



नईदिल्ली  
NEW DELHI

याचिका संख्या./ Petition No.: 287/MP/2019

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson  
श्री आई. एस. झा, सदस्य/ Shri. I.S. Jha, Member  
श्री अरुण गोयल, सदस्य/ Shri. Arun Goyal, Member

आदेश दिनांक/ Date of Order: 16<sup>th</sup> of July, 2020

**IN THE MATTER OF:**

Petition invoking Regulation 1.5(iv) read with Regulation 5.2(u) and Regulation 6.5(11) of the CERC (Indian Electricity Grid Code) Regulations, 2010 for enforcement of 'must run' status granted to solar power projects and Regulation 111 of the CERC (Conduct of Business) Regulations, 1999 seeking direction to State Load Dispatch Centre to stop issuing backing down instructions to the Petitioners.

**AND IN THE MATTER OF:**

1. Wardha Solar (Maharashtra) Private Ltd.  
Sambhaav House, Judges Bungalow Road,  
Bokadev, Ahmedabad, Gujarat-380015
2. Parampujya Solar Energy Private Ltd.  
Sambhaav House, Judges Bungalow Road,  
Bokadev, Ahmedabad, Gujarat-380015

**...Petitioners**

## VERSUS

1. Karnataka State Load Dispatch Centre  
27/1, Race Course Road, Madhava Nagar,  
Gandhi Nagar, Bengaluru, Karnataka 560001
2. Solar Energy Corporation of India  
1<sup>st</sup> Floor, A-Wing, 0-3, District Centre, Saket  
New Delhi-110017
3. Ministry of New and Renewable Energy  
Block-14, CGO Complex,  
Lodhi Road, New Delhi-110003
4. Karnataka Power Transmission Corporation Ltd.  
KPTCL, Corporate Office,  
Kaveri 8havan, Bengaluru-560009

...Respondents

**Parties Present:** Shri Amit Kapur, Advocate, WS(M)PL and PSEPL  
Ms. Aparajita Upadhyay, Advocate, WS(M)PL and PSEPL

## आदेश/ ORDER

M/s Wardha Solar (Maharashtra) Private Ltd. (hereinafter referred to as 'Petitioner No.1') has set up nine (9) solar PV power projects in the State of Karnataka whereas, M/s Parampujya Solar Energy Private Ltd. (hereinafter referred to as 'Petitioner No.2') has set up one (1) solar PV power project in the State of Karnataka after being selected under the competitive bidding process conducted by Solar Energy Corporation of India (SECI), Respondent No. 2. The projects have been set up under the Guidelines for Implementation of Scheme for setting up 2000 MW Grid-connected Solar PV Power Projects under Batch-III -'State Specific VGF Scheme' under JNNSM Phase-II (hereinafter referred to as 'JNNSM Guidelines') issued by Ministry of New and Renewable Energy. The Petitioner No. 2 is the parent company of Petitioner No. 1. The Petitioners are engaged in the business of development, building,

owning, operating and maintaining utility scale grid connected solar power projects, for generation of solar power.

2. The Respondent No. 1, Karnataka State Load Dispatch Centre (hereinafter referred to as 'KSLDC') is the apex body to ensure integrated operation of the power system in State of Karnataka. KSLDC is responsible for the real-time load dispatch functions, operation and maintenance of supervisory control and data acquisition system and energy accounting in the State of Karnataka.
3. The Respondent No. 2, Solar Energy Corporation of India (SECI) is a Central Public Sector Undertaking under the administrative control of Ministry of New and Renewable Energy, to facilitate the implementation of JNNSM Scheme and achievement of targets set therein. SECI has been designated by the Government of India as the nodal agency for implementation of JNNSM Schemes for developing grid connected solar power capacity.
4. The Respondent No. 3, Ministry of New and Renewable Energy (MNRE), is the nodal ministry of the Government of India for all matters relating to new and renewable energy in India.
5. The Respondent No. 4, Karnataka Power Transmission Corporation Ltd. (KPTCL), is a wholly owned company of the Government of Karnataka and is vested with the functions of transmission of power in the State of Karnataka and also construction of stations and transmission lines and maintenance of sub-stations. It operates under a license issued by Karnataka Electricity Regulatory Commission (KEREC).
6. The Petitioners have made the following prayers:
  - (a) *Admit the Petition;*
  - (b) *Direct KSLDC to enforce the 'must run' status granted to the solar power projects of the Petitioners;*
  - (c) *Direct KSLDC to forthwith stop issuing instructions to back down the solar power from the Petitioners' solar power projects;*

- (d) Consider deemed generation to solar plants for the loss of generation due to outages/backing down instructions of Respondents and approve the methodology for estimating deemed generation;
- (e) Direct KSLDC to pay deemed generation charges to the Petitioners in order to compensate the Petitioners for the loss of generation due to the back down of solar power with retrospective effect at the rate of the tariff of the PPAs along with interest;
- (f) Direct Respondent No.1, KSLDC that the backing down of the solar power plants having must run' status power can be resorted to only after exhausting all other possible means of achieving and ensuring grid stability and reliable power supply.
- (g) Direct Respondent No.1 KSLDC that any whimsical, unscheduled and unauthorised backing down instructions (other than for system security events) would attract penal action under section 142 of the Act, by fixing personal responsibility on the official(s) concerned;
- (h) To pass such other and further order or orders as this Commission deems appropriate under the facts and circumstances of the present case.

