



नई दिल्ली
NEW DELHI

याचिका संख्या/ Petition No.: 342/MP/2019
with I.A. Nos. 35 of 2021

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 27th of September, 2021

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 project 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 Petitioner.

AND IN THE MATTER OF

Prayatna Developer Private Limited,
Sambhaav House, Judges Bungalow Road,
Bokadev, Ahmedabad,
Gujarat-380 015

...Petitioner

Versus

1. Andhra Pradesh State Load Despatch Centre,
Vidyut Soudha Gunadala,
Eluru Rd, Vijayawada,
Andhra Pradesh-520 004
2. NTPC Limited,

NTPC Bhawan, SCOPE Complex,
7 Institutional Area, Lodhi Road,
New Delhi-110003

3. NTPC Vidyut Vyapar Nigam Limited,
2nd Floor, Core 5, SCOPE Complex,
7 Institutional Area, Lodhi Road,
New Delhi-110003
4. Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha Gunadala,
Eluru Rd, Vijayawada,
Andhra Pradesh-520 004
5. Ministry of New and Renewable Energy,
Block-14, CGO Complex, Lodhi Road,
New Delhi-110003
6. Southern Regional Load Despatch Centre,
29, Race Course Cross Road, Bangalore,
Karnataka-560009
7. Southern Regional Power Committee,
29, Race Course Cross Road, Bangalore,
Karnataka-560009

... Respondents

Parties Present: Shri Amit Kapur, Advocate, PDPL
Ms. Poonam Verma, Advocate, PDPL
Ms. Aparajita Upadhyay, Advocate, PDPL
Shri Venkatesh, Advocate, NTPC
Shri Ashutosh K. Srivastava, Advocate, NTPC
Shri Abhinav Singh, Advocate, NTPC
Shri Sidhant Kumar, Advocate, AP SLDC and AP Transco
Shri Rajeev Lochan, PDPL
Shri Dipak Panchal, PDPL
Shri Ishapul Uppal, NTPC

आदेश/ ORDER

The Petitioner (Prayatna Developer Private Ltd.) is a generating company and has set up a 50 MW solar PV power project in 1000 MW Kurnool Ultra Mega Solar Park, at Gani in Kurnool, Andhra Pradesh and is connected to the intra-State transmission system of the State Transmission Utility of Andhra Pradesh, i.e. Transmission Corporation of Andhra Pradesh Ltd. The Petitioner was selected under the competitive bidding process conducted by the Respondent No. 2, NTPC Ltd. (in short, 'NTPC') under the *Guidelines for Selection of 3000 MW Grid-Connected Solar PV Power Projects under Batch-II for State Specific Bundling Scheme* issued by the Ministry of New and Renewable Energy (MNRE), the Respondent No. 5, and has entered into a Power Purchase Agreement (PPA) dated 21.03.2016 with NTPC. In terms of the PPA, NTPC is purchasing power from the Petitioner, bundling it with unallocated thermal power, and selling the bundled power to the distribution licensee of Andhra Pradesh on a back-to-back basis. Since January 2019, it is claimed by the Petitioner that the Andhra Pradesh State Load Dispatch Centre (APSLDC) has been issuing telephonic instructions to the Petitioner to back down generation of solar power due to which the Petitioner has suffered loss of generation and non-realization of full tariff. Being aggrieved, the Petitioner has filed the 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 [in short, 'IEGC'] for enforcement of 'must run' status granted to solar power project, Regulation 111 of the CERC (Conduct of Business) Regulations, 1999 and seeking direction to the Andhra Pradesh State Load Dispatch Centre to stop issuing backing down instructions to the Petitioner.

2. The Respondent No. 1, Andhra Pradesh State Load Dispatch Centre is the apex body to ensure integrated operation of the power system in Andhra Pradesh. APSLDC is responsible for the real-time load dispatch functions, operation and maintenance of the supervisory control and data acquisition system and energy accounting in the State of Andhra Pradesh.
3. The Respondent No. 2, NTPC Ltd. (NTPC) is engaged in the business of generation of electricity and allied activities. NTPC is acting as a trading licensee operating under the

trading licence granted (in 2004) to NTPC Vidyut Vyapar Nigam Ltd. in terms of this Commission's Order dated 14.10.2016 in Petition No. 2/TDL/2016. Subsequently, in 2019, NTPC has also been granted trading license by this Commission.

4. The Respondent No. 3, NTPC Vidyut Vyapar Nigam Ltd. (NVVN) is the subsidiary company of NTPC. NVVN has been appointed as the administrative agency by MNRE to implement the "3000 MW Grid-Connected Solar PV Projects under Batch-II State Specific Bundling Scheme" under the Jawaharlal Nehru National Solar Mission (JNNSM) Phase-II Guidelines.
5. The Respondent No. 4, APTRANSCO is a wholly owned company of the Government of Andhra Pradesh and vested with the functions of transmission of power in the State of Andhra Pradesh and construction of stations and transmission lines and maintenance of sub-stations. It operates under a licence issued by Andhra Pradesh Electricity Regulatory Commission (APERC).
6. The Respondent No. 5, 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.
7. The Respondent No. 6, Southern Regional Load Despatch Centre (SRLDC) is the apex body to ensure integrated operation of the power system in the Southern Region comprising of States of Andhra Pradesh, Telangana, Karnataka, Kerala, Tamil Nadu and Union Territory of Puducherry.
8. The Respondent No. 7, Southern Regional Power Committee (SRPC) has been constituted by the Government of India under Section 2(55) of the Act comprising of States of Andhra Pradesh, Telangana, Karnataka, Kerala, Tamil Nadu and Union Territory of Puducherry. In terms of Section 29(4) of the Act, SRPC may agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region.
9. The Petitioner has made the following prayers:

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- a) *Admit the Petition;*
- b) *Direct APSLDC to enforce the 'must run' status granted to the solar power project of the Petitioner;*
- c) *Direct APSLDC to forthwith stop issuing instructions to back down the solar power from the Petitioner's solar power project;*
- d) *Declare that scheduling and dispatch of power from Petitioner's plant shall be done by SRLDC;*
- e) *Direct AP SLDC to provide all necessary information in relation to the Kurnool Ultra Mega Solar Park to SRLDC to enable SRLDC to gain control over the scheduling and dispatch of power from the projects situated in the said Solar Park;*
- f) *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;*
- g) *Pending hearing direct APSLDC to pay deemed generation charges to the Petitioner in order to compensate the Petitioner for the loss of generation due to the back down of solar power with retrospective effect at the rate of the tariff of the PPA along with interest, subject to adjustment based on final outcome;*
- h) *Direct Respondent No.1, APSLDC 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; and*
- i) *To pass such other and further order or orders as this Commission deems appropriate under the facts and circumstances of the present case.*

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- a. *List the present matter for hearing in accordance with the order dated 04.02.2021 of the Hon'ble High Court of Andhra Pradesh; and*
- b. *Pass any further order or orders deemed fit and proper under the circumstances of the present case.*

Background and chronological date of events

10. **01.11.2002:** NVVN was incorporated as the subsidiary of NTPC. Thereafter, on 23.07.2004, NVVN was granted inter-State trading license by this Commission.
11. **11.01.2010:** Government of India launched the JNNSM *inter alia*, setting a target of deploying 20,000 MW of grid connected solar power by 2022. This target was subsequently revised to 1,00,000 MW.
12. **10.03.2015:** MNRE issued the JNNSM Phase-II Guidelines.
13. **21.05.2015:** NTPC issued Request for Selection (RfS) for selection of 500 MW grid connected solar PV projects to be set up in Gani-Sakunala Solar Park phase-II, at district Kurnool in the State of Andhra Pradesh in terms of the JNNSM Phase-II Guidelines.
14. **09.01.2016:** The Petitioner was selected as the successful bidder and NTPC awarded Letter of Intent (LoI) to the Petitioner for development of the solar PV project of 50 MW capacity in the Kurnool Ultra Mega Solar Park, at Gani, Andhra Pradesh.
15. **21.03.2016:** The Petitioner entered into a PPA with NTPC for supply of power from its solar power project at a tariff of Rs. 5.13/kWh.
16. **28.06.2017:** Out of the 50 MW capacity of the project, 30 MW was synchronized with the grid.
17. **15.07.2017:** Remaining 20 MW was synchronized.
18. **21.10.2017:** The project was declared commissioned.
19. Since January 2019, APSLDC has been issuing telephonic instructions to the Petitioner to back down generation from its power project in Andhra Pradesh citing grid safety and security as the reason for back down.

20. **23.07.2019, 27.07.2019, 10.08.2019, 23.08.2019 and 06.09.2019:** The Petitioner wrote letters to APTRANSCO requesting APTRANSCO/APSLDC to not back down generation of solar power from its project.
21. **17.10.2019:** In view of the persistent and arbitrary curtailment of solar power from the Petitioner's project, the Petitioner filed the present petition.
22. **21.01.2020:** The present petition was reserved for Orders by this Commission. Meanwhile, APSLDC preferred Writ Petition No.1286 of 2020 before Hon'ble High Court of Andhra Pradesh and the proceedings before the Commission were stayed.
23. **21.09.2020:** Writ Petition No.1286 of 2020 was dismissed by the Hon'ble High Court of Andhra Pradesh for the non-joinder of the necessary party (NTPC).
24. **04.02.2021:** The Hon'ble High Court of Andhra Pradesh in Writ Petition No. 21512 of 2020 directed that the matter should be heard afresh and granted liberty to the Applicants to raise its objections in relation to maintainability of the present petition and the jurisdiction of this Commission.

Submission of the Petitioner

25. The Petitioner has submitted that it has executed PPA dated 21.03.2016 with NTPC to supply 50 MW from its power project. NTPC is purchasing power from the Petitioner, bundling it with unallocated thermal power, and selling the bundled power to AP Discoms on a back-to-back basis. The said power project is set up in the 1000 MW Kurnool Ultra Mega Solar Park, at Gani, Andhra Pradesh and is connected to the intra-State transmission system of Transmission Corporation of Andhra Pradesh Ltd. The Petitioner has achieved commissioning of the project on 21.10.2017. Since January 2019, APSLDC has been issuing telephonic instructions to the Petitioner to back down generation of solar power. Such backing down has caused loss of generation and non-realization of full tariff by the Petitioner.
26. The Petitioner has submitted that this Commission has the jurisdiction to adjudicate the

present matter as the present petition is filed invoking Regulation 1.5(iv) of the IEGC which states that any non-compliance of the provisions of IEGC by the State Load Dispatch Centre may be reported to this Commission by way of a petition. Regulation 5.2(u) of the IEGC stipulates that SLDC is mandated to make all efforts to evacuate available solar power and treat solar power stations as 'must run'. Also, this Commission is empowered under Regulation 111 of the CERC (Conduct of Business) Regulations, 1999 to issue Orders to meet the ends of justice. The arbitrary backing down instructions issued by APSLDC to the Petitioner, are in contravention of the express terms of the IEGC that provides to treat solar power plants as 'must run'. In terms of Section 79(1)(h) of the Act, this Commission has the powers to specify the Grid Code.

27. The Petitioner has submitted that the Electricity Act, 2003 also confers powers on the State Commission under Section 86(1)(h) to specify the State Grid Code which must be in conformity with the IEGC specified by this Commission under Section 79(1)(h) i.e. IEGC. APERC on 26.03.2014, has issued the Code of Technical Interface (in short, 'the AP Grid Code'). As per the definition clause of the said document, IEGC is defined to be synonymous with the AP Grid Code. The AP Grid Code:
- (a) does not have any provision which requires the AP SLDC to treat solar power plants as 'must run'. (*as is provided in Clause 5.2 (u) of the IEGC*)
 - (b) does not have any provision to deal with APSLDC's non-compliance of the IEGC. (*as is provided in Clause 1.5(iv) of the IEGC*)
 - (c) has not been notified by APERC in terms of Section 86(1)(h) of the Act.
28. The Petitioner has submitted that lack of provisions in the AP Grid Code (i) granting 'must run' status to solar power plants; and (ii) to tackle any non-compliance by APSLDC, must be read as consistent with the IEGC in view of the sections 79(1)(h) and 86(1)(h) of the Act. This Commission is, therefore, empowered to look into non-compliance of IEGC by APSLDC. The Petitioner has placed its reliance on the decision settled by the Hon'ble Supreme Court in *Central Power Distribution Co. & Ors. v. Central Electricity Regulatory Commission & Anr.*: (2007) 8 SCC 197 wherein it was held that grid discipline even when there is a single state beneficiary will be within the purview of this Commission.

