

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELH**

**Petition No: 498/MP/2020**

**Coram:**

**Shri P.K. Pujari, Chairperson  
Shri I.S. Jha, Member  
Shri Arun Goyal, Member  
Shri Pravas Kumar Singh, Member**

**Date of Order: 4<sup>th</sup> April, 2022**

**In the matter of**

Petition under Section 79 read with Section 142 of the Electricity Act, 2003 for execution/implementation of the Order dated 04.02.2020 passed in Petition No.115/MP/ 2019 including directions to State Load Despatch Centre, Odisha to comply with directions in said Order and directions for payment of amounts due to GKEL.

**AND**

**In the matter of:**

GMR Kamalanga Energy Limited  
Skip House, 25/1 Museum Road,  
Bangalore-560025

...Petitioner

Vs

1. State Load Despatch Centre for Odisha  
SLDC Building, GRIDCO Colony,  
P.O. Mancheswar Rly. Colony,  
Bhubaneswar –751017,  
Odisha

2. Grid Corporation of Odisha Limited,  
Janpath, Bhubaneswar – 751022  
Odisha

...Respondents

**Parties Present:**

Shri Amit Kapur, Advocate, GKEL  
Shri Vishrov Mukerjee, Advocate, GKEL  
Shri Rohit Venkat, Advocate, GKEL  
Shri Yashaswi Kant, Advocate, GKEL  
Shri Damodar Solanki, Advocate, GKEL  
Shri Akshat Jain, Advocate, GKEL



Shri Avsi Malik Sharma, GKEL  
Shri R.K. Mehta, Advocate, GRIDCO  
Ms. Himanshi Andley, Advocate, GRIDCO  
Shri Sukanta Panda, GRIDCO  
Ms. Susmita Mohanty, GRIDCO  
Shri Mahfooz Alam, GRIDCO  
Shri Sakesh Kumar Sharma, Advocate, SLDC  
Ms. Gitanjali N. Sharma, Advocate, SLDC  
Shri Bhadresh B. Mehta, SLDC

## **ORDER**

The Petitioner, GMR Kamalanga Energy Limited (in short 'GKEL') has filed the present Petition under Section 79 read with Section 142 of the Electricity Act, 2003 (hereinafter referred to be as 'Act') seeking execution/implementation of the Commission's order dated 4.2.2020 in Petition No.115/MP/2019 and has made the following prayers:

- “(a) Direct SLDC to compute PAFM for FY 2015-16 as per original availability declaration issued by GKEL;*
- (b) Direct GRIDCO to pay Rs.117 crore along with Late Payment Surcharge of Rs 76 crore;*
- (c) Direct GRIDCO to pay atleast 75% of outstanding amount legally due and payable by GRIDCO as an interim measure;*
- (d) Direct attachment of bank account or any other suitable measure/directions to ensure compliance and implementation of this Hon'ble Commission's orders;*
- (e) Initiate proceedings under Section 142 of the Electricity Act against SLDC for failure to comply with the directions of the Hon'ble Commission; and*
- (f) Pass any such further order as this Hon'ble Commission may deem necessary in the interest of justice.”*

### **Background:**

2. The generating station of the Petitioner comprises of 3 units of 350 MW each and the Unit-1, Unit-2 and Unit-3 achieved COD on 30.4.2013, 12.11.2013 and 25.3.2014 respectively. The generating station supplies 262.5 MW gross power out of 1050 MW to GRIDCO in terms of the revised Power Purchase Agreement dated 4.1.2011 with



delivery point being Orissa STU interconnection point. Supply of power to the GRIDCO commenced on 30.4.2013.

3. Petition No.115/MP/2019 was filed by the Petitioner disputing the monthly Plant Availability Factor (in short 'PAFM') computed by SLDC, Odisha during the period from 01.04.2015 to 31.03.2017, with prayers to (a) Direct SLDC to correct PAFM for the project from 01.04.2015 till 31.03.2017 based on the availability declarations made by GKEL (b) Direct GRIDCO to pay Rs. 55 crore due from the period from 01.04.2015 to 31.03.2017 forthwith based on the corrected PAFM to GKEL (c) Direct GRIDCO to pay Rs. 24 crore or such other amount wrongly deducted by GRIDCO and to stop making any deductions from amounts due to GKEL. The Commission vide order dated 4.2.2020 (in short '**PAFM order**') disposed of the said petition holding as under:

*"33. Since provisions of regulations framed by this Commission override PPA provisions inconsistent with the regulations, we hold that irrespective of provisions in the PPA, the calculation of PAFM and consequent capacity charges payable by the Respondent No.1 are required to be done in accordance with the provisions of the 2014 Tariff Regulations. Also, in view of the provisions of the 2014 Tariff Regulations as regards calculation of PAFM and thereby payment of capacity charges, we hold that methodology adopted by the SLDC Odisha for calculation of PAFM based on the energy scheduled by the GRIDCO, is incorrect.*

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*45. Having held that the provisions of the PPA in so far as they are not in line with the provisions of the 2014 Tariff Regulations, are not enforceable, we do not find it necessary to deal with the PPA provisions. The payment of capacity charges is to be done based on availability declaration by the Petitioner in terms of the 2014 Tariff Regulations.*