### **Background**

7. On, 04.08.2015, MNRE issued Guidelines for Implementation of Scheme for setting up 2000 MW Grid-connected Solar PV Power Projects under Batch-III - 'State Specific VGF Scheme' under JNNSM Phase-II.
8. On 15.02.2016, SECI issued Request for Selection (RfS) for selection of 1000 MW grid connected solar PV projects to be set up in Karnataka in terms of the JNNSM Guidelines. In terms of the RfS , solar power developers (SPDs) selected by SECI were required to set up the solar PV projects on Build, Own, Operate basis in accordance with the provisions of the RfS. SECI was required to execute power purchase agreement (PPA) with the successful bidder for a period 25 years with maximum tariff at Rs. 4.43/kWh for 25 years.
9. On 29.06.2016, SECI executed a Power Supply Agreement (PSA) with distribution licensees of Karnataka for supply of power to be procured by SECI (upto 1000 MW) from selected solar power projects pursuant to the bidding conducted in terms of the RfS at the tariff determined pursuant to the bidding plus trading margin of Rs. 0.07/kWh.

10. On 02.07.2016, Letter of Intent (LOI) was issued by SECI to the Petitioners for development of solar PV projects of 390 MW in the State of Karnataka.
11. On 02.08.2016, Petitioner No. 2, entered into Power Purchase Agreement (PPA) with SECI for supply of 40 MW power from its solar power project in Karnataka at a tariff of Rs. 4.43/kWh.
12. On 22.09.2016, Petitioner No. 1 entered into nine PPAs with SECI for supply of 350 MW power from its solar power projects in Karnataka at a tariff of Rs. 4.43/kWh.
13. From February to May 2018, the solar power projects of the Petitioners were commissioned.
14. From April 2018 onwards, KSLDC has been issuing telephonic instructions to the Petitioners to back down generation from their power projects in Karnataka citing grid safety and security as the reason for back down.
15. On 13.05.2019, the Petitioners wrote to KPTCL that the projects of the Petitioners are facing rampant curtailment, due to lack of system/grid strengthening by KPTCL, which has led to generation loss and which would subsequently lead to default under the PPA. In terms of the PPAs, the Petitioners are liable to pay compensation for not generating minimum energy for the contracted year.
16. On 31.05.2019, KPTCL informed the Petitioner No. 2, *inter alia*, that solar power projects have been backed down as a last resort in view of grid security.
17. On 01.08.2019, MNRE taking note of the violation of Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (hereinafter referred to as 'IEGC Regulations, 2010') by various State Load Despatch Centres (SLDCs) issued a letter with directions that 'must run' status of solar and wind projects must be honoured in letter and spirit and curtailment of such power can be done only for grid security, that too after communicating the instructions detailing the reason for curtailment to the generator in

writing. If the SLDC curtails solar or wind power for any reason other than grid safety and security as prescribed in the IEGC Regulations, 2010, the SLDC shall be liable for making good the loss incurred by the wind or solar generator towards deemed generation.

18. On 29.08.2019, the Petitioners filed the Petition before the Commission.

### **SUBMISSIONS OF THE PETITIONERS**

19. The Petitioners have submitted that Petitioner No. 1 has entered into nine (9) PPAs dated 22.09.2016 with SECI for supply of 350 MW power from its power projects. Petitioner No. 2 has entered into one (1) PPA dated 02.08.2016 with SECI for supply of 40 MW power from its project. These power projects are connected to the intra-State transmission system of KPTCL. The details of the projects set up by the Petitioners *viz.* PPA, capacity, location, commercial operation date are as under:

S. No.	Project ID	PPA	Capacity (MW)	Location in Karnataka	Commercial Operation Date (COD)
1	P2B3T5-PSEPL-B-4KA-7V	22.09.2016	40	Yetnal	12.04.2018 (30 MW) 05.05.2018 (10 MW)
2	P2B3T5-PSEPL-B-1KA-8V	22.09.2016	10	Yetnal	12.04.2018
3	P2B3T5-PSEPL-B-5KA-3V	22.09.2016	50	Madhuvanahally	14.03.2018
4	P2B3T5-PSEPL-B-5KA-4V	22.09.2016	50	Madhuvanahally	14.03.2018
5	P2B3T5-PSEPL-B-5KA-1V	22.09.2016	50	Rajeshwar	28.02.2018
6	P2B3T5-PSEPL-B-5KA-2V	22.09.2016	50	Maskal	29.03.2018
7	P2B3T5-PSEPL-B-5KA-6V	22.09.2016	50	Hattigudur & Bommanahalli	16.03.2018
8	P2B3T5-PSEPL-B-5KA-5V/4P	22.09.2016	40	Nalwar	28.03.2018

S. No.	Project ID	PPA	Capacity (MW)	Location in Karnataka	Commercial Operation Date (COD)
9	P2B3T5-PSEPL-B-5KA-5V/1P	22.09.2016	10	Kallur	07.04.2018
10	P2B3T5-PSEPL-A-4KA-1V	02.08.2016	40	Kallur	07.04.2018 (20 MW) 30.05.2018 (20 MW)
	TOTAL		390		