29. The Petitioner has further submitted that in terms of Clause 6.4.2(b) of the IEGC, Ultra Mega Power Projects and wind and solar projects of capacity of 500 MW and above come under Regional Inter-state Transmission System control area and the scheduling of such power plants is to be coordinated by the Regional Load Dispatch Centre. The Petitioner's 50 MW solar power project is set up at the 1000 MW Kurnool Ultra Mega Solar Park, at Gani, Andhra Pradesh. Therefore, in terms of Clause 6.4.2(b) of the IEGC read with Section 28(1) of the Act, SRLDC is the apex body responsible for scheduling power from the Petitioner's project. However, contrary to the terms of the IEGC, APSLDC continues to control the scheduling of the Petitioner's solar power plant.
30. The Petitioner has submitted that SRPC in its 31st (dated 25.02.2017) and 36th (12.07.2019) meetings had also discussed and decided that scheduling of power from Kurnool Ultra Mega Solar Park at Gani would be carried out by SRLDC. Pertinently, Section 29(4) of the Act empowers the Regional Power Committee to take decisions and agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region. Hence, the Commission has the jurisdiction to decide the present petition.
31. The Petitioner has submitted that its solar power plant is to be treated as 'must run' in terms of the applicable extant law *viz.* Regulation 5.2(u) and Regulation 6.5(11) of the IEGC.
32. The Petitioner has submitted that in terms of Article 4.4.1 of the PPA (signed by it with NTPC), in case it is unable to generate the minimum units of energy as specified in the PPA, then it is liable to pay to NTPC, compensation corresponding to the shortfall in generation during the contract year.
33. The Petitioner has submitted that MNRE in 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 generator in writing.

34. The Petitioner has submitted that this Commission has notified the 4th Amendment to the IEGC on 06.04.2016, wherein, it has amended Regulation 6.3 of the IEGC and inserted Regulation 6.3B to fix the minimum schedule for operation of Central Generating Stations and Inter-State Generating Stations.
35. The Petitioner has submitted that the Respondents are neither backing down the State generating stations nor surrendering the Central Generating Stations' share of Andhra Pradesh to the extent that the State generating stations and CGS/ISGS can operate their unit(s) at the technical minimum i.e. 55% of Maximum Continuous Rating (MCR) loading or installed capacity. Had the Respondents backed down conventional generation to the technical minimum capacity, the solar power generation could be accommodated fully in the grid.
36. The Petitioner has submitted that recently several wind and solar power developers had moved the Hon'ble Andhra Pradesh High Court against APSLDC, complaining that it had backed down their projects without attributing any reason or abnormality on the national grid. The Hon'ble High Court on 01.08.2019 passed an interim order directing APSLDC to discharge its statutory functions fairly and refrain from arbitrary curtailment of power generated by the wind/ solar developers. The Hon'ble High Court further directed APTRANSCO to adhere to its undertaking that written justification for curtailment of power will be updated on weekly basis on the website of APTRANSCO. In view of provisions of the IEGC and the express directions of MNRE, APSLDC is obligated to compensate the Petitioner for the loss it has incurred towards deemed generation.
37. The Petitioner has submitted that Clause 6.4.2(b) of the IEGC mandates that the scheduling and dispatch of power from Ultra-Mega Power projects and wind and solar based projects of capacity 500 MW and above shall be done by the concerned RLDC. SLRDC is the concerned RLDC in the Petitioner's case since the Petitioner's project is situated at the 1000 MW Kurnool Ultra Mega Solar Park in Gani, Andhra Pradesh. However, contrary to the

provisions of the IEGC, APSLDC is continuing to issue backing down instructions to the Petitioner's project and exercising control of the scheduling and dispatch of power from the said plant. This issue was discussed in detail during the 31st and 36th SRPC meetings, wherein it was decided that scheduling of power from the Kurnool Solar Park at Gani would be done by SRLDC. The said meetings were attended by APTRANSCO as well as private power generators. However, till date, no steps have been taken by APTRANSCO to enable SRLDC to take control of scheduling and dispatch of power from renewable energy plants in line with the IEGC. On 12.07.2019, APTRANSCO was requested by SRPC to reply to their letter in this regard. However, APTRANSCO has not furnished any response till date.

38. The Petitioner has submitted that Government of India had launched the JNNSM with a view to actualize the legislative intent of promoting renewable energy [Sections 61(h) and 86(1)(e) of the Act] and set a target of deploying 20,000 MW of grid connected solar power by the year 2022. This target was subsequently revised to 1,00,000 MW. The stated objective of the JNNSM is to establish India as a global leader in solar energy, by creating the policy conditions for its diffusion across the country as quickly as possible.
39. The Petitioner has submitted that the Government of India, in pursuance of Section 3 of the Act has notified the Tariff Policy, 2016 and National Electricity Policy, 2005 for development of power system based on optimal utilisation of resources. These policies also lay emphasis on promotion of generation of electricity through renewable energy sources.
40. The Petitioner has placed its reliance on the judgment dated 30.05.2019 of Appellate Tribunal for Electricity (APTEL) in Appeal No. 350 of 2017 in *Ramnad Solar Power Ltd. v. TNERC & Ors.* which upheld the 'must run' status of solar power plants under the IEGC and the Tamil Nadu Grid Code.
41. The Petitioner has submitted that APSLDC must be restrained from issuing any backing down instructions to solar power plant in view of the following:
 - (a) The issue of grid security as the basis for backing down of solar generation has not arisen at all. 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 APSLDC which are contrary to the legal and regulatory mandate that is binding on them.

- (b) In case of voltage drop, there is a provision to install Low Voltage Ride-Through (LVRT) in solar power plants. LVRT mechanism boosts the terminal voltage of the point of connection of the machine when there is a fault at the remote location to provide transient stability support. LVRT is the capability of the electrical device to operate through periods of lower grid voltage. This has been installed by the Petitioner in its power project 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 generation due to grid security does not arise.
- (c) The Petitioner has analysed the block-wise grid frequency as per the data obtained from the website of SRPC. As per the said data, it is noticed that during day time, when solar generation is available, the frequency has hardly crossed the limit of 50.05 Hz.
- (d) Prior to the installation of the solar power plants, connectivity approval was issued by APTRANSCO after carrying out load flow/ system studies for analysing all the possibilities and infrastructure available to evacuate the available power to the point of consumption even under worst conditions. APTRANSCO was required to resolve all issues pertaining to transmission constraints prior to the 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 APTRANSCO.
- (e) Known transmission constraints do not come under grid security. This is a scheduling issue, for which solar projects are to be treated as 'must run'. Only those constraints which are encountered suddenly in real time operation of grid can come under operational grid security issues. Hence, non-availability of the appropriate evacuation facility or transmission constraint cannot be a ground for initiating backing down of solar generators.
- (f) Enormous investments have been made by the Petitioner in setting up its solar power

project. Therefore, such large scale backing down of solar power against the assurances and promises of the Government, would lead to a situation where the solar power plant of the Petitioner would need to be closed and the existing/ new capacities will have to be shifted to other States where there is a more conducive environment for development of solar power.

- (g) Solar power has various advantages in comparison to non-renewable sources such as coal, gas, oil, nuclear etc. *viz.* it is a clean source of energy, not prone to breakdowns and requires low maintenance. The Ministry of Environment, Forests & Climate Change (MoEF & CC) has also released a new categorization of industries based on pollution load. Under this categorization, solar power generation through solar PV cells have been placed under the White category. The said White category constitutes those industrial sectors which are practically non-polluting. Therefore, generation of solar power needs to be encouraged and solar power projects must to be utilized optimally and efficiently.

42. The Petitioner has submitted that its project has been set up pursuant to a competitive bidding process and based on the assurances and mission statement of JNNSM to establish India as a global leader in solar energy. In pursuance of such assurances, many project developers including the Petitioner have made considerable financial investments to construct and operate their solar plants. However, the unexpected and arbitrary backing down of solar power by APSLDC is making full tariff realization very difficult for the Petitioner. In such a case, it is imperative that APSLDC ought to be made liable for the generation loss being caused to the Petitioner and pay deemed generation charges to the Petitioner corresponding to power which was ready to be evacuated from the solar power project, but could not be evacuated due to the instructions of APSLDC.
43. The Petitioner has submitted that this Commission in the Statement of Objects and Reasons issued along with CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 had considered it relevant to issue directions to NLDC and SLDCs to reach a consensus and formulate a framework guaranteeing 'deemed generation' to renewable energy projects in cases of backing-down or grid unavailability.

44. The Petitioner has submitted that even though no framework has been formulated, the intent of this Commission is clear regarding payment of deemed generation charges to the renewable energy projects in case of backing-down. Also, MNRE had published Draft Renewable Energy Act, 2015 on its website that incorporated Clause 42(2) to provide for deemed generation for renewable energy plants.
45. The Petitioner has submitted that even though the concept of deemed generation charges to renewable energy plants has not yet been incorporated in the regulatory framework, the grant of the same is only logical given the ‘must run’ status of solar power plants and to encourage the generation through the non-conventional means.
46. The Petitioner has submitted that deemed capacity charges have been recognized and granted by this Commission and 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 Petitioner has placed its reliance on this 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. Further, the Tribunal in its judgment dated 26.08.2019 in Appeal No. 396 of 2018 in *Arya Energy Ltd. & Anr. v. MPPMCL & Anr.* has held that even in case of biomass power plants having single part tariff, if the plant is subjected to Merit Order Dispatch and power is not scheduled, fixed charges must be paid to the generator. Therefore, this Commission ought to formulate a methodology to compensate the Petitioner for the loss of generation due to the back down instructions of APSLDC.
47. The Petitioner has submitted that the 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. Therefore, 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 Petitioner. The Tribunal has considered the question of deemed generation charges to renewable energy plants in *M/s. SLS Power Ltd. vs. APERC & Ors.* reported as 2012 SCC Online APTEL 209. In the said judgment, although deemed generation charges were not granted, the Tribunal suggested alternate reliefs which can be granted to renewable energy power plants.

Submissions of Respondent No. 6 (SRLDC)

48. SRLDC has submitted that there is no specific averment made on SRLDC by the Petitioner. Therefore, it has limited its reply to the facts in complying with the IEGC w.r.t control area jurisdiction.
49. SRLDC has submitted that Clause 6.4.2(b) of the IEGC stipulates that “Ultra-Mega Power Projects and projects based on wind and solar resources and having capacity of 500 MW and above” need to be scheduled by respective Regional Load Despatch Centre.
50. SRLDC vide its letter dated 29.08.2018 had requested constituents to revert with the details regarding the commissioning cum COD status of RE parks/ projects in their control area to SRLDC/SRPC. APSLDC was requested to specifically revert on renewable injections at Gani and Uravakonda in which the Petitioner’s plant is located. Further SRLDC sent a reminder dated 20.03.2019 to all Southern Region States but are yet to receive specific replies in this regard.
51. SRLDC has submitted that the issues of control area jurisdiction w.r.t. Clause 6.4.2(b) of the IEGC were discussed in various OCC Forums of SRPC viz 147th OCC onwards till the 160th OCC. The issue had been further discussed in detail during the 31st, 35th and 36th SRPC meetings. The important observations during the meetings were as below:
 - (i) During the 150th OCC meeting of SRPC held on 10.12.2018, it was noted that Kurnool Solar Park (1,000 MW) (Ghani) developed by Andhra Pradesh Solar Power Corporation Pvt. Ltd. (APSPCL) was an approved Solar Park under Solar Park Scheme of MNRE.

(ii) In the 35th SRPC meeting held on 02.02.2019, it was stated as below:

“In the 151st OCCM, regarding Ghani Solar Park, APSLDC had informed that the issue was being addressed and they were planning to shift the scheduling to SRLDC from April 2019 onwards.”

(iii) In 154th OCC meeting held on 09.04.2019, it was stated as below:

“Ghani Solar Park: It was noted that Ghani Solar Park was an UMPP and scheduling would need to be carried out by SRLDC. APTRANSCO informed that the issue was scheduled to be discussed at SLDC within 15 days.”

(iv) In 156th OCC Meeting held on 11.06.2019, it was stated as below:

“It was noted that Ghani Solar Park was an UMPP and scheduling would need to be carried out by SRLDC. APTRANSCO informed that the issue was not discussed at SLDC with SPDs due to some changes in management. The scheduling would be with SRLDC. Meeting will be scheduled shortly. APTRANSCO was requested to reply to SRLDC letter in this regard”

(v) In 160th OCC meeting held on 15.10.2019, APTRANSCO had informed that the issue was under review.

52. SRLDC has submitted that from the above letters & minutes of meetings, APSLDC/ APTRANSCO has been requested on various occasions to provide details of wind and solar projects having installed capacity of more than 500 MW to the SRLDC for ensuring technical and commercial compliance of the CEA and CERC regulations and also for seamless integration, scheduling and accounting by SRLDC/ SRPC. However, SRLDC is yet to receive a specific reply in this regard to enable SRLDC to take control of scheduling and dispatch of power from renewable energy plants in line with the IEGC.
53. SRLDC has submitted that scheduling of power from the Ghani Solar Park is currently being done by APSLDC. SRLDC is ready to take over scheduling in accordance with Regulation 6.4.2(b) of the IEGC subject to the Petitioner fulfilling all the mandated requirements as per

RE framework and smooth handing over by APSLDC in the interest of dispute free implementation. Shifting of control area may require some time considering the following:

- a. User Registration with RLDC
- b. Requirement of SEMs as approved metering philosophy at ISTS level and data meter output in SRLDC format.
- c. SCADA integration at Invertor level with RLDC.