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*50. .... In our view, due to incorrect PAFM prepared by the Respondent No. 2 (SLDC Odisha), the Petitioner was not being paid capacity charges due to it based on its availability declaration. Therefore, it is due to the fault of the Respondents that the Petitioner has not been paid full capacity charges for the period from 01.04.2015 to 31.03.2017. In our view, the Respondents cannot be allowed to benefit on account of their own fault and, therefore, the Petitioner needs to be compensated for not having received due amount. Accordingly, in our considered view, the Respondent No.1 is liable to pay DPS/ LPS as per provisions of the 2014 Tariff Regulations.*



*51. Accordingly, we direct the Respondent No. 2 to correct the PAFM for the project for the disputed period i.e. from 01.04.2015 to 31.03.2017 based on the original availability declarations made by GKEL. The Respondent No. 1 shall pay the capacity charges (along with late payment surcharge) to the petitioner based on the corrected PAFM as calculated by the Respondent no.2 in terms of 2014 Tariff Regulations, within one month from the date of issue of this order.*

*52. This order will not come in the way of the understanding reached between the parties for supply of 50% of the shortfall energy by the Petitioner which was not availed by GRIDCO at special rates and which has been accepted by GRIDCO vide letter dated 27.02.2019. “*

4. In the above background, the Petitioner, in the present petition, has submitted the following:

- (a) On 07.02.2020, GKEL wrote to SLDC and inter-alia stated that paragraph 51 of the PAFM order directs SLDC to compute PAFM for 2015-16 and 2016-17 based on original availability declaration by GKEL. Along with the said letter GKEL provided the computation of PAFM as per original availability declaration and requested SLDC to confirm and certify the same;
- (b) On 03.03.2020, SLDC wrote to GKEL providing the PAFM for 2015-16 and 2016-17 and stated that GKEL shall raise invoice accordingly.
- (c) On 13.03.2020, GKEL raised the Supplementary Invoice for Late Payment Surcharge (in short 'LPS') based on order dated 4.2.2020 and the revised PAFM issued by SLDC on 03.03.2020. GRIDCO was requested to acknowledge the same and process payment immediately.
- (d) On 18.03.2020, GKEL wrote to SLDC referring to SLDC's letter dated 03.03.2020 and inter-alia submitted that: -
  - (a) PAFM computed by SLDC for the period 01.04.2016 to 31.03.2017 is as per the directions of the Commission in order dated 4.2.2020. However, SLDC seems to have adopted a different methodology for computing PAFM for 2015-16 which is not in conformity with the finding and directions in the said order dated 4.2.2020;
  - (b) In terms of the PAFM order, SLDC is to compute PAFM for the project based on the original availability declared by GKEL.



Accordingly, GKEL provided its original availability declarations and requested SLDC to compute PAFM for the period FY 2015-16 as per the PAFM order.

(e) On 18.03.2020, GKEL wrote to GRIDCO and submitted that: -

(a) SLDC vide letter dated 3.3.2020 had computed the PAFM for 2015-16 and 2016-17. SLDC correctly computed the PAFM for 2016-17. However, for 2015-16, SLDC has not complied with the directions in PAFM order;

(b) GKEL was undergoing severe financial stress and payment from GRIDCO would enable GKEL in servicing its debt and meeting operational expenses. Accordingly, GRIDCO was requested for immediate payment of Rs. 79 crore along with Rs. 46 crore as LPS based on the PAFM computed by SLDC for 2015-16 and 2016-17.

(c) Balance payment upon revision of PAFM by SLDC for 2015-16 would be paid later.

(f) On 20.3.2020, GRIDCO wrote to GKEL reiterating the same contentions which had been rejected by this Commission in Petition No. 115/MP/2019 and refused to comply with the PAFM order and pay amounts due and payable to GKEL. GRIDCO also stated that

(a) Supplementary invoice for LPS raised by GKEL is unwarranted and unacceptable in absence of invoice claiming revised fixed charges for the period 2015-16 and 2016-17 based on revised PAFM;

(b) GRIDCO has repeatedly informed GKEL (letters dated 20.01.2016, 27.04.2017 and 30.01.2018) that GRIDCO is not liable to make any payment of LPS/Delayed Payment Surcharge as monthly bills were never raised by GKEL as per certified Energy Accounting Statements of SLDC;

(c) Certified Energy Accounting Statements were first issued by SLDC in April, May and June 2017. This formed the basis for GRIDCO to calculate fixed cost payable to GKEL which was re-cast subsequent to the 61/GT order and adjusted in twelve instalments;

(d) LPS is due only when principal amount is duly raised by GKEL in terms PAFM order and there is no payment within stipulated time. Accordingly, supplementary invoice raised by GKEL is without any basis.

(g) On 06.04.2020, SLDC wrote to GKEL and stated that computation of PAFM for 2015-16 was done as per directions of this Commission in PAFM order and



that original availability declaration issued by GKEL, as per records, has been considered as DC for PAFY calculation;

(h) In terms of the PAFM order, SLDC was required to compute the PAFM in terms of the directions of this Commission. Further, GRIDCO was also required to make payment within one month of the date of the PAFM order i.e payment by 3.3.2020;

(i) However, SLDC has failed to comply with the directions of this Commission in as much as for 2015-16, SLDC has not considered the original availability declaration made in the morning but has rather considered the availability declaration revised in the evening on the verbal instructions of SLDC to match GRIDCOP's dispatch schedule. There is also mismatch in the amounts involved for certain months.