20. The Petitioners have submitted that since April 2018, KSLDC has been issuing telephonic instructions to the Petitioners to back down generation from their power projects in Karnataka citing grid safety and security as the reason for back down. Such backing down has caused loss of generation and non-realization of full tariff by the Petitioners.
21. The Petitioners have submitted that the solar power plants are to be treated as ‘must run’ in terms of the applicable extant law viz.:
- a) Regulation 5.2(u) of the IEGC Regulations, 2010 which states as under:
- “System operator (SLDC/ RLDC) shall make all efforts to evacuate the available solar and wind power and treat as a must-run station. However, System operator may instruct the solar /wind generator to back down generation on consideration of grid security or safety of any equipment or personnel is endangered and Solar/ wind generator shall comply with the same. For this, Data Acquisition System facility shall be provided for transfer of information to concerned SLDC and RLDC.”*
- b) Regulation 6.5(11) of the IEGC Regulations, 2010 which provides that:
- “11. Since variation of generation in run-of-river power stations shall lead to spillage, these shall be treated as must run stations. All renewable energy power plants, except for biomass power plants, and non-fossil fuel based cogeneration plants whose tariff is determined by the CERC shall be treated as ‘MUST RUN’ power plants and shall not be subjected to ‘merit order despatch’ principles”*
22. The Petitioners have submitted that curtailment of evacuation of solar power from the Petitioners’ projects is contrary to the aforesaid provisions of the IEGC Regulations, 2010. Such arbitrary conduct by KSLDC is not only illegal but also has an adverse financial impact on the Petitioners as they are not able to realize the full tariff payable to it.

23. The Petitioners have submitted that the Scheduling and Despatch Code of the Karnataka Electricity Grid Code, 2015 (hereinafter referred to as 'KEGC, 2015') notified by KERC also confers 'must run' status on renewable energy power plants and mandates SLDC to not to subject such plants to 'merit order dispatch' principles.
24. The Petitioners have submitted that Article 4.4.1 of the PPAs stipulates that in case the Petitioners are unable to generate the minimum units of energy as specified in the PPA, then the Petitioners are liable to pay to SECI, compensation corresponding to the shortfall in generation during the Contract Year.
25. The Petitioners have submitted that MNRE, vide its letter dated 01.08.2019, has taken note of the irregular curtailment of solar and wind power by various SLDCs and issued directions to all SLDCs to honour the 'must run' status of solar and wind power plants in letter and spirit. MNRE has instructed that curtailment of solar and wind power can only be done for reasons of grid safety and security and that too after communicating instructions detailing the reasons for curtailment to the generator in writing.
26. The Petitioners have submitted that in terms of the IEGC Regulations, 2010 and MNRE letter dated 01.08.2019, back down instructions to solar power plants can only be issued if grid security is endangered or safety of any equipment or personnel is endangered. However, no such reasons have ever been communicated to the Petitioners and KSLDC has been issuing these back-down instructions solely due to:
  - a) routine system operations requirements such as lower demand in the system;
  - b) alleged unavailability of transmission corridor for evacuation of power.
27. The Petitioners have submitted that the Commission has notified the 4th Amendment to the IEGC Regulations, 2010 on 06.04.2016, wherein the Commission has amended Regulation 6.3 and inserted Regulation 6.3B to fix the minimum schedule for operation of Central Generating Stations and Inter-State Generating Stations. As per the amendment, the technical minimum for operation in respect of a unit(s) of a Central Generating Station or Inter-State



Generating Station shall be 55% of Maximum Continuous Rating (MCR) loading or installed capacity of the unit of a generating station.

28. The Petitioners have submitted that KSLDC is not backing down the State generating stations and also not surrendering the Central Generating Stations' share of Karnataka to the extent that the State generating stations and CGS/ISGS can operate its unit(s) at the technical minimum i.e. 55% of MCR loading or installed capacity. It is pertinent to mention here that had the Respondents backed down conventional generation to the technical minimum capacity, then the solar power generation could be accommodated fully in the grid.
29. The Petitioners have submitted that the power generated by the solar power plants has been curtailed arbitrarily by KSLDC without even recording reasons for such back down. Such instructions are in teeth of the express mandate of the Electricity Act, 2003, JNNSM scheme, the Tariff Policy, 2016 and National Electricity Policy, 2005 notified by the Government to promote generation of power from renewable energy sources.
30. The Petitioners have submitted that KEGC, 2015 obligates KSLDC to make all efforts to evacuate solar power and treat solar power projects as 'must run'. In this regard, clauses 6.2(xxi) and 8.5(8) of the KEGC, 2015 stipulate as under:

a) Clause 6.2(xxi):

*“xxi. Special requirements for Renewable Energy System Operator (SLDC) shall make all efforts to evacuate the available Solar, mini-hydel, co-generation and wind power and other Renewable Energy (RE) sources and treat the plants as must-run stations. However, SLDC may instruct such generator to back down generation in case grid security or safety of any equipment or personnel is likely to be endangered and Renewable Energy (RE) sources shall comply with the same. For this, Data Acquisition System facility shall be provided by the generator for transfer of information to the SLDC.”*

b) Clause 8.5 (8):

*“8. Since variation of generation in run-of-river power stations shall lead to spillage, these shall be treated as must-run stations. All renewable energy power plants, except for biomass power plants and non-fossil fuel based cogeneration plants whose tariff is determined by the KERC shall be treated as 'MUST RUN' power plants and shall not be*

*subjected to 'merit order despatch' principles. Provided that, in case of low load conditions, the SLDC shall regulate the generation of Renewable energy power plants to maintain Grid security."*