54. SRLDC has submitted that the Commission may issue suitable directions as deemed fit.

Submissions of Respondent No. 1 (APSLDC)

55. APSLDC has submitted that the relief sought by the Petitioner is not maintainable as the issue was already dealt by the Hon'ble High Court of Andhra Pradesh in W.P. 9844 of 2019 and batch, and the same was disposed of vide Order dated 24.09.2019. Further, APERC which has jurisdiction over APSLDC is also dealing with the same relief in O.P. No.61 of 2019 relating to the compliance or otherwise of 'must run' status by A.P. Power utilities. Therefore, to the extent of the said relief the petition is liable to be rejected as simultaneous proceedings are not permitted in law since there would be possibility of conflicting decisions.

56. APSLDC has submitted that the precise facts that emerged in complying with the 'must run' status in real time operation by APSLDC - particularly when the wind and solar power in the State of Andhra Pradesh is in the range of 7300 MW as against the demand ranging between 5300 and 10,100 MW in the year - are as under:

- a) APSLDC has been operating the system in compliance with all the regulations in force i.e. the IEGC and the AP Grid Code read with Electricity Act, 2003.
- b) In grid operation, frequency is the main parameter for operation. The rated frequency of Indian power system is 50 Hz. If the system is running at a frequency greater than 50 Hz, it means more generation is injected into the system. Further, if the system is running at a frequency less than 50 Hz, it means less generation is

injected into the system. Apart from frequency regulation, there are other parameters viz. drawl of power from the central Grid, maintaining load generation balance, voltage profiles in the system and line loadings which need to be regulated in real time operations by the State Load Dispatch Center (SLDC). Allowing any kind of generation with wind, solar, hydel, coal etc. is a sheer wastage of resources when the frequency is beyond 50 Hz and could also cause insecurity to the grid. India is one Grid with one frequency and variation of generation from any corner of India will impact the frequency. So, frequency is dynamic, and it is also a system dependent parameter. However, as per the IEGC provisions, the Grid is to be operated in the 49.90 Hz to 50.05 Hz frequency band, and AP being a renewable-rich State can over-inject or under-inject upto 250 MW.

- c) Around 7300 MW wind and solar generation (RE), which is highly variable in nature, has been added to the Andhra Pradesh Grid in recent times. Must run status given to wind and solar generators is subject to grid security as per the IEGC. These 7300 MW wind and solar generators have generated in the range of 150 MW to 5300 MW with sudden and gradual variations depending on the vagaries of nature.
- d) Discoms have planned and are exporting power up to 40 MU per day in high wind generation season in order to accommodate wind and solar generation. Reserve shut down of thermal plants as and when possible is being resorted to for accommodating wind and solar generation. This itself confirms the commitment of SLDC towards dispatching wind and solar power up to optimum level. AP Grid has facilitated the Petitioner to transmit the maximum scheduled energy. APSLDC is successful in dispatching 8290 MU wind and solar power during April-2019 to September-2019 as against the total energy dispatch of 32425 MU which works out to 25% of the total dispatched energy. However, marginal energy is backed down and could not be dispatched due to grid conditions.
- e) Suitable infrastructure is still not developed in the aspect of system operation to overcome variations of wind and solar power generation. No storage or reverse

pumping facility is available. No spinning reserve or Automatic Generation Control is available in the State Grid. Accurate forecast mechanism for wind and solar generation is not in place. Hence, AP Grid is not adequately equipped to maintain must run status for the 7300 MW variable wind and solar generation without backing down. In fact, till today even the developed countries such as the USA and European countries are also not able to accurately forecast, and absorb/ schedule total variable wind and solar generation. There are instances of partial black out/ grid outages across the world due to the effect of highly inconsistent wind and solar power.

f) In view of the above circumstances and the realities facing the A.P. Grid, backing down of wind and solar generation in real time system operation is inevitable. Wind and solar generation are backed down after exploring the possibility of backing down all conventional generation to the extent possible. However, in certain critical situations such as changeover, gate closure for Central Generating stations (CGS) and weather changes etc., wind and solar power might need be backed down even prior to the conventional generation backing down. However, for every such backing down instruction given from APSLDC, justification is given from the operation perspective.

57. APSLDC has submitted that hundreds of wind and solar generators are having PPAs, which have must run status but their operation is subject to grid security. The generators ignore grid security aspect and consider only must run as if the same is absolute. As and when real time system operation requires backing down of wind and solar generation in view of grid security, these wind and solar generators generally do not comply with SLDC backing down instructions. This practice is more in high wind season (i.e. July, August and September). Fifteen non-compliance instances by the Petitioner exclusively in August-2019 have occurred.

58. APSLDC has submitted that in the ongoing season (June-19 to October-19), the system composition was highly critical. Up to 1000 MW sudden variation in solar generation has

frequently occurred due to cloud cover. Wind generation variation was highly irregular in 24 hours cycle from day to day. The load was varying in the range of 5500 MW to 10100 MW. To dispatch maximum wind and solar power generation, around 40 MU per day export swapping arrangement was done. To overcome the said wind and solar generation variations, day ahead exchange purchases were made by DISCOMs to meet the few hours of peak demand in a day. Sometimes, sudden fall in wind and solar power generation has led to shortfall, which has adversely affected the interest of consumers.

59. APSLDC has submitted that it can manage, plan optimally and operate the grid only with available generation and existing demand. Grid can neither generate nor store the power. For instance, on a typical day in high wind season, wind and solar generation forecast could be up to 5000 MW but actual generation might vary from 2000 MW to 5000 MW. Actual technical minimum details are submitted as below:

Plant name	Installed capacity/ Share Allocated (MW)	Technical Minimum as per PPA (%)	Technical Minimum as per PPA (MW)
NTTSPS Stage I, II, III	1260	71.4	900
NTTSPS Stage IV	500	71.4	357
RTPP stage I, II, III	1050	71.4	750
RTPP stage IV	600	71.4	428
SDSTPS stage I & II (Krishnapatnam)	1600	71.4	1142
Hinduja (one unit considered)	520	55	286
CGS (Allocation)	2300	55	1265
Total	7830		5128
In September-19, 770MW additional allocation from western region.			
SDSTPS, NTTSPS IV and RTPP IV requested to back down to 55% by SLDC			

60. APSLDC has submitted that these total technical minimum levels change from day to day depending on on-bar status of the generating units. The load ranges between 5300 MW to 10100 MW in this season. Actual average load in August-19 and September-19 was 7000 MW and 6750 MW respectively. In this situation, it is difficult to manage a minimum load condition of 5300 MW, which is dependent on inclement weather conditions (rainy

season). Therefore, it becomes necessary to back down available excess solar and wind generation in the high wind and rainy seasons. If the plan is made for reserve shut down of any conventional generating station, it will take considerable time for restarting the same and, thus, one cannot manage the variation of wind and solar power generation to that extent. This year, in September and October, most of the time Srisaillam Reservoir was spilling. This peculiar condition prevailed in AP power system in the said high wind season. Hence, wind and solar generation has been backed down due to the prevailing grid conditions.

61. APSLDC has submitted that must run status does not mean that their power cannot be backed down at all. It should always be subjected to reasonable restriction on account of grid condition and safety. Since the time of commissioning of their projects, the Petitioner has not been complying with the load dispatch instructions. As per Section 33(4) of the Electricity Act, 2003, these generators are to comply with the load dispatch instructions before approaching the Appropriate Commission. Non-compliance statement for this Petitioner for August-2019 indicates complete violation of Section 33(4) of the Electricity Act, 2003.
62. APSLDC has submitted that the extended rainy season in Andhra Pradesh and continuous spillage in Krishna basin are a first-time experience in this decade. Hence, high negative load growth in September-19 and October-19 and no-load growth in August-2019 is unprecedented. Normal average year on year load growth predicted is at around five percent. Since the last five years after reorganization of Andhra Pradesh State, the load growth is around eight percent.

Submissions of the Respondent No.2 (NTPC)

63. NTPC has submitted that the Petitioner in filing the present petition has not claimed any relief against it and, therefore, at this stage NTPC is filing a preliminary reply.
64. NTPC has submitted that the matter requires to be examined keeping in mind the sectoral interests and the viability of the renewable energy power plants in the State of Andhra

Pradesh, in consonance with the objectives under the Electricity Act, 2003 [Section 86(1)(e) and Section 61(h)], National Electricity Policy [Clause 5.12], Tariff Policy [Clauses 4(e) and 6.4], as also the international convention, i.e. United Nations Framework Convention on Climate Change [Article 4], and appropriate relief be provided accordingly.

65. NTPC has submitted that it is settled law that the Regulations have the force of law. The IEGC framed by this Commission being in the nature of delegated legislation are enforceable and mandatory in nature. Since the IEGC specifically provides for enforcement of the 'must run' status of solar and wind projects in the country, requiring the backing down of conventional two-part-tariff thermal power plants, APSLDC ought to be directed to abide by such mandate. Moreover, as per Section 86(1)(h) of the Act, the Grid Code specified by the State Commission is to be consistent with the IEGC. Perusal of provisions of the AP Grid Code reveals that the said Code does not have an equivalent dispensation for solar generating stations as has been provided in the IEGC. Therefore, the provisions of the IEGC and AP Grid Code would be required to be interpreted harmoniously as per Section 86(1)(h) of the Act.
66. NTPC has submitted that the present issue is no more *res integra* and has been extensively dealt with by the Tribunal in its Judgment dated 30.05.2019 in Appeal No. 350 of 2017 in the case of *Ramnad Solar Power Limited vs. Tamil Nadu Electricity Regulatory Commission & Ors.*
67. NTPC has submitted that it has never supported the issuance of backing down instructions to the Petitioner and/or any other generating company as the same is counter-productive to the entire purpose of renewable energy generation and its promotion as mandated under Section 86(1)(e) of the Act. When unmerited backing down instructions are issued, financial loss is caused to the generating company which cannot be the permitted when especially Section 86(1)(e) of the Act provides for promotion of renewable energy. In this regard, the following are relevant:
 - a. The APTEL in a plethora of cases has recognized the importance of promotion of renewable energy under the scheme of the Act. NTPC has placed its reliance on Judgment dated 26.04.2010 in Appeal No. 57 of 2010, titled *M/s Century Rayon vs.*

MERC & Ors.; Judgment in the case of *Rithwik Energy vs. Transmission Corporation of Andhra Pradesh* 2008 (ELR) (APTEL) 237.

b. Further, the Hon'ble Supreme Court in *Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission*, (2015) 12 SCC 611, has held that the import of Section 86(1)(e) is to sub-serve the mandate of Article 21 of the Constitution of India read with Article 51A(g).

68. NTPC has submitted that the intent of the Constitution of India and the Act is to promote renewable energy and protect the environment. However, such promotion cannot be fully achieved unless the unwarranted backing down is curtailed. Backing down instructions can only be issued under exceptional circumstances when there is clear threat to the safety of the grid.

69. NTPC has submitted that the PPA does not contemplate deemed generation and the reliance placed by the Petitioner on draft notifications are not relevant as they are not applicable to the Petitioner and the PPA. However, in case the Commission takes a view that such deemed generation charges are payable to the Petitioner, then since NTPC is a mere intermediary, the said charges must be recovered from the ultimate beneficiary and paid to the Petitioner. NTPC has submitted that no standalone adverse financial obligation may be imposed on NTPC on account of deemed generation charges.

Rejoinder of the Petitioner to the reply filed by Respondent No.1 (APSLDC)

70. The Petitioner has filed rejoinder vide which it has reiterated the submissions already made in the petition and as such they are not reproduced herewith for the sake of brevity. Additionally, the Petitioner has submitted that:

a. APSLDC without producing a copy of the Order dated 24.09.2019 is trying to mislead this Commission to allege that the proceedings before the Hon'ble AP High court were in relation to enforcement of must run status of the solar plants. The said proceedings were initiated by the wind and solar generators against the decision of the Government of Andhra Pradesh to re-negotiate the tariff of concluded power purchase agreements of the solar/ wind generators with the AP Discoms and the steps taken pursuant thereto.

Further, the Hon'ble AP High Court in the said Order has taken note of the abrupt disconnection of a generator to the sub-station from which the generated power is evacuated and issued directions that the State cannot curtail power of the generator on the grounds that the price of the power was too high. The Hon'ble AP High Court directed that no coercive steps including curtailing production and stopping evacuation be taken by the State without prior notice to the generator. Therefore, the objection of APSLDC to the maintainability of the present petition is baseless, since the present petition has been filed seeking (i) enforcement of the must run status and (ii) change in scheduling jurisdiction of the Petitioner's plant as mandated under the IEGC, which is squarely covered under the jurisdiction of this Commission.