(j) SLDC has not provided the basis for computation and has computed the same contrary to the principle set down by this Commission. Such an approach is contrary to the letter and spirit of the PAFM order. The PAFM/PAFY as calculated by SLDC as per its letter dated 3.3.2020 and the PAFM/PAFY as per original availability declarations of GKEL is as under:

Month		Monthly Original Availability Declaration/PAFM (in %)	SLDC Monthly Availability/ PAFM (in %)	GKEL Cumulative PAFM (in %)	SLDC Cumulative PAFM (in %)
<b>For FY 2015-16:</b>					
1-Apr-15	30-Apr-15	89.797	66.284	89.797	66.284
1-May-15	31-May-15	71.294	39.880	80.394	52.865
1-Jun-15	30-Jun-15	87.683	58.826	82.797	54.830
1-Jul-15	31-Jul-15	96.055	57.448	86.166	55.495
1-Aug-15	31-Aug-15	88.767	74.862	86.693	59.419
1-Sep-15	30-Sep-15	81.967	79.082	85.918	62.643
1-Oct-15	31-Oct-15	108.555	89.207	89.197	66.491
1-Nov-15	30-Nov-15	81.944	77.329	88.305	67.823
1-Dec-15	31-Dec-15	81.141	67.315	87.497	67.766
1-Jan-16	31-Jan-16	93.490	93.688	88.104	70.392
1-Feb-16	29-Feb-16	78.939	76.106	87.072	70.887
1-Mar-16	31-Mar-16	100.852	98.390	88.239	73.216
<b>PAFY for FY 2015-16</b>				88.24	73.22



FY 2016-17:					
1-Apr-16	30-Apr-16	88.358	88.358	88.358	88.358
1-May-16	31-May-16	86.958	86.958	87.647	87.647
1-Jun-16	30-Jun-16	97.980	97.980	91.054	91.054
1-Jul-16	31-Jul-16	98.196	98.196	92.868	92.868
1-Aug-16	31-Aug-16	96.384	96.384	93.581	93.581
1-Sep-16	30-Sep-16	19.757	19.757	81.478	81.478
1-Oct-16	31-Oct-16	70.188	70.188	79.843	79.843
1-Nov-16	30-Nov-16	82.586	82.586	80.180	80.180
1-Dec-16	31-Dec-16	98.219	98.129	82.214	82.214
1-Jan-17	31-Jan-17	97.637	97.637	83.776	83.776
1-Feb-17	28-Feb-17	98.219	98.219	84.987	84.987
1-Mar-17	31-Mar-17	98.086	98.086	86.099	86.099
PAFY for FY 2016-17				86.099	86.099

(k) GRIDCO has also not made payment of annual fixed charges (AFC) for the entire period 2015-16 and 2016-17 along with late payment surcharge in accordance with the directions of the Commission in PAFM order. GRIDCO in fact returned the Supplementary invoice for LPS raised as per the PAFM order. The details of the outstanding AFC payable by GRIDCO for 2015-16 and 2016-17, as per original availability declaration by GKEL and SLDC computation of PAFM vide letter dated 3.3.2020 is as under:

Outstanding Capacity Charges payable by GRIDCO post PAFM Order						
Year	PAFY (%)		Outstanding Capacity Charges (Rs. Cr.)		LPS (Rs. Cr.)	
	Original availability	SLDC*	Original availability	SLDC*	Original availability	SLDC*
2015-16	88.24	73.22	45	7	35	5
2016-17	86.10	86.10	72	72	41	41
Total	-	-	117	79	76	46

(l) In view of the above, the outstanding capacity charges payable by GRIDCO as per PAFM order is Rs 117 crore along with LPS of Rs 76 crore in all amounting to Rs 193 crore. Pending correction of PAFM computation for 2015-16, GKEL had raised LPS invoice for Rs 46 crore only on 13.3.2020. However, the total LPS amount payable by GRIDCO in the event PAFM for 2015-16 is computed on the basis of original availability declarations of GKEL, as per PAFM order is Rs.76 crore.



- (m) In terms of the PAFM order, PAFM is to be computed on the basis of original availability declaration. On 03.03.2020, SLDC computed the PAFM. The PAFM computed for FY 2016-17 was as per directions of this Commission and in accordance with the 2014 Tariff Regulations. However, SLDC adopted a different methodology for computing PAFM for 2015-16.
- (n) SLDC has not considered the original availability declaration made in the morning but rather based the PAFM for 2015-16 on the basis of dispatch schedule. This issue was raised by GKEL in the proceedings before this Commission and the Commission after considering all facts directed the original availability declaration to be taken into account.
- (o) SLDC has computed the PAFM based on revised despatch schedule submitted by GKEL on the verbal instructions of SLDC to match GRIDCO's dispatch schedule. Failure to consider the original availability declaration made by GKEL in the morning has led to artificial lowering of the availability declared by GKEL.
- (p) As an illustration and for reference purposes, the availability declaration made by GKEL in the morning, the availability revised in the evening as per verbal directions of SLDC (considered by SLDC for computation of PAFM as per its letter dated 03.03.2020) and the corresponding PAFM for the month of April, 2015 is given hereunder:

Date	Morning		Revised (considered by SLDC for PAFM computation)	
	Availability declaration (MW)	PAFM (%)	Availability declaration (MW)	PAFM (%)
1-Apr-15	238	96.20	162	65.35
2-Apr-15	238	96.20	179	68.84
3-Apr-15	238	96.20	179	69.98
4-Apr-15	238	96.20	193	72.03
5-Apr-15	238	96.20	193	73.21
6-Apr-15	238	96.20	232	76.62
7-Apr-15	238	96.20	232	79.05
8-Apr-15	238	96.20	220	80.26
9-Apr-15	238	96.20	174	79.14
10-Apr-15	238	96.20	174	78.28
11-Apr-15	238	96.20	192	78.20
12-Apr-15	238	96.20	189	78.04
13-Apr-15	230	95.95	189	77.90
14-Apr-15	224	95.55	184	77.65





15-Apr-15	238	95.59	165	76.93
16-Apr-15	238	95.63	166	76.32
17-Apr-15	238	95.66	168	75.82
18-Apr-15	238	95.69	173	75.48
19-Apr-15	238	95.72	170	75.13
20-Apr-15	238	95.74	160	74.60
21-Apr-15	238	95.76	158	74.08
22-Apr-15	238	95.78	146	73.39
23-Apr-15	238	95.80	141	72.68
24-Apr-15	105	93.59	74	70.89
25-Apr-15	238	93.69	129	70.14
26-Apr-15	238	93.79	126	69.40
27-Apr-15	158	92.68	114	68.54
28-Apr-15	158	91.65	114	67.74
29-Apr-15	158	90.69	114	66.99
30-Apr-15	158	89.80	113	66.28

- (q) The factum of verbal instructions being issued by SLDC and artificial lowering of availability based on dispatch schedule was placed before this Commission in Petition 115/MP/2019. This Commission, on consideration of facts rejected the methodology adopted by SLDC and directed that availability be considered as per original availability declaration. Despite such directions, SLDC has continued with the earlier methodology and not rectified the PAFM for 2015-16;
- (r) PAFM order was passed by this Commission after favourable consideration of GKEL's contentions vis-à-vis the sufficiency of the reasons; viz. verbal instruction of SLDC given on behalf of GRIDCO, for revision of the availability declaration in the evening. The binding directions in the PAFM order ought to be given effect to;
- (s) This Commission had explicitly mentioned that SLDC is to consider the original availability declarations made by GKEL. For 2015-16 and 2016-17, GKEL had provided the PAFM based on the original availability declarations to SLDC. However, SLDC has not considered the original availability declaration made by GKEL for 2015-16.
- (t) Even after Commission issued the PAFM order and held in favour of GKEL, SLDC has failed to implement the PAFM order in letter and spirit which has adversely impacted GKEL. SLDC being a creature of a statute is required to mandatorily exercise its powers and discharge its duties within the confines of the Electricity Act and the extant Regulations. Accordingly, it is statutory duty of the SLDC to compute PAFM in accordance with the 2014 Tariff Regulations;



- (u) In terms of Section 94 of the Electricity Act, 2003 this Commission has powers of a civil court under the Code of Civil Procedure Code, 1908. Further, in terms of Regulation 119 of the CERC (Conduct of Business) Regulations, 1999, it is mandated that the Secretary of this Hon'ble Commission will ensure enforcement and compliance of the Orders passed by the Commission;
- (v) This Commission is a "court" and consequently has the power to execute its own orders. The Hon'ble Supreme Court in Tamil Nadu Generation & Distribution Corporation Ltd. vs. PPN Power Generating Co. (P) Ltd. (2014) 11 SCC 53 held that a tribunal such as the State Commission has trappings of a court. Also, the Hon'ble Supreme Court has in the case of APPCC & Ors. v. Lanco Kondapalli Power Ltd & Ors., reported as (2016) 3 SCC 468 held that in view of the Hon'ble Supreme Court's Judgment in Gujarat Urja Vikas Nigam Ltd v Essar Power Ltd. [(2008) 4 SCC 755], the Commission has been elevated to the status of a substitute for civil court in respect of all disputes between the licensees and the generating companies.
- (w) It is a settled position of law that Courts have the power to execute their own orders. The aforesaid position has been confirmed by the Hon'ble Supreme Court in State of Karnataka vs Vishwabharathi House Building Cooperative Society, reported as (2003) 2 SCC 412;
- (x) SLDC wilfully defaulted in complying with this Hon'ble Commission's PAFM Order which has resulted in denial of fixed charges that GKEL is legally entitled to. Thus, it is imperative that this Commission may pass appropriate directions for execution / implementation of the PAFM order;
- (y) The total outstanding amount for PAFM is Rs. 117 crore and LPS of Rs. 76 crore. Substantial delay in and non-payment by GRIDCO has resulted not only in inability of GKEL to timely service its debt but also impacted GKEL's ability to operate the project in a smooth manner and continue to supply power to the States of Haryana, Bihar and Odisha;



- (z) This Commission may be pleased to initiate proceedings under Sections 142 of the Electricity Act, 2003 against SLDC and its officers for wilful non-compliance of orders of this Hon'ble Commission. Section 142 of the Electricity Act, 2003 non-compliance of an order passed by this Commission is punishable thereunder. The penalty prescribed under Section 142 of the Electricity Act, 2003 is a natural consequence of any non-compliance of a direction issued by this Hon'ble Commission. This position has been confirmed by the Hon'ble Appellate Tribunal for Electricity in the case of Bihar State Electricity Board v Central Electricity Regulatory Commission reported as [2009] SCC OnLine APTEL 113;
- (aa) GRIDCO filed appeal on 11.3.2020 before the Appellate Tribunal for Electricity (APTEL) challenging the PAFM order. The same is yet to be listed. It is submitted that the present execution petition is being filed without prejudice to GKEL's rights and contentions with regard to the appeal filed by GRIDCO;

#### **Hearing dated 23.6.2020**

5. The Petition was heard through video conferencing on 23.6.2020. The Commission 'admitted' the Petition and issued notice to the Respondents with directions to complete pleadings in the matter.