31. The Petitioners have submitted that KSLDC's action to curtail solar power is not only in violation of the IEGC Regulations, 2010, but also in violation to the provisions of the KEGC, 2015. Further, they have submitted that they have analyzed the block wise grid frequency as per the data obtained from the web site of the Southern Regional Power Committee (SRPC). As per the said data, during the day time when solar generation is available, the frequency has hardly ever crossed the limit of 50.05 Hz. The data available with respect to the frequency clearly demonstrates that the frequency has never been an issue and solar power is being backed down on account of the arbitrary decisions of KSLDC which are contrary to the legal and regulatory mandate that is binding upon it.
32. The Petitioners have submitted that in case of voltage drop, there is a provision to install Low Voltage Ride-Through (LVRT) in solar power plants to maintain generation even at low voltage conditions. This has been installed by the Petitioners in their power projects in line with the Central Electricity Authority (CEA) guidelines. Therefore, even in the event of transient faults when the recovery of voltage starts after 300 milli seconds, solar generation is available and the grid stability is maintained. Therefore, the need to back down solar generation due to grid security does not arise.
33. The Petitioners have submitted that prior to the installation of the solar power plants, connectivity approval was issued by KPTCL after carrying out load flow/system studies for analyzing all the possibilities and infrastructure available to evacuate the available power to the point of consumption even under worst conditions. KPTCL was required to resolve all issues pertaining to transmission constraints prior to commissioning of the solar power plants. Therefore, now transmission constraint cannot be a ground for curtailment particularly when the responsibility of development of transmission systems lies with KPTCL.
34. The Petitioners have submitted that their projects have been set up pursuant to a competitive bidding process and based on JNNSM to establish India as a global leader in solar energy.

Many project developers including the Petitioners have made considerable financial investments to construct and operate their solar plants. However, due to the unexpected and arbitrary backing down of solar power by KSLDC is making full tariff realization very difficult for the Petitioners. In such a case, it is imperative that KSLDC ought to be made liable for the generation loss being caused to the Petitioners and KSLDC must pay deemed generation charges to the Petitioners corresponding to power which was ready to be evacuated from the solar power projects, but could not be evacuated due to the instructions of KSLDC.

35. The Petitioners have submitted that the Commission in the Statement of Reasons (SOR) issued along with CERC (Tariff and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 had underscored the need for NLDC and SLDCs to evolve a framework for written explanation in cases of back-down of renewable energy projects due to issues other than grid security and reliability.
36. The Petitioners have submitted that even though no framework has been formulated yet, the intent of this Commission is clear regarding payment of deemed generation charges to renewable energy projects in case of back-down. The deemed capacity charges have been recognized and granted by the Commission and the Appellate Tribunal for Electricity (hereinafter referred to as 'the Tribunal') in cases, where the generator is ready to supply power, but due to reasons beyond the control of the generator, the said power could not be evacuated. The Petitioners have placed their reliance on the Commission's Order dated 21.08.2018 passed in Petition No. 14/MP/2017 in NTPC Ltd. v. BSES & Ors. and the Tribunal's judgment in Chhattisgarh State Power Generation Company Limited v. Chhattisgarh State Electricity Regulatory Commission reported as 2018 ELR (APTEL) 1050.
37. The Petitioners have submitted that if capacity charges have been granted to power plants operating on conventional sources of energy, then granting the same benefit to renewable energy power plants is only logical. Therefore, the Petitioner's solar power projects ought to

be granted deemed generation charges for the period of illegal backing down of power by KSLDC.

38. The Petitioners have submitted that Ministry of Power, Government of India on 08.12.2017 had notified the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects. In terms of clause 7.6.2 of the said guidelines, in case of generation loss due to offtake constraints due to backdown, the Procurer shall be liable to pay generation compensation to the generator which shall be calculated as under:

*“Generation Compensation=*

*50% x (Average Generation during the month corresponding to the capacity backed down) x PPA Tariff*

*Where, Average Generation during the month corresponding to the capacity backed down (kWh)=*

*(CUF during the month) x  $\sum$  (backed down capacity in MW x Corresponding time of backdown in hours x 1000)”*

39. The Petitioners have submitted that the same logic must also be applied in case of solar power projects (being a renewable source of energy) and generation compensation must be granted to the Petitioners.

#### **HEARING HELD ON 05.05.2020**

40. As per ROP dated 05.05.2020, the following was recorded:

*“The matter was listed for hearing through video conferencing.*

*2. the Learned counsel for the Petitioners submitted that the present Petition has been filed invoking the Regulation 1.5(iv) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 ('Grid Code'), inter-alia, enforcement of the 'must run' status granted to their Solar Projects in the State of Karnataka under Regulations 5.2(u) and 6.5(11) of the Grid Code and direction to the Respondent, Karnataka State Load Despatch Centre (KSLDC) to forthwith stop issuing back-down instructions to such Power Projects. Learned counsel mainly submitted as under:*

(a) *The Petitioners have set up Solar Power Projects of total capacity of 390 MW in the State of Karnataka after being selected by a competitive bidding process initiated by the Respondent No.2, Solar Energy Corporation of India Limited (SECI) under the Guidelines for Implementation of Scheme for Setting up of 2000 MW Grid-connected Solar PV Power Projects under Batch-III- 'State Specific VGF Scheme' under JNNSM Phase-II issued by Ministry of New and Renewable Energy (MNRE), Government of India.*

(b) *This Commission has the jurisdiction to adjudicate the present Petition under Section 79(1)(h) of the Electricity Act, 2003 read with Regulation 1.5 (iv) of the Grid Code for violation of the Regulations 5.2(u) and 6.5(11) of the Grid Code by KSLDC. The Karnataka Electricity Regulatory Commission has notified the Karnataka Electricity Grid Code, 2015 ('KEGC'). However, there is no corresponding provision therein for dealing with the non-compliance of the Grid Code or KEGC by SLDC. Since KEGC is subject to the Grid Code in terms of Section 79(1)(h) and 86(1)(h) of the Act, only this Commission has jurisdiction to adjudicate upon the present Petition with respect to noncompliance of the provisions of the Grid Code by KSLDC.*