- b. The contention of APSLDC that the present petition is not maintainable due to pendency of proceedings before APERC in O.P. No. 61 of 2019 which are allegedly related to "compliance or otherwise of the must run status by APSLDC" is wrong and denied. The present petition has been filed, *inter alia*, since the AP Grid Code does not provide for must run status of solar plants, and to that extent, the AP Grid Code is inconsistent with Clause 5.2(u) and 6.5(11) of the IEGC. Further the AP Grid Code does not have any provision for dealing with non-compliance of IEGC by the State Load Dispatch Centre (i.e. APSLDC), as has been provided in Clause 1.5(iv) of the IEGC. The lack of a provision in the AP Grid Code for (i) granting 'must run' status to solar power plants; and (ii) to tackle any non-compliance by APSLDC, must be read as inconsistent with the IEGC in view of sections 79(1)(h) and 86(1)(h) of the Electricity Act, 2003. Therefore, only this Commission is empowered to look into such non-compliance by APSLDC.
- c. At all times that the generation from the Petitioner's solar project was backed down/ curtailed, there was scope for reduction of generation available from other sources. Such curtailment is being done for commercial purposes and contrary to the provisions of the IEGC and other applicable regulations. APSLDC has categorically classified certain solar power plants as "*11 number of high price solar stations*", purely on account of their higher tariff as compared to other solar power stations and regularly

backing down generation of such power plants. This act of APSLDC is akin to applying the “merit order dispatch” principle to solar power plants, which are otherwise kept outside the purview of merit order under the IEGC. APSLDC is prejudiced against these high-priced solar stations and has been extensively curtailing such solar stations on account of economic considerations and not on account of grid safety and security.

- d. AP Discoms have filed a petition in October 2019 before APERC seeking directions *inter alia* regarding revision of tariff of solar PPAs entered into by AP Discoms by reducing the same to Rs. 2.44/unit or in the alternative to reduce the term of the said PPAs/PSAs to 5 years from the date of commercial operation and to relieve the AP Discoms from the obligations of the PPAs/PSAs entered into by them. The curtailment of solar power by APSLDC is directly related to the move of AP Discoms to reduce the tariff of concluded solar PPAs. The same is not occasioned by any threat to grid safety and security.
- e. APSLDC has been actively procuring power from thermal power stations ranked higher in the Merit Order Dispatch list while curtailing only lower ranked thermal power plants to their technical minimum limits.
- f. The tariff for Thermal Powertech Corporation of India Limited’s thermal power plant is Rs. 4/kWh as compared to the Petitioner’s tariff of Rs. 4.63/kWh. On 29.10.2019, the generation from the Petitioner’s solar power plant was curtailed for approximately more than nine hours on account of grid safety and security while Thermal Powertech Corporation of India Limited’s 1320 MW Plant in Krishnapatnam was running at a plant load factor of approx. 76%. This clearly shows that:
 - (i) APSLDC is procuring cheaper energy from thermal power plants whilst curtailing solar power generators and thereby violating the must run status accorded to the solar plants; and
 - (ii) The curtailment instructions issued by APSLDC are not on account of any alleged threat to grid safety and security as the same is being done entirely on account of economic considerations.

- g. APSLDC in its reply has stated that the back down instructions issued by it are not illegal and has cited reasons for such back down instructions. APSLDC has further contended that despite the difficulties in dispatching solar power, APSLDC has made its best efforts to accommodate solar power in the grid. These contentions of APSLDC are wrong and denied as APSLDC is mandated under the Act to carry out optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State [Section 32(2)(a) of the Act]; and carry out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code. [Section 32(2)(e) of the Act].
- h. The backing down instructions have been communicated telephonically by APSLDC and without specifying the reason. In this regard, MNRE has issued amendment dated 22.10.2019 to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects (Amended Tariff Guidelines). In terms of Clause 5.5.2 of the Amended Tariff Guidelines, no backing down/ curtailment can be ordered to solar power projects without giving formal/ written instructions for the same, and the details of such backing down, including justifications for such curtailment is to be made public by the concerned Load Dispatch Centre.
- i. As per clause 4.3.4 of the AP Grid Code, generators connected above 30 MW shall be subject to central dispatch and APSLDC shall issue dispatch instructions in standard format to the generators. However, APSLDC has never issued any written instructions with reasons for backing down to PDPL's plant.
- j. APSLDC in its reply has admitted that the demand in the State of AP ranges between 5300 MW and 10,100 MW and wind and solar capacity is about 7300 MW. Therefore, transmission infrastructure in the State must always be well equipped to accommodate the entire solar and wind capacity. As per Clause 4.2 of the JNSSM Guidelines issued by MNRE, 3000 MW grid connected solar plants were to be set up for which the

transmission system was to be provided by the State Transmission Utility i.e. APTRANSCO. This obligation of the STU is also reiterated in the RfS issued by NTPC, inviting generators to set up projects in the Gani Solar Park based on which, the Petitioner submitted its bid and constructed its solar plant. The generators were to set up the solar plants and the evacuation facility for such plants was the responsibility of the STU. APTRANSCO/ APSLDC having failed their obligation to provide adequate transmission system for evacuation of solar power, cannot now back down generation from the solar plants. It is a settled position of law that a person cannot be allowed to take advantage of his own wrong. In this regard, reliance is placed on *Union of India vs. Major General Madan Lal Yadav* [(1996)4 SCC 127] (para 28); *B.M. Malani vs. Commissioner of Income Tax and Anr.* [(2008)10 SCC 617] (para 18); *Kushweshwar Prasad Singh vs. State of Bihar* [(2007) 11 SCC 14]; *Ashok Kapilv. Sana Ullah* [(1996) 6 SCC 342].

- k. The Govt. of AP on 03.01.2019 issued the Andhra Pradesh Solar Power Policy, 2018. The said policy at Clause 4(e) clearly states that the upstream or downstream transmission system for evacuation of solar plants shall be constructed or strengthened by APTRANSCO/Discoms on priority basis.
- l. On 21.08.2017, APERC in terms of Sections 32(3), 33(4), 86(1)(h) and 181 (2)(g)(zp) of the Act notified the APERC (Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation) Regulation, 2017 (Solar Forecasting Regulations). Clause 4.3 of the Solar Forecasting Regulations mandates the solar generators to provide the forecast for generation to APSLDC and APSLDC is obligated to undertake forecasting of wind and solar power that is expected to be injected into the grid with the objective of ensuring secure grid operation by planning for the requisite balancing resources. The Petitioner has been giving the day-ahead/ week-ahead forecast for its solar plant to APSLDC in compliance with the Solar Forecasting Regulations. However, APSLDC till date has not prepared any forecast under Regulation 4.3.
- m. APSLDC has contended that solar generation is backed down since allowing any kind of generation in the grid is a sheer waste beyond 50 Hz and causes insecurity to grid.

There is no insecurity to the grid prior to the upper limit of frequency band i.e. 50.05 Hz. APSLDC is admittedly compelling solar power plants to reduce generation when they are operating well within the acceptable frequency range of 49.09 Hz to 50.05 Hz.

- n. APSLDC has further contended that (i) frequency regulation, (ii) drawl of power from central grid, (iii) maintaining load generation balance, (iv) voltage profiles in the system and (v) line loadings need to be regulated in real time operations by APSLDC and, therefore, backing down of solar power is resorted to. The said contention of APSLDC is wrong. In case of contingencies such as overloading of lines/ transformers, abnormal voltages which are events that threaten system security, APSLDC may direct the thermal generating stations to inter-alia decrease generation and, as a last resort, subsequently may ask solar generators to back down.
- o. As per Regulation 6.3B of the IEGC, the technical minimum schedule for operation of Central Generating Stations and Inter-state Generating Stations is 55% of Maximum Continuous Rating (MCR) loading or installed capacity. APSLDC is issuing backing down instructions to solar power plants without first curtailing conventional generation. Had APSLDC backed down conventional generation to the technical minimum capacity, solar power generation could be accommodated fully in the grid. Petitioner submits that there was no backing down of thermal units up to technical minimum for Rayalseema Unit 3 and 4 of Sembcorp thermal power plant.
- p. The rampant and arbitrary back down instructions issued by the APSLDC has resulted in a loss of Rs. 4,35,78,584/- to the Petitioner, not being able to generate power to its full capacity for a period of 256 days (31.01.2019 to 27.11.2019). From 01.07.2019 to 27.11.2019, financial loss to the Petitioner's project was Rs. 4,05,17,859/- If such curtailment of power was to continue, the Petitioner faces the risk of suffering cumulative losses of approx. Rs. 244 crores over the term of its Power Purchase Agreement (i.e. 25 years) having invested around Rs. 250 crores.

Additional submissions of Respondent No. 1 (APSLDC)

- 71. APSLDC has submitted as under:

- a. Clause 1.10 - Precedence of IEGC to the AP Grid Code enables some of the clauses of IEGC to be followed in the operations of APSLDC. The jurisdiction is also stated in clause 1.1.6 of the AP Grid Code under dispute settlement procedure.
- b. Writ Petition No: 9844, 9867, 9869, 9870, 9871, 9872, 9873, 9874, 9875, 9876, 9877, 9938, 10135, 10138, 10212, 10244, 10486, 10487, 11175, 11872, 12286, of 2019 have been filed by wind and solar generators in the Hon'ble High Court of Andhra Pradesh. In these petitions, various interlocutory applications are filed complaining alleged arbitrary curtailment of wind and solar generation by APSLDC and for impleading SLDC/APTRANSCO as a Respondent. Some of the generators have filed IAs in their respective Writ Petitions and they have raised the issue of compliance of clause 4.3.8.1 of APCTI and in particular regarding written instructions.
- c. APSLDC is carrying out direct operations of 132 kV level and above. Hon'ble A.P. High Court has given interim directions to APSLDC that "*written justification for curtailment of power will be informed on weekly basis in the website of TRANSCO as required under point 4.3.8.1 Grid code*". Interim Order on backing down was complied with. The Hon'ble High Court passed final Order in these petitions on 24.09.2019. However, since the said interim Order is not extended in the final Order, it was deemed to have merged with the final order. As such, the said interim Order is not in force.
- d. Subsequent to the common Order of single judge dated 24.09.2019, the generators have filed writ appeals vide WA no 393 of 2019, 433 of 2019 and others. The division bench of Hon'ble High Court issued notices to Discoms and SLDC and posted the matter for hearing on 19.12.2019. Therefore, propriety requires for this Commission not to proceed with this issue.
- e. The generator is connected to the State-owned transmission system and supplying power exclusively to Andhra Pradesh State DISCOMs and scheduled by APDISCOMs. The same issue cannot be adjudicated before two or more courts at the same time. (i.e. High court, CERC and APERC) and may lead to conflict of Orders being passed in respect of the very same issue. The matter is already ordered by Single bench of Hon'ble High

Court of Andhra Pradesh and pending before Divisional bench of Hon'ble High Court of Andhra Pradesh. Hence, the petition may be dismissed.

- f. The ABT mechanism is not implemented in full in APSLDC control area. Therefore, procedure in line with the AP Grid Code and not inconsistent with IEGC, is being implemented for scheduling. Energy sent out as per Joint meter reading is considered for billing instead of scheduled energy in case of ABT.
- g. Recently, APSLDC has started giving written instructions in respect of backing down of wind and solar generation.
- h. Whether the solar station is named as park or UMPP, if and only if a solar project falls under clause 6.4.2(b) of the IEGC, can the scheduling by coordinating agency be changed from SLDC to RLDC. In the petition itself, it is stated that the Petitioner has set up 50 MW solar PV power project and hence the petitioner generator would not come under the ambit of IEGC clause 6.4.2(b) and accordingly, change of agency for scheduling coordination would not arise. Further, for any reason if Commission decides that the petitioner generator comes under IEGC clause 6.4.2(b), it is requested to approve APSLDC as a scheduling coordination agency with the powers vested in IEGC clause 6.4.3 as exception in respect of operational expediency.
- i. In recent times, sudden variations in solar generation have been experienced. In order to discharge the prime functional responsibility of APSLDC i.e. load generation and balancing during high variations in the wind season, it is necessary that scheduling coordination for Gani solar generation shall be done by APSLDC only.
- j. Even when the forecast is accurate, during the low demand period of day with technical minimum thermal generation, and irrigation constrained hydel generation, the renewable generation shall be backed down. Several operational inconveniences are involved in dispatching the wind and solar generation due to fact that there exists 7300 MW wind and solar generation integration in a control area which has 7400 MW average load.

- k. During sudden variations in wind and solar generation, evening load change overs, thermal generation ramping times and assuring 9 hours day time supply to agriculture consumers, operational inconveniences emerge in achieving the balance of load with generation. In this regard, SRLDC has issued alerts and notices earlier for violation of IEGC for the month of August 2019. A sudden fall in wind or solar generation will cause recall of backing down instructions to CGS stations after four time blocks i.e. after one hour and intra-State generators were also instructed to raise their generation with immediate effect with specified ramp rates. After one hour, all the thermal generators achieve full load level. At these instances, if the wind or solar generation rises, it will cause operational expediency. Thermal generation ramping down will take considerable time during which time, solar and wind generation is required to be backed down.
- l. The Government of A.P has assured nine hours supply in day time to agricultural consumers. For implementation of this government policy, similar situation arises during changeover of the agricultural consumer groups. During agriculture feeder groups change over, variations in wind and solar generation and natural ramping of solar generation is further aggravating the operational violation.
- m. In the evenings, the variations in VRE generation during the day night load changeover from agriculture to domestic cause backing down of VRE generation.
- n. NP Kunta solar power station in A.P. control area is having PPAs with AP Discoms, but the scheduling coordination has already been transferred to SRLDC. Since scheduling is being done by SRLDC for these solar generators, all other solar generators connected in the State network are subject to regular curtailment and this quantum is not adequate to maintain load generation balance in the low demand condition. This situation already arose in October 2019.
- o. APSLDC has requested solar generators to revise their schedules as per SLDC grid requirement which the generators have not complied with. SRLDC was also requested to provide access to revising schedule of solar generation in low demand condition.