#### **Submissions of the Respondent SLDC**

6. The Respondent SLDC, Odisha vide reply affidavit dated 16.7.2020 has submitted the following:

(i) As per direction of the Commission, SLDC computed PAFM of GKEL for 2015-16 and 2016-17 considering the declared capacity by the Petitioner and sent the same to the Petitioner on 3.3.2020 for raising invoice to GRIDCO.

(ii) SLDC has not adopted a different methodology for calculation of PAFM for 2015-16 and 2016-17. Further, SLDC never issued any verbal instructions to GKEL to revise the declared capacity (DC) to match GRIDCO's dispatch schedule. GKEL used to forward multiple day ahead DC for scheduling for next day and usually GKEL named the last day ahead DC as 'Final Day Ahead



Schedule'. E-mail communication from Shift-in charge GKEL is attached at Annexure-I of the Petition. For preparation of next day injection schedule, SLDC has considered the last day ahead declared capacity submitted by the Petitioner following the provisions of IEGC, 2010 & Schedule and Despatch method laid down in Operating Procedure of the Eastern Region. SLDC substantiated the argument with illustrations and produced the communications between SLDC, Orissa and GKEL. Illustrations regarding submission of multiple DC by GKEL for a day are submitted.

(iii) As GKEL was revising the DC for various reasons, the first day ahead DC submitted in the morning by GKEL cannot be designated as 'original availability declarations' by ignoring the subsequent revisions submitted by them.

(iv) The PAFM calculation methodology adopted for 2015-16 and 2016-17 are the same as per directions of the Commission and in accordance with the 2014 Tariff Regulations. SLDC never issued any verbal instructions to GKEL for revising the DC. During 2015-16 and 2016-17, GKEL was submitting all the day ahead DC as per their availability and wisdom. GKEL has mis-interpreted the phrase "Original availability declarations" in PAFM order in an opportunistic manner that the day ahead DC submitted by them in the morning hours is original and the subsequent DC submitted by them have no have no relevance for scheduling.

(v) Earlier, the quantum of power to be scheduled for GRIDCO was computed by SLDC considering the power scheduled for other buyers as 75%. Accordingly, GRIDCO's share was computed as one third of the power scheduled for other buyers. This method was adopted by SLDC to comply with Section 2.2(a) of the PPA executed between GRIDCO and GKEL. PAFM was also determined considering the quantum of power scheduled to GRIDCO (25%) of the power sent out from station of GKEL as its DC for 2015-16 and 2016-17. However, Commission directed SLDC to correct PAFM of GKEL for 1.4.2015 to 31.3.2017 based on original availability declarations made by GKEL in terms of the 2014 Tariff Regulations.



(vi) The Commission in PAFM order has nowhere accepted the allegations made by GKEL regarding verbal instruction of SLDC to revise the DC and has not made any reference to it in the order. GKEL has needlessly tried to establish a connection between the basis of PAFM order with the unfounded and baseless allegation of verbal instruction for DC revision by SLDC. Therefore, the present petition is not maintainable.

### **Submissions of the Respondent GRIDCO**

7. The Respondent GRIDCO vide reply dated 17.7.2020 has mainly submitted the following:

(i) GRIDCO has filed an appeal (DFR No. 144/2020) before the Appellate Tribunal for Electricity (APTEL) challenging the Commission's order dated 4.2.2020 in Petition No. 115/MP/2019, by which SLDC has been directed to correct the PAFM for the disputed period i.e. from 1.4.2015 to 31.3.2017 based on the original availability declarations made by GKEL.

(ii) The Petitioner has not, till date, raised any Invoice / Bill on GRIDCO on the basis of PAFM certified by SLDC in terms of the PAFM order (which has been challenged before APTEL). Such Invoice/Bill is mandated under the PPA as well as GST Act, 2017 and Rules made there under. In the absence of any such Invoice / Bill, the question of GRIDCO making payment of any differential fixed charges does not arise. Moreover, in the absence of any Invoice / Bill raised by the Petitioner, on the basis of PAFM certified by SLDC, the present petition against GRIDCO is premature.

(iii) Supplementary invoice for LPS is meaningless in the absence of original Invoice / Bill in respect of differential fixed charges which has never been raised by the Petitioner on PAFM % issued in 2017 or on 3.3.2020.

(iv) SLDC has communicated the PAFM for 2015-16 and 2016-17 in terms of the PAFM order to the Petitioner vide letter dated 3.3.2020. SLDC has clarified that the PAFM/PAFY % for 2015-16 and 2016-17 has been computed as per PAFM order and that the original availability declarations by GKEL as per records have



been considered for the said calculation. The Petitioner is yet to raise the required monthly & yearly invoice for 2015-16 and 2016-17 as per SLDCs pre-revised and revised PAFM% as per PAFM order for necessary consideration and processing by GRIDCO. In the absence of such invoice/bill, it is not possible for GRIDCO to consider the claims of the Petitioner for the disputed period.