(c) *The Supreme Court in Central Power Distribution Co.& Ors. v. Central Electricity Regulatory Commission & Anr. [(2007) 8 SCC 197] has also held that grid discipline even when there is a single State beneficiary will be within the purview of this Commission.*

(d) *From the commissioning of these power projects during February to May, 2018, KSLDC has been issuing telephonic instructions to the Petitioners to back down generation in violation of the Grid Code as well as the MNRE letter dated 1.8.2019 wherein the MNRE has taken note of irregular curtailment of solar and wind power by various SLDCs and has instructed that the curtailment of solar and wind power can only be done for the reasons of the grid safety and security based on the detailed written instructions with reason to curtail the generator.*

(e) *Learned counsel requested that during the pendency of the Petition, the Respondent, KSLDC be directed to henceforth comply with the provisions of the Grid Code.*

3. *In response to the Commission's specific query that the Hon'ble High Court of Andhra Pradesh has stayed the further proceedings in Petition No. 342/MP/2019 involving similar issues, on the ground of lack of jurisdiction as raised by AP SLDC, learned counsel submitted that interim stay granted by the Hon'ble High Court is in respect of Andhra Pradesh PPAs and is applicable in the State of Andhra Pradesh only. Since the present case is pertaining to the State of Karnataka, the order of the Hon'ble High Court of Andhra Pradesh will not come on the way of exercising the jurisdiction by this Commission.*

4. *After hearing the learned counsel for the Petitioners, the Commission reserved the order on admissibility of the matter."*

### **Analysis and Decision:**

41. The Petition was heard on 05.05.2020. The Commission after hearing the learned counsels for the Petitioners, reserved Order on admissibility.
42. The brief facts of the case are that Petitioner No. 1 has entered into nine (9) PPAs dated 22.09.2016 with SECI for supply of 350 MW power from its solar power projects. Petitioner No. 2 has entered into one (1) PPA dated 02.08.2016 with SECI for supply of 40 MW power from its solar power project. These power projects are connected to the intra-State transmission system of KPTCL. The solar power projects were commissioned during the period from February 2018 to May 2018. The Petitioners have submitted that KSLDC has been issuing telephonic instructions to the Petitioners to back down generation of solar power which has caused loss of generation and non-realization of full tariff by the Petitioners. The Petitioners have submitted that curtailment of evacuation of solar power from the Petitioners' projects is contrary to the provisions of the IEGC Regulations, 2010 and KEGC, 2015. MNRE vide its letter dated 01.08.2019 has also taken note of irregular curtailment of solar and wind power by various SLDCs and issued directions to all SLDCs to honour the 'must run' status of solar and wind power plants in letter and spirit. The Petitioners have submitted that back-down instructions to solar power plants can only be issued if grid security is endangered or safety of any equipment or personnel is endangered. However, no such reasons have ever been communicated to the Petitioners and that KSLDC has been issuing these back-down instructions solely due to routine system operation requirements such as lower demand in the system and unavailability of transmission corridor for evacuation of power.
43. The Petitioners have submitted that the Commission has amended Regulation 6.3 of the IEGC Regulations, 2010 and inserted Regulation 6.3B to fix the minimum schedule for operation of Central Generating Stations and Inter-State Generating Stations. As per the amendment, the technical minimum for operation in respect of unit(s) of a Central Generating Station and Inter-State Generating Station shall be 55% of MCR loading or installed capacity of the unit of generating station. However, the Respondents are not backing down the State

generating stations and also not surrendering the Central Generating Stations' share of Karnataka to the extent that the State generating stations and CGS/ISGS can operate its unit(s) at the technical minimum i.e. 55% of Maximum Continuous Rating (MCR) loading or installed capacity.

44. The Petitioners have submitted that the Commission has the jurisdiction to adjudicate the issues raised in the present petition under Section 79(1)(h) of the Electricity Act, 2003 read with Regulation 1.5(iv) of the IEGC Regulations, 2010 for violation of the Regulations 5.2(u) and 6.5(11) of the of the IEGC Regulations, 2010 by KSLDC. KERC has notified the KEGC, 2015. However, there is no corresponding provision therein for dealing with the non-compliance of the IEGC Regulations, 2010 or KEGC, 2015 by SLDC. Since KEGC, 2015 is subject to the IEGC Regulations, 2010 in terms of Section 79(1)(h) and 86(1)(h) of the Electricity Act, 2003, only the Central Commission has jurisdiction to adjudicate upon the present petition with respect to non-compliance of the provisions of the IEGC Regulations, 2010 by KSLDC.

45. The Commission observes that the relevant provisions of the Electricity Act, 2003 stipulate as under:

*“Section 79. (Functions of Central Commission):*

*(1) The Central Commission shall discharge the following functions, namely:-*

*....*

*(h) to specify Grid Code having regard to Grid Standards;*

*Section 86. (Functions of State Commission):*

*(1) The State Commission shall discharge the following functions, namely: -*

*....*

*(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;”*

46. The Commission has specified the IEGC Regulations, 2010 in exercise of the powers under Section 79(1)(h) of the Act. Karnataka Electricity Regulatory Commission (KERC) in exercise of power under Section 86(1)(h) the Act has specified the KEGC, 2015. Regulation 3.11 of KEGC, 2015 deals with the compatibility or consistency of KEGC, 2015 with the provisions of IEGC Regulations, 2010 as under:

*“3.11 Compatibility with Indian Electricity Grid Code: This Grid Code is consistent/compatible with the IEGC. However, in matters relating to inter-State transmission, if any provision of the State Electricity Grid Code is inconsistent with the provisions of the IEGC, then the provisions of IEGC as notified by CERC shall prevail.”*