However, scheduling facility for APSLDC is not enabled for those generators connected at NP Kunta. So far, APSLDC is not able to schedule the generation for NP Kunta generators since scheduling coordinating agency is changed from APSLDC to SRLDC.

- p. As per the directions of CERC in ROP dated 25.11.2019, the reasons for backing down instructions issued to the Petitioner and actual generation loss are found to be 'Nil'.

Written submissions of Respondent No. 1 (APSLDC) and Respondent No. 4 (APTRANSCO) on the issue of jurisdiction of the Commission and maintainability of the Petition

72. The Respondents have submitted that the present petition is not maintainable as it is beyond the jurisdiction of this Commission as defined under the Electricity Act, 2003 and that the appropriate forum to adjudicate on the disputes raised is the Andhra Pradesh Electricity Regulatory Commission (APERC).
73. The Respondents have submitted that Section 33 of the Electricity Act, 2003 provides that State Load Dispatch Centre (SLDC) has the power to issue directions in exercise of its overall supervision of the State transmission system. The impugned instructions issued by APSLDC are, therefore, in exercise of its powers under Sections 32 and 33 of the Act. Assuming without admitting that the impugned instructions are in fact beyond the scope of authority of APSLDC under Section 33 or otherwise contrary to the Act, Section 33(4) provides that the State Commission shall be the appropriate forum to adjudicate such disputes. The provision of Section 33(4) is sufficiently broad to include any grievance against instructions issued by an SLDC. Notably, Section 33(4) of the Act is couched in mandatory language denoted by the use of the word 'shall'. The usage of the words 'any dispute' and 'shall' makes the legislative intent clear that such disputes must be adjudicated by the State Commission. The present dispute being entirely arising out of the directions issued by APSLDC is clearly within the scope of Section 33(4) of the Act. Accordingly, this Commission would not have any jurisdiction in the present case.
74. The Respondents have submitted that statutory scheme is explicit that matters of inter-State electricity are to be adjudicated by this Commission and intra-State disputes are under the

purview of the State Commission. The present case admittedly concerns intra-State generation and supply of electricity. There is no material or pleading on record to suggest that there is any inter-State element to the present disputes. The Respondents have placed their reliance on the decision of the Supreme Court in *Energy Watchdog v. CERC*, (2017) 14 SCC 80.

75. The Respondents have submitted that the dictum of the Supreme Court emphasizes that the Act restricts the jurisdiction of this Commission to adjudicate only on inter-State disputes. All disputes that are intra-State in nature are to be adjudicated by the State Commission. Admittedly, the Petitioner is generating electricity in the State of Andhra Pradesh and is connected to the intra-State transmission system of APTRANSCO. The entire electricity generated is supplied to the distribution licensees/ companies only in the State of Andhra Pradesh *i.e.* the Andhra Pradesh Eastern Power Distribution Company Ltd. and the Andhra Pradesh Southern Power Distribution Company Ltd. This being the admitted position of the parties, the present disputes are not within the jurisdiction of this Commission.
76. The submission that the present dispute concerns a ‘composite scheme’ is clearly an afterthought as there is no pleading or material on record to suggest that the present scheme is a ‘composite scheme’. The said plea is rooted in fact and cannot, therefore, be considered by this Commission without any pleading or material being on record. The Petitioner has admitted in the petition that the power plant “*is connected to the intra-State transmission system*” of APTRANSCO. This clearly shows that the plea that the present case is a ‘composite scheme’ is bereft of any factual basis. The present Petition is in no manner concerned with the generation or supply of power that may be bundled for onward supply. Even otherwise, the process after generation and before sale of power cannot be read in, by the Petitioner, as part of the ‘composite scheme’ carefully defined by the Supreme Court. Accordingly, the present Petition falls within the jurisdiction of the State Commission.
77. The Respondents have submitted that Section 79(1)(h) of the Act provides that this Commission has the power to ‘specify’ the Grid Code [IEGC]. The legislature has consciously chosen not to use the words ‘regulate’ or to ‘determine’ granting adjudicatory powers even in case of purely intra-State disputes in relation to the IEGC. The adjudicatory

powers of this Commission are limited to the areas defined under Section 79(1)(a) to (d) as clearly stipulated in Section 79(1)(f) of the Act. In any event, Section 79(1)(h) cannot be construed in a manner that renders Section 33(4) meaningless.

78. The present dispute neither deals with regulation/ determination of tariff of the Petitioner, nor with inter-State transmission of electricity. It does not even deal with specification of the Grid Code as envisaged under Section 79(1)(h) of the Act. The prescription with regard to adjudication of such disputes in relation to instructions under Section 32 is with the State Commission under Section 33(4) of the Act. Therefore, it does not fall within the adjudicatory power, regulatory power or even the power to specify, conferred on this Commission under Section 79 of the Act.
79. The Respondents have submitted that all regulations under the Act are to be construed to be consistent with the Act as per Section 178(1). Accordingly, Regulation 1.5 (iv) being delegated legislation cannot be interpreted contrary to the provisions of the Act. The Respondents have placed their reliance on the decision of the Hon'ble Supreme Court in *Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd.*, (2015) 9 SCC 209 in which it has reiterated the principle of law that delegated legislation must be subject to the provisions of the Act. The Respondents have also placed their reliance on decision of APTEL in *Himachal Pradesh State Electricity Board v. Himalya International Ltd.* 2007 SCC OnLine APTEL 94. Therefore, Regulation 1.5(iv) must be read subject to the provisions of the Act. The present dispute being intra-State and concerning the directions issued by SLDC is squarely within the province of the State Commission. Construing Regulation 1.5(iv) of the IEGC in a manner to accord jurisdiction to this Commission shall have the consequence of obliterating Section 33(4) and Section 79(1)(h) of the Act.
80. The Respondents have submitted that the question before the Commission is one of jurisdiction. There is no dispute as to the applicability of the IEGC. A combined reading of Section 86(1)(h) and Section 142 of the Act provides that the State Commission has the power to enforce the IEGC as well. As per Section 86(1)(h) of the Act, the State Grid Code must be consistent with the IEGC. In cases of absence of any provision in the State Grid Code, it thus

follows that the State Commission would rely on the provisions of the IEGC to adjudicate on the dispute between the parties. The Respondents have relied on the decision of APTEL given in *Tamil Nadu Generation and Distribution Corporation Ltd. v. M/s. Penna Electricity Ltd. & Ors.* 2013 SCC Online APTEL 110. In accordance with the same and by virtue of Section 86(1)(h) of the Act, absence of a provision under the AP Grid Code to treat the solar power projects as ‘must run’, the relevant provision of the IEGC i.e. Regulation 5.2 (u), would become applicable to the AP Grid Code. Further, APTEL in *Punjab State Power Corporation Limited v. Punjab State Electricity Regulatory Commission* 2012 SCC Online APTEL 182 has further laid down that in absence of Regulations by State Commission, the State Commission would not be debarred from carrying out the functions entrusted to it under the Act, and instead would be guided by the Regulations of the Central Commission.

81. The Respondents have submitted that a necessary corollary of the aforesaid is that adjudication on violations of the IEGC would not *ipso facto* confer jurisdiction to this Commission. The State Commission has power to enforce the provisions of the IEGC, when the same are not specifically dealt with by the AP Grid Code. This is also borne out by Section 142 of the Act that accords the State Commission to deal with regulations made under the Act as applicable irrespective of the fact that such regulations are specified by this Commission or the State Commission itself. Therefore, in absence of a provision under the AP Grid Code granting ‘must run’ status to the Petitioner, the State Commission has the power to decide the matter in accordance with the applicable provisions of the IEGC.
82. The Respondents have submitted that the Petitioner’s reliance on the decision of the Supreme Court in *Central Power Distribution Co. v. Central Electricity Commission* (2007) 8 SCC 197 is misplaced. The judgment in *Central Power Distribution Co.* is inapplicable to the present facts for the following reasons: (i) the Court in that case was considering a challenge to the authority of this Commission to specify Availability Based Tariff under Section 79(1)(h); (ii) the Court was concerned with this Commission’s authority to specify Regulations for grid discipline; (iii) there was no direction issued by the SLDC nor was there any challenge thereto and accordingly, Section 33(4) was not considered by the Act; (iv) the Court did not vest this Commission with the adjudicatory authority to determine disputes in relation to directions

issued under Section 32 of the Act by the SLDC. The controversy in the said case arose from an Order dated 04.07.2003 passed by this Commission subjecting the power plant of the Appellant therein to the scheme of 'Availability Based Tariff'. Thereafter, an appeal was sought by the Appellant before the APTEL which came to be dismissed. The Petitioner as well as NTPC sought to selectively rely on a solitary sentence wherein the Court generally stated that this Commission would have the power to enforce the IEGC. The Court in that case was concerned only with enforcement of the IEGC against the generating units of the CPSUs. This is within the domain of this Commission in terms of Section 79(1)(a) of the Act.

83. The Respondents have submitted that the present case is concerned with the directions issued by APSLDC concerning intra-State supply of electricity under Section 32 of the Act. This particular question has not been addressed or even decided by the Supreme Court in the above case. The authority of the Commission to specify the IEGC or the provision of must run is not in question in the present case. The only question that falls for consideration is that whether a dispute in relation to a direction issued under Section 33 be adjudicated before this Commission contrary to the clear stipulation of Section 33(4) of the Act. Considering, this position, the aforesaid judgment is wholly inapplicable and irrelevant for the present case.
84. The Respondents have submitted that prayer (d) of the present petition seeks a declaration that scheduling and dispatch of power from the Petitioner's plant shall be done by SRLDC. To that end, the Petitioner has placed reliance on Regulation 6.4.2 of the IEGC and has contended that the Petitioner's power project of 50 MW is set up in the 1000 MW Kurnool Ultra Mega Solar Park, Andhra Pradesh, falling within the purview of the SRLDC (Respondent No. 6). The Petitioner has no locus to pick and choose which Load Dispatch Centre will schedule its power. There is no provision under the Act, the IEGC or the AP Grid Code which provides that the Petitioner can seek a shift in the scheduling and dispatch of power from SLDC to RLDC. In case any scheduling or power is being dispatched in violation of IEGC by any SLDC, it is only in the domain and scope of the RLDC to issue necessary directions to SLDC under Section 29 of the Act, and in case of non-compliance, challenge the said action before the Appropriate Commission.

85. The Respondents have submitted that the present Petition has not been filed by SRLDC (Respondent No.6) but by the solar power generator, impugning only the backing down directions issued by APSLDC under Section 33 of the Act. Pertinently, no directions have been issued by SRLDC to APSLDC, which have allegedly not complied with by APSLDC. Even if such directions were to be issued by SRLDC, the same cannot be challenged, impugned or enforced by the Petitioner in any petition, having no locus under any provision of the Act or the IEGC. Therefore, such a prayer and contention of the Petitioner and SRLDC, are only fictitious in nature, and have been sought by the Petitioner only to escape the jurisdiction of the State Commission.
86. The Respondents have submitted that the Petitioner has placed reliance on the Order dated 16.07.2020 passed by this Commission in '*Wardha Solar (Maharashtra) Pvt. Ltd. & Anr. v. Karnataka State Load Dispatch Centre and Others*' [Petition No. MP/287/2019], to support its contention of jurisdiction. In the said matter, this Commission decided that it would have jurisdiction over the dispute due to the following factors:
- (i) The State Grid Code had a provision to deal with 'must run' status of the renewable energy plants.
 - (ii) There was inconsistency between such provision of IEGC and the State Grid Code, which pertained to statutory body determining tariff i.e. CERC or State Commission respectively.
 - (iii) Thus, whether a renewable energy power plant would be governed by the IEGC or State Grid Code for the purpose of must run status, in this particular case, depended on whether the tariff of the said plant was determined by CERC or State Commission.
 - (iv) The Petitioner alleged and pleaded that non-adherence of 'must run' status led to consequential reduction in tariff and a change in tariff.
87. The Respondents have submitted that only a cumulative effect of the aforesaid facts led this Court to hold that it had jurisdiction upon the *lis* between the parties. However, the aforesaid Order is not applicable to the present dispute, in light of the following material differences in the facts of the present petition, which have been overlooked by the Petitioner:

- (i) The AP Grid Code does not have a provision to deal with ‘must run’ status of the renewable energy plants.
- (ii) By virtue of Section 86(1)(h), Regulation 5.2(u) of IEGC would apply to the AP Grid Code and hence, there is no question of difference or inconsistency.
- (iii) There is no pleading or prayer in the entire petition regarding the effect of non-adherence of ‘must run’ status, on the tariff or even a change in tariff.

