the petitioner that the LI bidder retracted at the last moment.
9. It is noted that a meeting was held under the Chairmanship of Hon'ble Minister of State (I/C) for Power and New & Renewable Energy on 10th January 2018 at 10:30 AM in New Delhi on the power related issues of Andaman & Nicobar Islands. In the meeting it was decided that as a part of immediate & short term arrangement, A&N Administration may issue letter of award to NTPC for installation of 15 MW power plant. NTPC Ltd. shall complete the installation of 15 MW generation capacity, so as to enable power supply in A&N by 31st March, 2018. NTPC assured to complete the work within the time limit and requested that the plant should be allowed to be operated on cost-plus basis. The fuel for this plant will be arranged by A&N administration to NTPC. It was also decided that the 15 MW capacity installed by NTPC shall continue to be maintained after the crisis period over.
10. It is noted that subsequently, a meeting was held at Sri Vijaya Puram (formerly named Port Blair) between M/s NTPC and Electricity Department, at Sri Vijaya Puram from 13.01.2018 to 18.01.2018, regarding Sale of 15 MW (5+10 MW) power through DG sets. In the meeting, it was agreed that Electricity department will sign a power sale agreement with NVVN (NTPC Vidyut Vyapar Nigam Limited (NVVN), a 100% subsidiary of NTPC Ltd) for sale of 10 MW power initially for a period of three years plus one year extendable. NTPC/NVVN will sign 'back to back' Power Purchase Agreement (PPA) with DG Power Supplier. NTPC/NVVN shall be a trader and charge trading margin of 07 paisa per KWh. The trading margin shall be in addition to the power unit charge arrived through bidding process as per terms and conditions of the bid. It was also agreed in the meeting that NVVN will issue a tender to invite bid for selection of DG set Generator for installing 10 MW power plant at IPP Complex, Bambooflat. The letter of award (LOA) to the selected bidder shall be issued on signing of the PSA.
11. It is noted that as per letter No. NVVN/BD/A&N/DG issued by NVVN to ED A&N dated 12.04.2018, NVVN had published notice for RfS (RfS No.: NVVN-RE-CM-2017-009) for the purchase of power through DG Sets to deliver 10 MW power continuously to the 33KV grid of Electricity Department at IPP Complex, Bambooflat, Sri Vijaya Puram. M/s NVVN

intimated that in the open tenders floated by NVVN for supply of 10 MW Power at IPP Complex, Bambooflat bidder viz., M/s Express Engineers & Spares Private Ltd., has been selected at tariff of Rs 1.31/KWh excluding trading margin of 07 Paisa/KWh. GST on quoted tariff (Rs/KWh), if applicable, shall be paid extra on submission of documentary evidence.

12. It is noted that Petitioner has executed the Power Sale Agreement (PSA) with NVVN which was signed on 20.04.2018 without prior approval of the Commission for a period of three years from the date of COD i.e. from 17.10.2018 to 16.10.2021 extendable for further period of one year. The A&N Administration vide letter no. EL/PL/1-43(15 MW)/2018/(PF) dated 24.04.2018 processed draft Power Sale Agreement (PSA) duly vetted by Finance & Law department of the administration and the same has been approved by the Hon'ble Lt. Governor, A&N Island.
13. It is also noted that the Ministry of Power, GoI, vide letter No. **4/4/2017-Th-I dated 08.05.2018** approved the exemption of section 63 of the Electricity Act 2003 read with Para 5.3 of this ministry's Tariff Policy dated 28th January 2016, for selection of NTPC on nomination basis for installation of 15 MW DG Power Plant (5MW at Chatham + 10 MW at IPP Complex at Bambooflat) in A&N Island.
14. Further, it is also observed that the PSA dated 20.04.2018 expired on 16.10.2021 after a period of three years from the date of COD i.e. 17.10.2018. With the approval of A&N Administration and mutual consent the contract period had been sequentially extended upto 14.01.2023 on same terms & conditions. Subsequently, another extension had been executed for a period of six months from 15.01.2023 to 14.07.2023 through Supplementary Power Sale Agreement dated 13.04.2023 at a revised tariff of Rs. 1.10/KWh (including NVVN trading margin of Rs 0.07/KWh). Again, an extension had been executed for period of six months from 15.07.2023 to 14.01.2024 through Supplementary Power Sale Agreement dated 13.04.2023 at a tariff of Rs. 1.10/KWh (including NVVN trading margin of Rs 0.07/KWh). Further, with the approval of A&N Administration and mutual consent the contract period had been extended sequentially upto 15.09.2025 at a tariff of Rs. 1.10/KWh (including NVVN trading margin of Rs 0.07/KWh).
15. It is also noted that the Ministry of Power, GoI, vide letter **4/4/2017-Th-I dated 03.10.2022** approved the exemption of section 63 of the Electricity Act 2003 read with Para 5.3 of this ministry's Tariff Policy dated 28th January 2016, for selection of NTPC on nomination basis for installation of 15 MW DG Power Plant in A&N Island.
16. It is noted that the Petitioner first time approached the Commission by filing "**True-up for the FY 2021-22, Annual Performance Review (APR) for FY 2023-24, and Aggregate Revenue Requirement (ARR) and Determination of Retail Tariff for FY 2024-25**". The Commission issued the Tariff Order dated 13th June 2024 for Petition No. 119 of 2023 with following direction:

“3. The Commission decided not to carry out the true-up for FY 2021-22 since the Petitioner has not been able to submit the requisite information asked for in TVS The Commission directs the Petitioner to submit a separate petition for true-up for FY 2021-22.”

17. It is noted that after a lapse of approx. six years and nine months the Petitioner has filed the instant petition for approval of “Power Sale Agreement for Purchase of power through DG Sets to deliver 10 MW power continuously to the 33 KV grid of the Electricity Department at Sri Vijaya Puram” between Electricity Department, A&N Administration, Vidyut Bhawan, Sri Vijaya Puram – 744101 and NVVN.

18. It is relevant to highlight the different legal provisions as well as judicial determination thereon. Section 62 & 63 of the Electricity Act, 2003 stipulates:

“Section 62. (Determination of tariff): --- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –

(a) supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity;

(c) wheeling of electricity;

(d) retail sale of electricity:”

“Section 63. (Determination of tariff by bidding process): Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

19. The Hon’ble Supreme Court in the matter of PTC India Ltd. Vs. CERC (2010) 4 SCC 603 held, inter-alia, that: -

“17. The term "tariff" is not defined in the 2003 Act. The term "tariff" includes within its ambit not only the fixation of rates but also the rules and regulations relating to it. If one reads Section 61 with Section 62 of the 2003 Act, it becomes clear that the Appropriate Commission shall determine the actual tariff in accordance with the provisions of the Act, including the terms and conditions which may be specified by the Appropriate Commission under Section 61 of the said Act. Under the 2003 Act, if one reads Section 62 with Section 64, it becomes clear that although tariff fixation like price fixation is legislative in character, the same under the Act is made appealable vide Section 111. These provisions,

namely, Sections 61, 62 and 64 indicate the dual nature of functions performed by the Regulatory Commissions, viz, decision-making and specifying terms and conditions for tariff determination.

18. Section 66 confers substantial powers on the Appropriate Commission to develop the relevant market in accordance with the principles of competition, fair participation as well as protection of consumers' interests. ”

19. 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 de hors 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 harmonized. 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. ”

Further, the Hon'ble Supreme Court of India in the judgment passed in Jaipur Vidyut Vitran Nigam Ltd. And Others v. MB Power (Madhya Pradesh) Limited and Others 2024 SCC Online SC 26, while relying upon its earlier judgements passed in Energy Watchdog v. CERC (2017) 14 SCC 80 and PTC India Ltd. Vs. CERC (2010) 4 SCC 603 held that:

“113. 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.

114. 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.”