47. As per KEGC, 2015, its provisions are compatible and consistent with the provisions of IEGC Regulations, 2010. However, if any of the provisions relating to inter-State transmission of electricity is inconsistent with the provisions of IEGC Regulations, 2010, then provisions of IEGC Regulations, 2010 shall prevail. We now examine the provisions of IEGC Regulations, 2010 and that of KEGC, 2015 with regard to Must Run status of renewable energy power projects. The relevant provisions of the IEGC Regulations, 2010 with regard to the Must Run status of renewable energy power projects including solar projects are extracted as under:

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5.2(u)

*System operator (SLDC/ RLDC) shall make all efforts to evacuate the available solar and wind power and treat as a must-run station. However, System operator may instruct the solar /wind generator to back down generation on consideration of grid security or safety of any equipment or personnel is endangered and Solar/ wind generator shall comply with the same. For this, Data Acquisition System facility shall be provided for transfer of information to concerned SLDC and RLDC...”*

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6.5(11)

*11. Since variation of generation in run-of-river power stations shall lead to spillage, these shall be treated as must run stations. All renewable energy power plants, except for biomass power plants, and non-fossil fuel based cogeneration plants whose tariff is determined by the CERC shall be treated as ‘MUST RUN’ power plants and shall not be subjected to ‘merit order despatch’ principles.”*

48. The relevant provisions of the KEGC, 2015 with regard to the Must Run status with regard to RE power projects including solar projects are extracted as under:

Clause 6.2(xxi):

*“xxi. Special requirements for Renewable Energy  
System Operator (SLDC) shall make all efforts to evacuate the available Solar, mini-hydel, co-*



*generation and wind power and other Renewable Energy (RE) sources and treat the plants as must-run stations. However, SLDC may instruct such generator to back down generation in case grid security or safety of any equipment or personnel is likely to be endangered and Renewable Energy (RE) sources shall comply with the same. For this, Data Acquisition System facility shall be provided by the generator for transfer of information to the SLDC.”*

Clause 8.5 (8):

*“8. Since variation of generation in run-of-river power stations shall lead to spillage, these shall be treated as must-run stations. All renewable energy power plants, except for biomass power plants and non-fossil fuel based cogeneration plants whose tariff is determined by the KERC shall be treated as ‘MUST RUN’ power plants and shall not be subjected to ‘merit order despatch’ principles. Provided that, in case of low load conditions, the SLDC shall regulate the generation of Renewable energy power plants to maintain Grid security.”*

49. It may be observed that provisions of Regulation 6.2(XXI) and Regulation 8.5(8) of KEGC, 2015 are pari materia with the provisions of Regulations 5.2(u) and Regulation 6.5(11) respectively of IEGC Regulations, 2010. The only distinction is that while Must Run status under KEGC, 2015 pertains to the intra-State projects whose tariff is determined by KERC, the Must Run status under IEGC Regulations, 2010 pertains to projects whose tariff is determined by the Central Commission.
50. The Petitioners have based their case on jurisdiction on Regulation 1.5(iv) of the IEGC Regulations, 2010 which permits the affected party to approach the Commission in case of non-compliance by the statutory authorities including SLDC. The Petitioners have submitted that since the KEGC, 2015 has to be consistent with IEGC Regulations, 2010 in terms of Section 86(1)(h) read with Section 79(1)(h) of the Act and in the absence of corresponding provision in KEGC, 2015 for dealing with the non-compliance of the IEGC Regulations, 2010 or KEGC, 2015 by KSLDC, this Commission has the jurisdiction to deal with such instances of non-compliance by KSLDC. Regulation 1.5(iv) of IEGC Regulations, 2010 is extracted as under:

*“1.5 Compliance Oversight...*

*...*

*(iv) In case of non-compliance of any provisions of the IEGC by NLDC, RLDC, SLDC, RPC and any other person the matter may be reported by any person to the CERC through petition.*

51. The Commission is of the view that this is a procedural provision in the IEGC Regulations, 2010 for ensuring compliance with the provisions by all concerned statutory bodies. However, absence of a similar provision in KEGC, 2015 does not leave the affected party without a remedy since the affected party in order to ensure compliance with the regulation can always invoke the jurisdiction of the appropriate Commission under Section 142 of the Act. This Commission can have jurisdiction in the matter and the Petitioners can invoke provisions of Regulation 1.5(iv) of IEGC Regulations, 2010 in case of non-compliance of the relevant provisions in IEGC Regulations, 2010 with regard to Must Run status of renewable energy power projects only if the power projects of the Petitioners are otherwise covered under the provisions of IEGC Regulations, 2010. Therefore, based on the facts of the case and in the light of the provisions of IEGC Regulations, 2010 and KEGC, 2015, we have to determine whether this Commission or KERC has jurisdiction in the matter.
52. As per Clause 8.5(8) of the KEGC, 2015, all renewable energy power plants except for biomass power plants and non-fossil fuel based cogeneration plants whose tariff is determined by KERC shall be treated as Must Run power plants and shall not be subject to 'merit order dispatch principle'. Regulation 6.5(11) of IEGC Regulations, 2010 provides that all renewable energy power plants except for biomass power plants and non-fossil fuel based cogeneration plants whose tariff is determined by CERC shall be treated as Must Run power plants and shall not be subject to 'merit order dispatch principle'. Thus whether a renewable energy power plant shall be governed by the IEGC Regulations, 2010 or KEGC, 2015 for the purpose of Must Run status depends on whether the tariff of the said plant is determined by CERC or KERC, as the case may be.
53. On perusal of the records, it is revealed that the project was set up under the JNNSM Phase II Scheme in accordance with the "*Guidelines for Implementation of Scheme for setting up 2000 MW Grid connected Solar PV Power Project under Batch III State Specific VGF Scheme*".