88. The Respondents have submitted that in light of the contrasting facts, can the said matter be a precedent for deciding the present dispute between the parties. In addition, this Commission has laid down that it will have jurisdiction only if the power projects of the petitioners are “*otherwise covered under the provisions of the IEGC, 2010*”. The power project in the instant petition is not otherwise covered under the IEGC, on account of the following and, therefore, the Petitioner’s project falls within the purview of the AP Grid Code framed under Section 86(1)(h) of the Act:

- (i) The Petitioner is not a ‘user’ as defined under Clause (2)(1)(gggg) of the IEGC;
- (ii) The Scope of the IEGC is limited to utilities connected to/ or using the Inter-State Transmission System (ISTS). The Petitioner has admitted that its power plant is connected to the intra-State transmission utility of Andhra Pradesh. Both generation and supply of electricity is being undertaken by the Petitioner within the State of Andhra Pradesh. Therefore, the Petitioner’s project otherwise also falls beyond the scope of the IEGC.
- (iii) The tariff of the Petitioner’s power project has been consented/ adopted by the State Commission and not determined by this Commission. Hence, the Petitioner is also not covered under Regulation 6.5(11) of the IEGC.

89. The Respondents have submitted that NTPC has also relied on the Order of the APTEL in *Ramnad Solar Power Ltd. v. Tamil Nadu Electricity Regulatory Commission and Others*. (2019 SCC Online APTEL 31). In the said Order, APTEL directed that matters pertaining to adherence of the relevant provisions of the IEGC and State Grid Code regarding the ‘must run status’ of the power plants, ought to have been dealt by the State Commission. In line with dictum of the APTEL, the dispute pertaining to adherence of the relevant provisions of IEGC

and State Grid Code regarding the must run status of the power plants, ought to be decided by the State Commission i.e. APERC and not this Commission.

90. The Respondents have submitted that the present issue concerning the jurisdiction of APERC under Section 33(4) of the Act, to deal with disputes regarding the provision of 'must run' status, provided in the IEGC, to the wind and solar power generators, is *sub-judice* before the High Court of Andhra Pradesh in W.P. No. 7260 of 2021. The said writ petition has been filed by APSLDC against the Order dated 05.02.2021 passed by this Commission in Petition No. 204/MP/2020. Additionally, various private solar and wind power generators have filed applications regarding the backing down instructions and are pending adjudication before the Hon'ble High Court of Andhra Pradesh. These applications include I.A. No.1 in W.A. No 383/ 2019, I.A. No.1 in W.A. No. 384/2019, I.A. No.1 in W.A. No. 433/2019, I.A. No.1 in W.A. No. 435/2019, I.A. No.2 in W.A. No. 441/2019, I.A. No.1 in W.A. No. 447/2019, I.A. No.4 in W.A. No. 6/2020, I.A. No.3 in W.A. No. 138/2020, I.A. No.1 in W.A. No. 75/2020. Similar petitions O.P. Nos. 61, 74 & 76 of 2019 are also pending adjudication before APERC. The disputes raised in the present petition, particularly w.r.t the appropriate forum to decide the said disputes, are already *sub-judice* before High Court of Andhra Pradesh and APERC. Therefore, the present petition cannot be decided by this Commission in the interregnum.
91. The Respondents have submitted that the Petitioner has sought enforcement of its 'must run' status before this Commission, purportedly under Regulation 6.5(11) of the IEGC which grants such status to only renewable energy power plants whose tariff is determined by this Commission. Pertinently, the tariff/ price in respect of the Petitioner's power plant has been discovered through the bidding process as per the PPA. Thereafter, on an application made by the Petitioner, the State Commission i.e. APERC granted consent to the Petitioner's project and adopted the tariff so discovered. Since the tariff of the Petitioner's power plant has not been determined, adopted or consented by this Commission, no 'must run' status is conferred on the petitioner under Regulation 6.5(11) of IEGC. Therefore, the present petition is not maintainable since the petitioner has no *locus standi* to seek enforcement of Regulation 6.5(11) of the IEGC against APSLDC.

Written submissions of the Petitioner on the maintainability of the Petition

92. In its reply, the Petitioner had submitted that this Commission has jurisdiction to adjudicate the matter. Some additional points have been raised in support of its plea about jurisdiction of this Commission.
93. The Petitioner has submitted that it has sought multiple directions from this Commission and the petition is not solely related to the directions issued by APSLDC. In addition to seeking injunction against APSLDC from issuing any back down instructions to its project, it has raised issues relating to SRLDC's jurisdiction over the scheduling and dispatch from the 1000 MW Gani Solar Park, wherein Petitioner's project is located. The Petitioner has submitted that this Commission on 07.08.2015 (that came into effect from 01.11.2015) notified the Third Amendment to the IEGC which amended Regulation 6.4 (2)(b) of the IEGC to provide:
- “2. The following generating stations shall come under the respective Regional ISTS control area and hence the respective RLDC shall coordinate the scheduling of the following generating stations:*
- ...
- (b) Ultra Mega Power Projects including projects based on wind and solar resources and having capacity of 500 MW and above.”*
94. The Petitioner has submitted that the aforesaid Amendment to the IEGC mandates that the scheduling and dispatch of power from Ultra-Mega Power projects and wind and solar based projects of capacity 500 MW and above shall be done by the concerned Regional Load Dispatch Centre (RLDC). Since the Petitioner's project is situated in the 1000 MW Kurnool Ultra Mega Solar Park in Gani, Andhra Pradesh, SLRDC is the concerned RLDC in the Petitioner's case. Taking cognizance of the aforesaid mandate under the IEGC, SRLDC from time to time requested APSLDC to provide data regarding RE generation so that SRLDC can take over scheduling jurisdiction of the Gani Solar Park. However, APSLDC has neither complied with SRLDC's direction nor sought any exemption from this Commission from complying with Regulation 6.4(2)(b) of the IEGC. This fact was also submitted orally by the representative of SRLDC before this Commission during the hearing on 28.05.2021. The issue was also discussed in detail during the meetings of SRPC, wherein it was decided that SRLDC shall schedule power from Gani Solar Park.

95. The Petitioner has submitted that the present petition also invokes Section 29(5) of the Act, for directions to APSLDC to comply with the mandate of the IEGC and to handover scheduling jurisdiction of Gani Solar Park to SRLDC. This issue being under Sections 28 and 29 of the Act, can only be adjudicated by this Commission.
96. The Petitioner has submitted that prayer of the Petitioner is also related to entitlement of the Petitioner for deemed generation charges on account of curtailment of its power.
97. The Petitioner has submitted that amendment dated 22.10.2019 to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects (Amended Tariff Guidelines) was issued by MNRE. As per clause 5.2.2. of the said guidelines, no backing down instructions will be issued to solar power projects without giving formal/ written instructions for the same and in case of backing down of solar power the generator shall be paid Minimum Generation Compensation by the Procurer in the following manner:

<i>Duration of Backdown</i>	<i>Provision for Generation Compensation</i>
<i>Hours of Backdown during a monthly billing cycle.</i>	<p><i>Minimum Generation Compensation =</i> <i>100% of [(Average Generation per hour during the month) × (number of backdown hours during the month) × PPA Tariff]</i></p> <p><i>Where, Average Generation per hour during the month (kWh) =</i> <i>Total generation in the month (kWh) ÷ Total hours of generation in the month”</i></p>

98. The Petitioner has submitted that MNRE letter dated 01.08.2019 makes it clear that SLDCs shall be responsible for making good the loss incurred by the generators towards deemed generation.
99. The Petitioner has submitted that the present petition raises issues relating to the tariff of the project and difficulties faced by the Petitioner in realizing the same. In this regard, Article 16.3 of the PPA dated 21.03.2016 executed by Petitioner and NTPC provides that any claims relating to tariff of the project will be referred to this Commission. In this regard, reliance is placed on this Commission’s Order dated 16.07.2020 in Petition No. 287/MP/2019 [*Wardha*

Solar (Maharashtra) Pvt. Ltd. & Anr. v. KSLDC and Ors] wherein this Commission while interpreting similar provisions of the PPA between Wardha Power and SECI held that the tariff related matters will be decided by this Commission.

100. The Petitioner has submitted that from the above, it is clear that the present petition raised important issues which are related to (a) regulation of the Grid by this Commission and (b) tariff of Petitioner's project and the same are not limited to APSLDC's directions under Section 32 of the Act. Therefore, this Commission has the jurisdiction to decide the present case.
101. The Petitioner has submitted that its project is set up under the "State Specific Bundling Scheme" under the JNNSM Phase-II Guidelines. In the aforesaid scheme, supply of power from the Petitioner to NTPC and onward supply to distribution licensees of Andhra Pradesh is not purely intra-State supply of power.
102. Further, regulation of the Grid is an essential part of this Commission's function under Section 79(1)(h) of the Act (i.e., to specify IEGC having regard to grid standards) and Section 28(2) of the Act (i.e., RLDC to comply with such principles, for optimum scheduling and despatch of electricity as may be specified by this Commission in the IEGC), read with Section 178(2)(g) of the Act. Such power cannot be curtailed by application of Section 86(1)(h) of the Act.
103. The Petitioner has submitted that the present dispute falls within the jurisdiction of this Commission under Sections 29(5) and 79(1)(h) of the Act. Regulation 1.5(iv) of the IEGC having been notified under Section 79(1)(h) of the Act, cannot be said to be inconsistent with the Act. As such, the Respondents have not challenged the validity of Regulation 1.5(iv) of the IEGC before any court of law and therefore, this Regulation in its present form enables this Commission to look into any non-compliance of the IEGC either *suo moto* or in a petition filed by a person.

104. It is true that APERC is empowered to levy penalty on APSLDC in case of non-compliance of provisions of Act. Such penalty is punitive in nature. In the present case, the issue relates to directions to APSLDC to comply with the IEGC. The penalty specified in Section 142 of the Act, even if levied on APSLDC, will not resolve the disputes raised in the present petition which requires adjudication of this Commission. Further, such penalty is over and above any other penalty that may be imposed on APSLDC under this Act.

105. The Petitioner has submitted that Hon'ble Supreme Court's judgment in *Central Power Distribution Co. & Ors. vs. CERC & Ors. (2007) 8 SCC 197* is binding and applicable to the present case. It lays down in clear terms that this Commission is the apex authority in relations to matters of grid discipline under the IEGC. The Respondents have selectively relied on paragraphs of the said judgment to mislead this Commission. The Respondents have failed to highlight that:-

- (a) the main contention of the Appellants in the Central Power Distribution Co case was that the generating station in question was only connected to the intra-State grid and had only single State beneficiary and, hence, this Commission could not impose UI charges on such generating station (para 16). This ground is *pari-materia* to the first objection taken by the Respondents in the present case, i.e., since the Petitioner's project is connected to the intra-State network, only APERC has the jurisdiction relating to directions issued by APSLDC.
- (b) After considering Sections 2(32) [*Grid*], 28 [*Role of RLDC*], 29 [*Directions of RLDC*], 33 [*Directions of SLDC*], 79(1)(h) and 86(1)(h) of the Act, the Hon'ble Supreme Court has laid down the following principles relating to regulation of the grid:
 - (i) Section 86(1)(h) requires the State Grid Code to be consistent with IEGC under Section 79(1)(h). Therefore, powers of the State Commission are *subservient* to the powers of this Commission. (Para 18)
 - (ii) this Commission will have jurisdiction to deal with Grid discipline with regard to single State beneficiary generating stations. (Para 20)
 - (iii) this Commission has the power to evolve commercial mechanism to regulate and discipline. Power to regulate includes the power to enforce. (Para 22.3)

(iv) this Commission has the plenary power to regulate the grid, particularly in the context of the grid being integrated and connected across all regions comprising of more than one State. The State grid cannot be isolated and seen as independent from the region. (Para 22.4)

106. The Petitioner has submitted that all the aforesaid principles are squarely applicable to the present case since:-

- (a) the AP Grid Code must be read consistent with the IEGC.
- (b) this Commission has jurisdiction over the Petitioner's project even though the same is connected to intra-State network.
- (c) scheduling and dispatch of power in the grid by APSLDC *de hors* the provisions of the IEGC.
- (d) implementing the commercial mechanism to compensate the Petitioner for the loss of tariff due to arbitrary curtailment of generation in the name of grid stability.
- (e) RLDC being the operator for the entire region has supervening powers over SLDC and SLDC must comply with directions of RLDC.

107. The Petitioner has submitted that in terms of Section 29(1) of the Act, RLDC has the power to issue directions to achieve maximum economy and efficiency in the operation of the power system and to ensure grid stability. In this regard, SRLDC *vide* its letters dated 29.08.2018 and 20.03.2019 had specifically requested APSLDC to provide details of the RE projects in Andhra Pradesh for initiating action for scheduling under SRLDC jurisdiction as per Regulation 6.4 (2)(b) of the IEGC. However, AP SLDC has till date not complied with the said directions. Section 29(5) provides that any issues relating to directions of SRLDC will be adjudicated by this Commission and pending such adjudication, SLDC must comply with directions of RLDC.