20. Thus, as can be seen from the legal provisions and the above stated judicial pronouncements, it is settled law that (a) the Commission is vested with the power to allocate (and reallocate) power and (b) the regulatory powers of the State Commission are wide and multifarious in nature. The Ministry of Power, considering the urgency of requirement of power, had granted exemption u/s 63 of the Electricity Act, 2003, and selected NTPC on nomination basis for installation of 15 MW DG Power Plant (5MW at Chatham + 10 MW at IPP Complex at Bamboo flat) in A&N island. Subsequently a Power Sale Agreement was executed between NVVN and ED A&N on 20th April 2018 for supply of power through DG Sets & to deliver 10 MW power continuously to the 33 KV grid of the Electricity Department at Sri Vijaya Puram. Sections 62 and 63 deal with “determination” of tariff, which is part of “regulating” tariff. Under Section 63 the Commission has power to adopt tariff in accordance with guidelines and has power to exercise its regulatory functions. Furthermore, 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. But the Petitioner in the instant matter has not taken the approval of the Commission before execution of any Power Purchase/Sale Agreement which is mandated under the Electricity Act 2003.
21. The Commission took a serious note of the lapse made by the Petitioner in filing the present Petition for approval of the Power Sale Agreement with NVVN, after approximately six years and nine months from the date of execution of the Power Sale Agreement. The Commission advises the Petitioner to obtain the prior approval of the Commission before execution of any Power Purchase/Sale Agreement in the future.
22. Considering the urgency of the requirement of the power in A&N island and exemption granted u/s 63 by MoP to meet the power supply needs of the consumers in Sri Vijaya Puram, the Petitioner selected NTPC on nomination basis for installation of 10 MW DG

Power Plant at IPP Complex at Bambooflat. The details of PSA/ A&N Administration approval, Period of PSA & extension, and rate per unit including trading margin are tabulated below:

Sl. No.	Details of PSA / A&N Administration Approval	Period of PSA / Extension	Rate per unit including the trading margin of Rs. 0.07/-
1	Initial PSA dated 20.04.2018 F.No. EL/PL/1-43(15 MW)/2018/ (PF) dated 24.04.2018	17.10.2018 to 16.10.2021 (3 years)	Rs. 1.38/-
2	Order No. 499, dated 04.03.2022 F.No. EL/PL/1-43(15MW)/2020-21	17.10.2021 to 16.01.2022 (3 months)	Rs. 1.38/-
3	Order No. 709, dated 28.06.2022 F.No. EL/PL/1-43(15MW)/2020-21 (Vol.I)	17.01.2022 to 14.07.2022 (6 months)	Rs. 1.38/-
4	Order No. 2728, dated 18.10.2022 F.No. M/5/2022-Work-ELE-ELE AN	15.07.2022 to 14.01.2023 (6 months)	Rs. 1.38/-
5	Supplementary PSA dated 13.04.2023, Order No. 646, dated 14.03.2023 F.No. M/5/2022-Work-ELE-ELE AN	15.01.2023 to 14.07.2023 (6 months)	Rs. 1.10/-
6	Supplementary PSA dated 21.09.2023, F.No. M/5/2022-Work-ELE-ELE AN dated 17.08.2023	15.07.2023 to 14.01.2024 (6 months)	Rs. 1.10/-
7	Order No. 126, dated 13.01.2024 F.No. M/5/2022-Work-ELE-ELE AN	15.01.2024 to 14.05.2024 (4 months)	Rs. 1.10/-
8	Order No. 482, dated 04.03.2024 F.No. M/5/2022-Work-ELE-ELE AN	15.05.2024 to 14.07.2024 (2 months)	Rs. 1.10/-
9	F.No. M/5/2022-Work-ELE-ELE AN dated 09.09.2024	15.07.2024 to 14.09.2024 (2 months)	Rs. 1.10/-
10	F.No. M/5/2022-Work-ELE-ELE AN dated 30.10.2024	15.09.2024 to 14.03.2025 (6 months)	Rs. 1.10/-
11	F.No. 3-14(71-2)/2020-Power dated 19.02.2025	15.03.2025 to 14.09.2025 (6 months)	Rs. 1.10/-

In view of above, the Commission accords its approval for Power Sale Agreement to procure 10 MW power continuously to the 33 KV grid of the Electricity Department at Sri Vijaya Puram by the Petitioner through PSAs and subsequent extensions thereon.

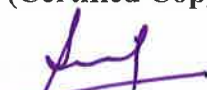
23. Ordered accordingly.

Sd/-
(Jyoti Prasad)
Member (Law)

Sd/-
(Alok Tandon)
Chairperson

(Certified Copy)

Place: Gurugram, Haryana
Date: 5th May, 2025


(S.D. Sharma)
Secretary I/c, JERC