SECI entered into PSA with the Distribution Companies of Karnataka for upto 1000 MW. Based on the tariff based competitive bidding carried out by SECI, the Petitioners were selected for execution of 390 MW solar projects for which the Petitioners entered into 10 PPAs with SECI. Therefore, there is back to back arrangement with the distribution companies of Karnataka for supply of power by the Petitioner through SECI. The Commission in its order dated 11.10.2017 in Petition No.95/MP/2017 (Welspun Energy Private Ltd Vs SECI & Others) held that the projects executed by SECI under JNNSM Scheme are inter-State in nature and they come under the jurisdiction of Central Commission. Therefore, the solar projects of the Petitioners come under the jurisdiction of this Commission in terms of the said order. Further, Appropriate Commission and Dispute Resolution Mechanisms have been stipulated in the PPAs between the Petitioners and SECI as under:

*“Appropriate Commission:*

*shall mean the Central Electricity Regulatory Commission referred to in sub-section (1) of section 76 or the State Electricity Regulatory Commission referred to in section 82 or the Joint Electricity Commission referred to in Section 83 of the Electricity Act, 2003, as the case may be;”*

*16.3 Dispute Resolution*

*16.3.1*

*Dispute Resolution by the Appropriate Commission*

*i) Where any Dispute (a) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (b) relates to any matter agreed to be referred to the Appropriate Commission, such Dispute shall be submitted to adjudication by the Central Commission.*

*ii) SECI shall be entitled to co-opt the Buying Entity(ies) and/or the lenders (if any) as a supporting party in such proceedings before the Central Commission.*

54. From the above provisions, it emerges that all disputes relating to tariff or determination of any of such claims which would result in change in tariff would be adjudicated by the Central Commission. The Petitioners are aggrieved that the Must Run status of solar projects as provided in the IEGC Regulations, 2010 are not being complied with by KSLDC which results in shortfall in the generation of contracted capacity and thereby consequential reduction in tariff. Therefore, the dispute which has been raised in the present petition has the

implication in the form of change in the tariff and, therefore, the dispute resolution between the parties will come under the jurisdiction of the Commission.

55. Hon'ble Supreme Court in its judgment in *Central Power Distribution Co. & Ors. v. Central Electricity Regulatory Commission & Anr.* [(2007) 8 SCC 197] has held that the Central Commission has the jurisdiction not only to regulate the inter-State transmission lines but also intra-State transmission lines based on an interpretation of Section 79(1)(h) read with Section 86(1)(h), 28, 29 and 33 of the Act. Hon'ble Supreme Court came to the conclusion that the Central Commission has the jurisdiction in respect of grid discipline with regard to single beneficiary generating station, particularly when the tariff of the said station is regulated by Central Commission. Relevant portion of the judgement are extracted as under:

*“18. Under Section 79(1)(h) the Central Commission has the power to specify Grid Code. It also provides that the function of the State Commission to specify State Grid Code under Section 86(1)(h) should be consistent with the Grid Code specified by the Central Commission and therefore the power of the State Commission is subservient to the power of the Central Commission. Section 2(32) defines Grid as interconnected transmission lines. The expression used interconnected has a significant meaning. Sub-section (1) of Section 28 deals with the function of RLDC (Regional Load Dispatch Centre) to ensure integrated operation of the power system in the region concerned. The term power system is of wide import. It is not confined to inter-State transmission lines but extends to even supply lines, distribution, main service lines, etc. However, sub-section (3) of Section 28 deals with duties of RLDC using the expression “within the region” or “in the region”. Obviously it includes both “inter-State” and “intra-State” lines and is not restricted to inter-State lines. Section 29 of the Act empowers RLDC to give directions and exercise such supervision and control to any person for ensuring stability of Grid operation. It also provides that the State Load Dispatch Centre shall duly enforce such directions. Sub-section (3) of Section 33 of the Act provides that the State Load Dispatch Centre shall comply with the directions of RLDC.*

*19. A fascicule reading of the above provisions would clearly show that the scheme of the Electricity Act is that RLDC is required to follow the principles, guidelines and methodologies specified by the Central Commission and all persons including the distribution licensees like the appellants herein are required to follow the directions of RLDC. RLDC can enforce such directions through SLDC. In turn SLDC is required to follow the directions of RLDC.*

*20. Having regard to the aforementioned provisions of law the contention that the Central Commission has no jurisdiction to deal with Grid discipline in regard to single State beneficiary station, in our view, has no merit. As already noticed ABT is to ensure discipline in the integrated system. Further ABT is being introduced stationwise and it is the Central Commission alone who has the jurisdiction particularly, in regard to generating stations of NTPC, which is a Central Government-owned and controlled generating company.*

...