108. The Petitioner has submitted that the findings of this Commission in the Order dated 16.07.2020 in Petition No. 287/MP/2019 [*Wardha Solar (Maharashtra) Pvt. Ltd. & Anr. v. KSLDC and Ors*] are squarely applicable to the present case and the same is evident from the following:-

- (a) Prayer of Wardha Power in Petition No. 287/MP/2019 as extracted in the Order dated 16.07.2020 are as under:

“(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.”

- (b) It is evident from the prayers in the present petition that the Petitioner has sought the same relief against APSLDC that was claimed by Wardha Power against Karnataka SLDC, i.e., enforcement of must run status of the solar project and to forthwith stop any backing down instructions.
- (c) This Commission relied on the Dispute Resolution clause – Article 16.3 of the PPA executed between Wardha Power and SECI to hold that:
- (i) all disputes relating to tariff or determination of any of such claims which would result in change in tariff would be adjudicated by this Commission.
 - (ii) Wardha Solar is aggrieved that the must run status of solar projects as provided in the IEGC are not being complied with by Karnataka SLDC 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.

(d) Clause 16.3 of the PPA is identical in the present case and provides that any matters relating tariff shall be adjudicated by this Commission. Therefore, the findings of this Commission will apply in the present case.

(e) The Petitioner in its petition has categorically claimed compensation for the loss of tariff due to the backing down instructions of APSLDC and the same has implication on the tariff (and realisation thereof) of the Petitioner's project.

109. The Petitioner has submitted that since the issues raised in the present petition are identical to the issues raised in Petition No. 287/MP/2019 with the only difference being, that the Petitioner's project is in Andhra Pradesh and that of the Petitioner in Petition No. 287/P/2019 is in Karnataka. Therefore, the findings of this Commission are applicable to the present case.

110. The Petitioner has submitted that the pending proceedings referred to by the Respondents pose no bar to the present petition in view of the following:-

(a) Hon'ble AP High Court in its Order dated 04.02.2021 in W.P (C). 21512 of 2020 has directed the Respondents to approach this Commission to decide the issue of must run status and the issue of maintainability of such petition. The Respondents cannot claim that the issue is sub-judice before the AP High Court.

(b) Respondents have only submitted that similar petitions O.P. Nos. 61, 74 and 76 of 2019 are also pending adjudication before APERC. However, the Respondents have not provided any details regarding the same. As such, since the present petition raises issues which can only be decided by this Commission under Section 29 of the Act and Article 16.3 of the PPA (in addition to the issue of must run status), the present petition would not be maintainable before APERC

111. The Petitioner has submitted that while the tariff of the Petitioner's project has been 'adopted' by APERC, Petitioner's PPA (which was approved by APERC) specifically provides that any matter that has any impact on the tariff of Petitioner, shall be referred to this Commission. Therefore, Regulation 6.5(11) will be attracted in the present case. In this regard, the

Petitioner has placed its reliance on this Commission's Order dated 16.07.2020 in Petition No. 287/MP/2019.

112. The Petitioner has submitted that Respondents are relying on APTEL's decision in *Ramnad Solar Power Ltd. v. Tamil Nadu Electricity Regulatory Commission and Others* to contend that only State Commission has powers to look into the issues of must run status. The facts of the Ramnad Solar case are distinct from the present case as:
- (a) the issue raised in the appeal was whether deciding must run petition of a solar power developer comes under the adjudicatory or regulatory function of Tamil Nadu Electricity Regulatory Commission.
 - (b) the solar power developer had approached TNERC for enforcement of must run status. TNERC had rejected the said petition while directing the solar developer to approach TNERC through a dispute resolution petition. The issue before APTEL was whether a generator can be permitted to maintain a Miscellaneous Petition before the Commission instead of Disputes Resolution Petition.
 - (c) There is no finding that this Commission will not have jurisdiction to decide petition of solar developers which are set up under JNNSM scheme and tariff of which is subject matter of adjudication before this Commission.

Analysis and Decision

113. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records. The Petitioner and Respondents have filed detailed replies *inter-alia*, on maintainability of the petition.
114. We observe that Respondents APSLDC & APTRANSCO have submitted that the present case concerns intra-State generation and supply of electricity and there is no material or pleading on record to suggest that there is any inter-State element to the generation and supply of electricity. The Respondents have submitted that statutory scheme is explicit that matters of intra-State disputes are under the jurisdiction of the State Commission and not under this Commission. The Respondents have placed their reliance on the decision of the Hon'ble Supreme Court in *Energy Watchdog v. CERC*, (2017) 14 SCC 80. We observe that the

Petitioner, *per contra*, has submitted that its project is set up under the “State Specific Bundling Scheme” under the JNNSM Phase-II Guidelines. In the aforesaid scheme, supply of power from the Petitioner to NTPC and onward supply to the distribution licensees of Andhra Pradesh is not purely intra-State supply of power.

115. We observe that the relevant provisions of the Electricity Act, 2003 stipulate as under:

“Section 2. (Definitions): --- In this Act, unless the context otherwise requires,--

(33) “Grid Code” means the Grid Code specified by the Central Commission under clause (h) of sub-section (1) of section 79;

Section 28. (Functions of Regional Load Despatch Centre): ---

(1) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.

(2) The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.

Section 29. (Compliance of directions): ---

xxxx

(5) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the regional grid or in relation to any direction given under sub-section (1), it shall be referred to the Central Commission for decision:

xxxx

Constitution, powers, and functions of Central Commission

Section 79. (Functions of Central Commission): ---

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

- (a) to regulate the tariff of generating companies owned or controlled by the Central Government;
- (b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause(a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;
- (c) to regulate the inter-State transmission of electricity ;
- (d) to determine tariff for inter-State transmission of electricity;
- (e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;

- (f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;
 - (g) to levy fees for the purposes of this Act;
 - (h) to specify Grid Code having regard to Grid Standards;
 - (i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;
 - (j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;
 - (k) to discharge such other functions as may be assigned under this Act.
- xxxx

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

- (1) The State Commission shall discharge the following functions, namely: -
- (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:
Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;
 - (b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;
 - (c) facilitate intra-State transmission and wheeling of electricity;
 - (d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;
 - (e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;
 - (f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;
 - (g) levy fee for the purposes of this Act;
 - (h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;
 - (i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;
 - (j) fix the trading margin in the intra-State trading of electricity, if considered, necessary; and
 - (k) discharge such other functions as may be assigned to it under this Act.

xxxx

116. From the above, we observe that Section 79(1)(a) of the Act empowers the Central Commission to regulate the tariff of the generating companies owned or controlled by the

Central Government; Section 79(1)(b) provides that the Commission shall have the jurisdiction of regulating the tariff of a generating company if it has a composite scheme of generation and sale in more than one State; under Section 79(1)(c), the Commission has the jurisdiction to regulate inter-State supply of electricity; under Section 79(1)(d), the Commission has the power to determine the tariff for inter-State transmission of electricity; and under Section 79(1)(f) of the Act, the Commission has the power to adjudicate the dispute involving generating company or transmission licensee in respect of Section 79(1)(a) to (d) of the Act. The word used is “involving” a generating company or a transmission licensee for a case to be brought before the Commission for adjudication of dispute under Section 79(1)(f) of the Act. In other words, if one of the parties to the dispute is a generating company or transmission licensee and the dispute can be related to any of the functions under Section 79(1)(a) to (d) of the Act, the case for adjudication of such dispute shall lie before this Commission.

117. We observe that the expression “composite scheme” and the jurisdiction of the Central Commission in regulating the tariff of the project meeting the “composite scheme” has been explained by the Hon'ble Supreme Court vide its judgment dated 11.4.2017 in Civil Appeals titled Energy Watchdog v. CERC & Ors. [(2017 (4) SCALE 580)] (in short, “Energy Watchdog Case”) as under:

“22. The scheme that emerges from these Sections is that whenever there is interState generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in subsections (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression “within the State” in sub-clauses (a), (b), and (d), and “intra-state” in sub-clause (c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission’s jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously

Section 86 does not get attracted. This being the case, we are constrained to observe that the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State.

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

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

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

(c) “Composite unit” – “A unit made of diverse elements.”

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

24. Even otherwise, the expression used in Section 79(1)(b) is that generating companies must enter into or otherwise have a “composite scheme”. This makes it clear that the expression “composite scheme” does not have some special meaning – it is enough that generating companies have, in any manner, a scheme for generation and sale of electricity which must be in more than one State.”

118. As per the above findings of the Hon’ble Supreme Court, the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State and that it is enough that generating companies have in any manner a scheme of generation and sale of electricity in more than one State. From the above, it is observed that if under a scheme there is generation or sale of electricity in more than one State, it is covered under the expression of the “composite scheme” and is consequently under the jurisdiction of the Central Commission.

119. We observe that the “Guidelines for Selection of 3000 MW Grid-Connected Solar PV Power Projects under Batch-II for State Specific Bundling Scheme”, stipulate *inter-alia* as under:

“1.0 Preamble

....

1.3 Phase-II Batch-II Scheme:

1.3.1 MNRE now proposes to add a total Solar PV capacity of 3,000 MW to be

implemented through NVVN as part of Phase-II. The scheme envisages setting up of Grid-connected solar PV power plants of 3,000 MW aggregate capacity through open competitive bidding.

1.3.2 Phase-II, Batch-II: State Specific Bundling Scheme

These guidelines are for 3000 MW. MNRE will indicate the total quantity for various States based on response received from the States. NVVN may then procure that quantity through one or more State specific tenders.

Scope of the Guidelines

The scope of these guidelines is limited to providing the necessary policy and operational framework for development of projects under the above mentioned "State Specific Bundling Scheme". These guidelines are independent and will have no bearing on the projects already selected under earlier schemes of NSM Phase-I & Phase-II, Batch - I.

∴

120. We observe that as per RfS issued by NTPC, the relevant provisions are as under:

"1.1 This document is for selection of Solar Power Developers (SPDs) for setting up Grid-connected Solar-PV Power Projects of 500 MW capacity in the Gani-Sakunala Solar Park phase-II being developed through association of Central and/or State agencies [i.e., Solar Park Implementation Agency (SPIA)] on the identified land arranged by the State Agencies at Distt.Kurnool in the State of Andhra Pradesh. The solar power produced by the selected SPDs from their respective Solar-PV Power Projects set up in this Solar Park, will be purchased by NTPC and would be sold to the State Utilities/ Discoms of Andhra Pradesh after bundling with cheaper power from unallocated quota of Govt. of India (Ministry of Power) out of the capacity of the NTPC coal-based stations.

1.2 Under the "State Specific Bundling Scheme", NSM provides for bundling of relatively expensive solar power with cheaper power from NTPC coal-based stations out of the unallocated quota of the Government of India (Ministry of Power) in the ratio of 2:1 basis (2 MW of Solar Power with 1 MW of Thermal Power)."

121. We observe that the relevant recitals as contained in the PPA dated 21.03.2016 are as under:

"D. The SPD has agreed to sign this Power Purchase Agreement (PPA) with NTPC to sell Solar Power to NTPC as per the terms and conditions of this Agreement.

E. NTPC Vidyut Vyapar Nigam Limited (NVVN) on behalf of NTPC will purchase Solar Power from SPD's, and sell it to Discom's after bundling it with the Thermal Power allocated by MoP GoI, for this purpose. Further on behalf of NTPC, NVVN will facilitate Billing, Realization, Data Submission and other associated day to Day activities for fulfilling the obligations of NTPC as assigned in this agreement.

F. NTPC has agreed to sign a Power Sale Agreement (PSA) with the Discom to sell such bundled power as per the provisions of the National Solar Mission."

122. From the above, it is observed that NTPC was identified by the Government of India as the Implementation Agency for setting up of grid-connected Solar PV Power Projects under ‘State Specific Bundling Scheme’ and for facilitating purchase & sale of 33 kV or above grid-connected Solar PV Power under the JNNSM of the Government of India (GoI). Further, the scheme provides for bundling of relatively expensive solar power with cheaper power from NTPC coal-based stations out of the unallocated quota of the Government of India (Ministry of Power) in the ratio of 2:1 basis (2 MW of Solar Power with 1 MW of Thermal Power). The NTPC coal based stations could be located anywhere in the country. As such, the scheme of the NSM (*Phase-II Batch-II Scheme*) has the ingredients of a composite scheme of generation and sale in more than one State. However, this issue is not germane to the present petition as the Petitioner has not filed this petition based on the argument of its project being a composite scheme. Rather, the petition has been filed invoking provisions of the IEGC.
123. We observe that the Petitioner has raised issues, inter alia in the context of some specific provisions of the IEGC, namely, the provisions relating to ‘must run’ status granted to the solar power project of the Petitioner; and control area jurisdiction of SRLDC in relation to the Kurnool Ultra Mega Solar Park. Regulation 6.4.2(b) of the IEGC provides that the scheduling and dispatch of power from Ultra-Mega Power projects and wind and solar based projects of capacity 500 MW and above shall be done by the concerned RLDC. Hence, the matter involves interpretation of the IEGC. It is pertinent to mention here that as per Regulation 1.5(iv) of the IEGC, 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 (in the instant case the Petitioner) to CERC through petition. As the issues raised in the petition involve interpretation of the IEGC, CERC is the appropriate Commission for deciding on applicability or otherwise, of the provisions of IEGC in the instant case involving the Petitioner’s project.
124. It has been contended by APSLDC that the same matter was contested before the Hon’ble High Court of Andhra Pradesh in W.P. Nos. 9844, 9867, 9869, 9870, 9871, 9872, 9873, 9874, 9875, 9876, 9877, 9938, 10135, 10138, 10212, 10244, 10486, 10487, 11175, 11872

and 12286 of 2019. We note that the matter was decided by the Hon'ble High Court of Andhra Pradesh vide common Order dated 24.09.2019, wherein it has been held as under:

“Determination:

In the case on hand, as pointed out earlier, the raison d’etre for the State/GoAP to issue the impugned letter and the G.O is because the State feels that the prices being charged by the various petitioners are very high. While the object is laudable, the question is does the State/GoAP have such power?