(v) PAFM was rightly calculated by SLDC based on both, provision of the PPA in Clause 2.2(a) and adopting formula for PAFM calculation as per the 2014 Tariff Regulation.

(vi) As the Petitioner has not raised invoice/bill for power supplied during the disputed period based on PAFM % issued by SLDC in 2017 or revised PAFM% issued in March, 2020 pursuant to PAFM order, GRIDCO has not acknowledged the Supplementary Invoice for LPS and vide letter dated 20.3.2020 returned the said invoice for LPS in original. By letter dated 18.3.2020, GKEL has once again disputed the PAFM% certified and issued by SLDC for 2015-16 pursuant to PAFM order.

(vii) The direction in the PAFM order for payment by GRIDCO within one month can be complied only after the Petitioner raises the required invoice/bill of supply on the basis of PAFM certified by SLDC.

(vii) Unit- 3 (350 MW) of GKEL is not State dedicated as submitted by the Petitioner. Had Unit-3 been State dedicated, the Petitioner could not have availed Open Access from the said unit, for sale of power outside the State. Moreover, from the past data regarding DC, it was placed and proved before the Commission that the Petitioner had interpreted and acted on the provisions of revised PPA dated 4.1.2011 as per its will and convenience. The Petitioner is now attempting to wriggle out of the issue of original "DC" taking the shelter of Regulations to extract further undue benefits from GRIDCO.

Accordingly, the Respondent has submitted that the present petition is liable to be dismissed.



## **Rejoinder of the Petitioner**

8. The Petitioner vide its rejoinders dated 31.7.2020 to the aforesaid replies of the Respondents has made the following submissions:

### ***Rejoinder to reply of SLDC***

(a) In the PAFM order, this Commission considered all the documents place on record especially those establishing the fact that SLDC used to issue verbal instructions to GKEL to submit a revised dispatch schedule based on the dispatch schedule/instructions of GRIDCO. In the light of these submissions, the Commission directed SLDC to consider the 'original availability 'declarations for purposes of computation of PAFM and not the 'Final Day Ahead Schedule; SLDC cannot be permitted to re-agitate the issue already considered by this Commission in PAFM order. SLDC s reference and reliance on the 'Final Day Ahead Schedule' for purposes of computation of PAFM substantiates the fact that SLDC has not complied with the PAFM order;

(b) SLDC (on behalf of GRIDCO) started issuing verbal instructions to GKEL to reduce the energy being scheduled from the project for supply to GRIDCO, which is not in line with the provisions of IEGC. Initially GKEL complied with the request of SLDC during the period 18.3.2015 to 3.12.2015, However, when it became apparent that SLDC was reducing the plant availability to power actually scheduled, GKEL refused to revise the availability declaration. As a result, between 4.12.2015 to 31.3.2017, GKEL refused to revise the availability declarations in the evening based on such verbal instructions by SLDC on behalf of GRIDCO.

(c) The fact that verbal instructions by SLDC was a matter of practice, is brought out through the attached MoM between GRIDCO, GKEL and SLDC dated 11.7.2013, which records inter-alia that GKEL were issued verbal instructions by SLDC for compliance. The said minutes were signed by representatives of SLDC and GRIDCO and thus had agreed to this position and they were not contested by SLDC/GRIDCO at any point of time till date.

(d) GKEL in its written submissions dated 14.10.2019 in Petition No. 115/MP/2019 had submitted that GKEL used to declare its day ahead availability to SLDC every morning. However, SLDC used to issue verbal instructions to GKEL to submit revised dispatch schedule based on the dispatch schedule/instruction of GRIDCO. Pertinently, while the availability (issued by GKEL in the morning) was not revised, the dispatch schedule underwent revision based on SLDC's instructions. Copies of sample e-mails evidencing verbal instructions were annexed to said written submissions.



(e) Apart from instructions from SLDC to backdown, there is no evidence to show that GKEL had any other reason to revise its original availability declarations. Furthermore, GKEL had sufficient coal stock for operating the project and SLDC never issued any communication enquiring from GKEL as to why availability declarations were revised on a consistent basis. Whenever GRIDCO sought supply of additional power, GKEL was in a position to supply the same. Further, all sales under STOA by GKEL were only after meeting GRIDCOs requirement and in the light of the coal stock position. Wherever the reduction was due to technical issues, was indicated in the email and factored in GKELs calculation of PAFM;

(f) The correspondence/e-mail relied on by SLDC is misplaced. The e-mails relied upon by SLDC qua day ahead availability declaration for 28.5.2015 clearly records that GKEL had revised the declarations to 0 MW due to tripping of Unit-3 on account of ID fan problem. Further, there was revision in day ahead availability declaration for 23.6.2015 on account repair work due oil leakage in TD BFP. Subsequent revisions were on account of completion of repair work and a typographical error. These instances highlighted by SLDC depict revision in day ahead availability declaration by GKEL. Pertinently, whenever any revision has taken place by GKEL itself, reasons are specified and PAFM calculated by GKEL has factored in such reductions. This further establishes that other instances are clearly due to SLDC / GRIDCO instructions and not due to technical issues. This position stands established from the very emails relied on by SLDC;