*22.4. In the facts and circumstances as alluded, and as per the scheme of the Electricity Act, 2003 mentioned above, the Central Commission has the plenary power to regulate the Grid, particularly in the context of the Grid being integrated and connected across the region comprising of more than one State. The State Grid cannot be isolated and can be seen as independent from the region”*

56. Even though the generation projects of the Petitioners are connected to State Grid, the tariff related matter including adjudication of disputes with regard to tariff comes under the jurisdiction of this Commission in terms of the PPA, our order in Petition No.95/MP/2017 and in terms of the above judgement of the Hon’ble Supreme Court.
57. In light of the above discussion, we are of the view that since issues of tariff and dispute with regard to tariff fall within the jurisdiction of this Commission, the provisions of Regulation 6.5(11) of IEGC Regulations, 2010 will be applicable in case of the projects of the Petitioners. Consequently, the Petition would be maintainable before this Commission.
58. The other issue which arose during the hearing was whether the Commission would proceed with the matter since proceedings in Petition No.342/MP/2019 raising a similar issue by Prayatna Developers Private Limited in respect of its renewable energy power project located in Andhra Pradesh was stayed by the Hon’ble High Court of Andhra Pradesh in Writ Petition No.1286/2020. The said writ petition was filed by the Andhra Pradesh State Load Despatch Centre contending that APERC only has the jurisdiction to adjudicate the disputes raised in Petition No.342/MP/2019. The Hon’ble High Court of Andhra Pradesh on 23.01.2020 has issued the following interim order in I.A. No 2/2020 in the Writ Petition No.1286/2020:

*“The Contention of the learned counsel for the petitioner is that respondent no. 1 has no jurisdiction to entertain the petition filed by respondent no.2 and it is only Andhra Pradesh Electricity Commission has to decide the dispute.*

*In view of the same, there shall be stay of all further proceedings pursuant to petition No. 342/MP/2019 pending before respondent no. 1 for the period of two weeks.”*

59. The Commission has been informed that on 05.02.2020 the Hon’ble High Court has further extended the stay on the proceedings in Petition No.342/MP/2019 upto 1.4.2020 and this

interim order is still continuing. Meanwhile, Prayatna Developers Pvt Ltd has filed I.A. No.3 of 2020 on 12.05.2020 before the Hon'ble High Court to vacate the interim order granted on 23.1.2020 by the Hon'ble Court and the same is pending.

60. The learned counsel of the Petitioner in the instant petition during the hearing held on 05.05.2020 submitted that the interim stay granted by the Hon'ble High Court of Andhra Pradesh is with respect to PPAs concerning renewable energy power projects in Andhra Pradesh and is applicable only in the State of Andhra Pradesh. Learned counsel submitted that since the present petition pertains to the State of Karnataka, the order of the Hon'ble High Court of Andhra Pradesh will not come in the way of exercising the jurisdiction by this Commission.
61. We have noted that Hon'ble High Court of Andhra Pradesh has stayed the proceeding in Petition No.342/MP/2019 before the Commission as the Hon'ble High Court is seized with the matter in the writ petition. This stay order is with regard to a specific petition and cannot have general application in respect of all petitions filed before the Commission raising similar issue. Further, the directions of the Hon'ble High Court are applicable within its territorial jurisdiction. In matter of Union Of India vs R Thiyagarajan, in Civil Appeal No. 2229 of 2020 (SLP(C) No. 18853 of 2017), vide judgement dated 03.04.2020, the Hon'ble Supreme Court decided as under:

*“18. We also are of the view that the High Court exceeded its jurisdiction in matters like this. The High Court exercise its jurisdiction only over State(s) of which it is the High Court. It has no jurisdiction for the rest of the country. Matters like the present may be pending in various parts of the country. In the present case, matter had been decided by the Delhi High Court but some other High Court may or may not have taken different view. The High Court of Madras could not have passed such order. It has virtually usurped the jurisdiction of other High Courts in the country. It is true that sometimes this Court has ordered that all similarly situated employees may be granted similar relief but the High Court does not have the benefit of exercising the power under [Article 142](#) of the Constitution. In any event, this Court exercises jurisdiction over the entire country whereas the jurisdiction of the High Court is limited to the territorial jurisdiction of the State(s) of which it is the High Court. The High Court may be justified in passing such an order when it only affects the employees of the State falling within its jurisdiction but, in our opinion, it could not have passed such an order in the case of employees where pan India repercussions would be involved.”*

In the light of the above decision, the stay order passed by Hon'ble High Court cannot be construed as a stay on the proceedings in a different petition filed by a renewable energy power project located in another State.

62. Section 10 of the Code of Civil Procedure, 1908 (CPC) deals with stay of suits in certain circumstances. Section 10 of CPC is extracted as under:

*“10. Stay of suit.- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established and continued by the Central Government and having like jurisdiction, or before the Supreme Court.”*

63. As per the above provisions of CPC, if any issue raised in a matter before a court is also directly or substantially in issue before a previously instituted suit by the same parties either in the same court or any other court in India competent to grant relief in the matter, the court shall not proceed in the said matter. We note that Hon'ble High Court of Andhra Pradesh has stayed the proceedings in Petition No.342/MP/2019 in Writ Petition No.1286 of 2020. Since the litigants in the writ petition before Hon'ble High Court of Andhra Pradesh are not the same as in the present petition, the stay by the Hon'ble High Court of Andhra Pradesh issued vide order 23.1.2020 and as extended from time to time, cannot be construed as stay of the proceedings in the present petition in terms of Section 10 of CPC. Further, as per the material placed on record, no proceeding has been instituted with regard to the Must Run status of the renewable energy power projects of the Petitioners in any other court in India including the superior courts in the State of Karnataka. Hence, *lis pendis*, the Commission is of the view that a stay of proceedings by Hon'ble High Court of Andhra Pradesh in Petition No. 342/MP/2019 is applicable to that Petition only and cannot be applied to the instant petition involving the generating station and SLDC in the State of Karnataka.

64. In view of the above, Petition No. 287/MP/2019 is admitted. The parties are directed to complete the pleadings. The Petition shall be listed for hearing in due course for which separate notice will be issued.

Sd/-

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