....

In view of the fact that this Court is holding in the other batch of writ petitions (WP.Nos.2401 of 2019, 5710 of 2019 and batch) that all the issues are to be raised in OP.No.17 of 2019 before the APERC, this Court is not entering into the depth of the controversy.

....

Thus, this Court holds that a third party to the contract cannot give directions to modify the contract. If the DISCOMS feel that the tariff is high they have to avail the statutory remedies only subject to limitation res judicata etc. State should act as a ‘model’ employer. Fairness, reasonableness and transparency must be the core values as per which the State must act. If the state action is viewed against the large volume of case law on “fairness of State action” it is clear that it falls short of the expected standards.

....

Payments due and the financial quagmire:

The plea that is raised by the petitioners namely that their bills have not been paid and that the DISCOMS are using some subtle and not so subtle methods in order to force them to reduce the rate needs to be addressed at this stage. A large number of interlocutory applications have been filed seeking directions to the respondents to refrain from arbitrarily curtailing generation; seeking payment of the outstanding dues etc. Some writs contain this prayer too; either directly or as a prayer not to take coercive steps.

....

Keeping in view the submissions made by both the parties and (a) as the petitioners need liquidity and consequential lubrication to keep the “wind mills” moving and (b) as the losses of the DISCOMS are high for whatever reason, this Court is of the opinion that the respondents/DISCOMS should be directed to honour the bills of the wind purchasers and solar purchasers and to pay the same at the “interim” rate of Rs.2.44p for solar power and Rs.2.43p for wind power. All the pending and future bills of all the petitioners should be paid at this interim rate. This interim arrangement is being suggested by this Court in order to balance the interest of both the parties. The argument that the petitioners will soon become NPA and their financiers would initiate insolvency and other proceedings can not be lost sight of. The State’s claim that they are bleeding cannot be lost sight of either. Hence, this interim arrangement. By making a payment at this rate the petitioners or DISCOMS are not losing any of their rights. By submitting a bill; by processing the bill; by paying the bill and by receiving the bill neither party will lose its rights. It is only an interim measure that is suggested till the dispute is resolved by the APERC. A time frame of six months was also suggested to APERC in the other batch of writ petitions to dispose the case.

.....

Curtailement:

All the learned senior counsels who argued in the batch argued about the State/respondents action in curtailing the power, failure to pay the bills and also the actions in disconnecting the evacuation of power etc.

Learned senior counsel argued IA.No.9 of 2019 filed in W.P.No.9844 of 2019 for which separate orders are passed. This was a case of abrupt disconnection of a generator to a sub-station from which the generated power is evacuated.

During the course of hearing in IA.No.9 of 2019, the learned Advocate General justified the State action by stating that the action was taken in that particular case because of a representation given by another generator. He, therefore, justified the action of the State and argued that the initial action was illegal; that in the interest of grid safety etc., the action was taken. However, Mr. Sajan Poovayya, learned senior counsel in the course of his rejoinder argument has filed a document downloaded from website of the A.P.TRANSCO (Transmission Corporation to Andhra Pradesh Limited), which clearly shows that the solar power has been curtailed on the ground that the "price quoted" is too high. Learned senior counsel points out that this downloaded document is for the period from 01.08.2019 to 01.09.2019, which includes the period during which the writ petitions were being heard.

This Court had already given an order dated 25.07.2019 to the respondents restraining them from taking coercive steps, but steps continued to be taken. Permission was not taken from the Court before complete curtailment in IA.No.9 of 2019 in WP.No.9844 of 2019. Once this Court was seized of the matter, permission must have been sought as there was no glaring emergency to disconnect the petitioners' right to evacuate.

This Court after hearing all the learned counsels is of the opinion that the terms of the contract have to be honoured. The State cannot give a direction to the DISCOMS or to the generators that the price is high. This matter of "price" has to be determined as per law. The respondents cannot use tactics like this. Until it is determined that the price is high or for similarly determined reasons by which the contract is amended, the curtailment of the power for any reason whatsoever cannot be ordered. Except for the reasons which are mentioned in the PPA or as per the Electricity Regulation Act, 2003 etc., curtailment cannot be ordered either directly or indirectly. Even if the price is high, it can lead to a monetary claim or adjustment/ set off etc., but not curtailment of power or stoppage of evacuation etc.

In view of the fact that these sort of orders will have serious consequences, apart from financial consequences all the generators are entitled to a notice before any such action is taken except in a very grave and sudden emergency. This action should also be supported by reasons which are strong and germane. Therefore, the respondents are once again directed not to take any coercive steps of any nature including curtailing production, stopping evacuation or the like except after giving due notice to the generators and as per the PPAs; the Regulation and 2003 Act. Therefore, this Court holds any restriction can only be imposed if it is as per the agreement or it has the sanction of law.

With these observations, this batch of writ petitions are allowed setting aside the GOMs.No.63 of 2019 dated 01.07.2019; the letter dated 12.07.2019 and all related and consequential actions.”

125. From the above, we observe that the matter adjudicated in various writ petitions before the High Court of Andhra Pradesh and decided by the common Order dated 24.09.2019 is with regard to modification of tariff, commercial compensation and curtailment of power due to high tariff. We observe that the parties have filed the Writ Appeal No. 383, 393, 435, 441, 447, 463 and 477 of 2019 before the Division Bench of the Hon'ble High Court of Andhra Pradesh to set aside the common Order dated 24.09.2019. However, the matter before the Commission in the instant petition is regarding violation of provisions of 'must run' as provided in the IEGC. Therefore, the contention of APSLDC that the Commission may not proceed in the matter in view of same matter being heard by Hon'ble High Court of Andhra Pradesh is not correct.
126. Another issue contended by APSLDC is that similar matter is pending before APERC and that the Petitioner should not indulge in forum shopping. We observe that the petitions O.P. No. 61, 74 and 76 of 2019 filed by generators which are pending before APERC for adjudication are for seeking commercial compensation and for ensuring 'must run' status for their respective power plants, whereas the instant petition is filed by the Petitioner regarding violation of Regulations 1.5(i) and 1.5(iv) of the IEGC.
127. The Commission further observes that proceedings in the instant petition were earlier stayed by the Hon'ble High Court of Andhra Pradesh in Writ Petition No.1286/2020. The said writ petition was filed by APSLDC contending that only APERC has the jurisdiction to adjudicate the disputes raised in Petition No.342/MP/2019. The Commission observes that the High Court of Andhra Pradesh vide its Order dated 21.09.2020 in Writ Petition No.1286/2020, has held as under:
- “Subsequent to the common order dated 24.09.2019 passed in the said writ petitions; writ appeals have been filed vide W.A.Nos.383, 393, 424, 433, 435, 441, 477 of 2019 and 6 of 2020 arraying APSLDC as respondent. The Division Bench of this Court issued notices to DISCOMs and APSLDC i.e., petitioner and posted the writ appeals for further hearing on 23.01.2020. Therefore, propriety requires the CERC not to proceed with the issue. But, the CERC is proceeding with the enquiry in a petition filed by respondent No.2 vide petition No.342/MP/2019.*

...
...

Considering rival contentions, perusing the material available on record, the points that arise for consideration are:

- 1) Whether the Writ of Certiorari can be issued in the circumstances stated in the writ petition?*
- 2) Whether the petition is liable to be dismissed for non-joinder of necessary parties?*
- 3) Whether CERC is competent to decide the dispute between respondent No.2 and the petitioner in terms of Section 79 (1) (h) of the Electricity Act, Regulation 111 of CERC (Conduct of Business) Regulations, 1999 and Regulation 5.2 (u) of IEGC? If not, whether respondent No.1 be restrained from proceeding with application No.342/MP/2019 by issuing Writ of Prohibition?*

P O I N T No.1:

Before going to decide the aspect of jurisdiction, it is appropriate to advert to the relief claimed in the petition to decide whether Writ of Certiorari or writ of prohibition can be issued in the facts and circumstances of the case.

The relief claimed in the petition is as follows:

“it is therefore prayed that this Hon’ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of certiorari calling the records leading up to quash the impugned proceedings pending before the 1st respondent vide petition No.342/MP/2019 filed by the 2nd respondent against the petitioner for curtailment of generation of solar power as illegal, arbitrary and unreasonable without jurisdiction, and contrary to Section 86 (1) (f) of Electricity Act and contrary to Section 33 (4) of Electricity Act and be pleased to pass such other order or orders as deem fit and proper in the circumstances of the case.”

As seen from the relief claimed in the petition, the petitioner claimed only Writ of Certiorari.

...
...

In the present facts of the case, undisputedly, petition No.342/MP/2019 filed by respondent No.2 against the petitioner questioning the curtailment of generation of solar power is pending before respondent No.1, at this stage the appropriate remedy is Writ of Prohibition.

If an order is passed by CERC assuming jurisdiction though not vested in it or passed any order in violation of principles of natural justice or violating fundamental rights guaranteed under the Constitution of India, a Writ of Certiorari can be issued. Hence, I am of the considered view that Writ of Prohibition is appropriate remedy at this stage, when the petition No.342/MP/2019 filed by respondent No.2 is pending before respondent No.1. Accordingly, the point is answered

P O I N T No.2:

...

Undoubtedly, when necessary parties are not impleaded to the writ petition, the writ petition is liable to be dismissed in limini. But, who is necessary and proper party is a question of fact depending upon the facts of each case. Proper party is a party, in whose absence effective adjudication cannot be made. Necessary party is a party, in whose absence the dispute cannot be decided.

...

In the absence of NTPC, any decision of this Court is not binding on the NTPC, who is a party to the agreement entered into with respondent No.2. Hence, I find that NTPC is a necessary party, in whose absence the dispute as to the inherent jurisdiction of the CERC cannot be decided. On this ground alone by applying the law declared by the Apex Court in the judgments (referred above) and persuaded by the judgment of California Court, the petition is liable to be dismissed. Accordingly, the contention of the learned counsel for respondent No.2 is upheld and point is decided in favour of respondent No.2 and against the petitioner.

P O I N T No.3:

In view of my finding on point No.2, no finding need be recorded on the main issue as I have already held that such issue cannot be decided in the absence of necessary parties. Hence, the writ petition is liable to be dismissed.

In the result, the writ petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.”

128. It is evident from the above that the issues raised and decided in the aforesaid writ petitions by the High Court relate to the power of the State Government to modify the contracts including the curtailment of power evacuation by generators on the ground of high tariffs. The Hon’ble High Court of Andhra Pradesh has dismissed the writ petition No.1286 of 2020 for want of necessary parties and for seeking prayer under an incorrect writ.

129. Further, the High Court of Andhra Pradesh vide Order dated 04.02.2021 in the writ petition No. 21512 of 2020 held as under:

“4. It is now submitted by the learned Advocate General that there has been a change in the Constitution of the 1st respondent which would require the 1st respondent to hear the matter afresh. The learned Advocate General would also submit that they have no objection for the present Writ petition being disposed of, leaving it open to the petitioners to approach the Central Electricity Regulatory Commission and raise all

issues including the question of maintainability of the application and the jurisdiction of the 1st respondent to hear the said application.

5. In the circumstances, this Writ Petition is disposed of, giving liberty to the petitioners to raise all objections and submissions including the question of maintainability of the application and the jurisdiction of the 1st respondent to entertain the application bearing No.342/MP/2019. There shall be no order as to costs of the Writ Petition.”

130. We observe from the aforesaid Order that the Hon'ble High Court of Andhra Pradesh, based on the submissions of the Respondents, has given liberty to the Petitioner to approach this Commission and raise all issues including the question of maintainability. Accordingly, in the present Order, we have dealt only with the issue of maintainability, as to whether the Petitioner can approach this Commission for interpretation of provisions of the IEGC and we hold that we have the jurisdiction to adjudicate in the matter as discussed in the preceding paragraphs. We have expressed no views on merit of the case and the same would be dealt with when the matter is heard on merit.

131. The Petition No.342/MP/2019 is admitted and I.A. No. 35 of 2021 is disposed of. The parties are directed to make their submissions on merit. The petition shall be listed for hearing in due course for which separate notice will be issued.

Sd/-
पी. के. सिंह
(सदस्य)

Sd/-
आई. एस. झा
(सदस्य)

Sd/-
पी. के. पुजारी
(अध्यक्ष)