(g) SLDC has failed to place on record the dispatch instructions /schedule issued by GRIDCO. Moreover, SLDC has not denied the fact that GKEL was directed to change its schedule on the basis of GRIDCO/SLDCs instructions. SLDC should be put to strict proof on the issue of revision of schedule as well as dispatch instructions which will bear the fact that GKELs schedule was revised on an incorrect and erroneous interpretation;

### ***Rejoinder to reply of GRIDCO***

(h) Raising of Invoice is not a pre-requisite for payment of capacity charges by GRIDCO. GKEL vide invoice dated 13.3.2020 has computed the capacity charges based on revised PAFM issued by SLDC along with applicable LPS (annexure 1 and 2 of the invoice). The said annexures contain details of the original invoices raised for the specific month for 2015-16 and 2016-17. The original bills were based on the PAFM computed by GKEL on the original availability declarations which has already been upheld by this Commission in the PAFM order. Thus, there is no requirement for a fresh bill.

(i) GRIDCO's contention that the existing GST laws require raising of fresh invoice is misplaced. GKEL cannot raise two separate invoices for the same availability unless the original one was rejected by GRIDCO. However, GRIDCO accepted the





original invoice and never rejected it. GRIDCO only part-paid the said invoice. Thus, there is no requirement under GST laws for GKEL to raise fresh invoice.

(j) In terms of the PAFM order, SLDC was directed to correct the PAFM calculation for the period starting 1.4.2015 to 31.3.2017 based on original availability declaration made by GKEL and GRIDCO was to pay the capacity charges along with LPS based on corrected PAFM in terms of the 2014 Tariff Regulations. GRIDCO's refusal to pay the outstanding amounts claiming pendency of appeal cannot be countenanced as it is settled law that pendency of appeal cannot be a ground to refuse compliance with order of this Commission.

(k) GKEL vide invoice dated 13.3.2020 had provided a detailed calculation of revised capacity charges based on PAFM issued by SLDC and based on the same, GKEL has also computed applicable LPS. This is in line with the directions of this Commission in the PAFM order and any attempt by GRIDCO to defy the same ought not to be permitted. GKEL has clarified that the payment being sought is as per SLDCs calculation and any balance payment based on revision of PAFM may be paid later. Thus, GKELs challenge to computation of PAFM for 2015-16 does not preclude GRIDCO from making any payment.

(l) In the PAFM order, this Commission considered all the documents placed on record and submissions made in Petition No.115/MP/2019, especially those establishing the fact that SLDC used to issue verbal instructions to GKEL to submit a revised dispatch schedule based on dispatch/instructions of GRIDCO. It is in the light of these submissions that this Commission directed SLDC to consider the 'original availability declarations. Thus, the data submitted by SLDC in Petition No.115/MP/2019 has no bearing in this petition.

(m) The earlier methodology followed by SLDC i.e computing PAFM by treating 25% of power sent out as the DC of GKEL, was disallowed by this Commission as an incorrect methodology. However, by refusing to compute PAFM based on original availability declaration, SLDC is still following the methodology rejected by this Commission. GRIDCO is re-agitating issues which have already been decided by this Commission in the PAFM order. Further, PAFM is to be computed in accordance with the Regulations.

(n) The Commission in the PAFM order had held that GRIDCO and SLDC themselves changed the methodology for computation of PAFM with effect from 1.4.2017 in terms of the MOM dated 12.7.2017 and agreed that computation of PAFM ought to be in accordance with the Tariff Regulations. Thus, GRIDCO and SLDC had admitted to the position that previous computation of PAFM was not in accordance with the Tariff Regulations. GKEL is only claiming what is payable to



GKEL under the 2014 Tariff Regulations as decided by this Commission in the PAFM order.

**Hearing dated 30.7.2021**

9. The matter was heard through Video conferencing on 30.7.2021. During the hearing, the learned counsel for the Petitioner circulated note of arguments and made detailed oral submissions in the matter. He also submitted that in terms of Order 41 Rule 5 of the Civil Procedure Code, 1908, mere filing of an appeal by the Respondent GRIDCO, does not amount to stay of the Commission's order dated 4.2.2020 and its implementation is still binding upon the parties (Judgment of APTEL dated 11.2.2014 in Appeal Nos. 112, 113 and 114 of 2013 WESCO v Odisha Electricity Regulatory Commission was referred to). The learned counsel further submitted that the Commission may take a strict view of the non-compliance of the order dated 4.2.2020 by the Respondents and initiate proceedings under Section 142 of the Electricity Act, 2003 (Judgment of APTEL dated 31.7.2009 in Appeal No. 53 of 2009 [Bihar State Electricity Board v CERC] was referred to). The learned counsel prayed that the Commission may, as an interim measure, direct the Respondent GRIDCO to pay 75% of the outstanding amount payable to the Petitioner.

10. The learned counsel for the Respondent GRIDCO referred to the reply filed by GRIDCO and submitted that pursuant to the revision of PAFM by the Respondent, SLDC on 3.3.2020, the Petitioner had not raised any revised invoices for the period 2015-16. He also submitted that the Petitioner had only raised bill towards payment of LPS, which was returned by the Respondent GRIDCO since no revised invoices were raised by Petitioner. He also submitted that in terms of Articles 5 and 7 of the PPA dated 28.9.2006 and Section 31(3)(c) of the Goods & Services Tax Act, 2017, it was



mandatory for the Petitioner to raise revised invoices on the Respondent GRIDCO. Accordingly, the learned counsel submitted that the present petition was premature and is not maintainable.

11. In response, the learned counsel for the Petitioner clarified that the original invoices raised by the Petitioner for the years 2015-16 and 2016-17 respectively, were based on the PAFM computed by the Petitioner, on original availability declarations, which was upheld by the Commission in its PAFM order. He, therefore, submitted that since the bills of the Petitioner were already pending before the Respondent GRIDCO, no revised bills were required to be raised by the Petitioner, except for the updated bill for LPS amount, due to the delay in payments by the Respondent GRIDCO. Referring to paragraphs 50 and 51 of the PAFM order, the learned counsel submitted that the direction on the Respondent No.2 to correct the PAFM for the period from 1.4.2015 to 31.3.2017 and directions on the Respondent GRIDCO to make payments thereafter, along with LPS, within one month, was based on clear finding that the non-payment of capacity charges to the Petitioner for the said period was due to the fault of the Respondents. Accordingly, the learned counsel for the Petitioner prayed that the submissions of the Respondent GRIDCO may be rejected.

12. The learned counsel for the Respondent, SLDC referred to its reply and made oral submissions. On a specific query by the Commission as to whether the calculation of PAFM for the period from 1.4.2015 to 31.3.2017 was made by SLDC in accordance with the PAFM order, the learned counsel for the Respondent SLDC answered in the affirmative. The Commission, after hearing the parties, vide ROP directed the



Respondent SLDC and Petitioner to submit the following additional information, (as revised vide corrigendum dated 18.8.2021):

**By Respondent SLDC**

*“(a) The detailed calculation of PAFY of 73.22% for the year 2015-16 along with (i) all capacity declarations (all revisions made on day ahead basis and during the day of delivery) made by the Petitioner for 366 days including time at which each revision was made; (ii) GRIDCO’s Dispatch Schedule for all 366 days with time stamp; (iii) dispatch schedule provided to the Petitioner on day ahead basis for 366 days and (iv) DC finally used for calculating the PAFD (all 366 days);*

**By Petitioner**

*(b) The detailed calculation of as claimed PAFY of 88.24% for the year 2015-16 along with all capacity declarations (all revisions made on day ahead basis and during the day of delivery) made by the Petitioner for 366 days with a proof to the effect that the last revision which was used by SLDC to calculate the PAFD was not due to technical constraints/fuel availability and was only made due to verbal instructions of SLDC”*

13. In compliance to the above, the Respondent SLDC vide additional information dated 24.8.2021 has submitted the following:

(a) The detailed calculation of PAFY of 73.22% by SLDC for the year 2015-16 is annexed as Annexure-I of the reply to the ROP and the capacity declarations (all revisions made on day ahead basis and during the day of delivery) made by the Petitioner for 366 days has been prepared and annexed as Annexure-2 of the reply to the ROP. Further, for verification of the time at which each revision was made, the copy of every e-mail correspondence made by the Petitioner for capacity declaration are attached along with DC.

(b) On receipt of the capacity declaration by the Petitioners for next day, SLDC was preparing the day ahead dispatch schedule in the afternoon considering the last DC of the Petitioner received till preparation of dispatch schedule and thereafter also prepared revised dispatch schedules if any revised capacity declarations were made by the Petitioner. All the dispatch schedules were uploaded in the SLDC website for information of GRIDCO and the Petitioner. The month-wise final dispatch schedules for 2015-16 is annexed at Annexure-3 of the reply to the ROP.

(c) The DC finally used for calculating PAFM has been prepared on monthly basis and is annexed as Annexure-4 of the reply to the ROP.



14. The Petitioner, GKEL vide affidavit dated 3.9.2021 has submitted the additional information setting out the detailed calculation of the claimed PAFY of 88.24% depicting the details regarding original and revised declarations made to STU, total original plant declaration and total plant despatch quantum of power for 2015-16 (1.4.2015 to 31.3.2016). It has also submitted that the revisions carried out by GKEL were only due to verbal curtailment instructions from SLDC and not due to any technical constraints or non-availability of fuel. GKEL had sufficient stock for operating the project. Copies of Form-15 showing coal stock availability for the primary and secondary fuel for 2015-16 are annexed as Annexure-A-I of the affidavit dated 3.9.2021. Also, the Petitioner, in response to the submissions of the Respondent SLDC (as in paragraph 13 above) has vide affidavit dated 8.9.2021 submitted the following:

(a) In the additional reply filed by SLDC dated 26.8.2021, SLDC has admitted that it is using the final despatch declarations for computing PAFM/PAFY for 2015-16 and has not considered the original availability declarations made by GKEL for the said period. Therefore, SLDC has used the same basis for computation of PAFM/PAFY that had been rejected in PAFM order. Admittedly, SLDCs actions are contrary to the 2014 Tariff Regulations, the IEGC 2010 as well as the PAFM order. This practice was followed between 18.3.2015 to 3.12.2015.

(b) The practice of SLDC directing GKEL to revise the original declarations based on despatch requirements of GRIDCO was also accepted in (i) GRIDCO's letter dated 21.11.2015 wherein GRIDCO has admitted that scheduling was being done as per requirement indicated by SLDC; and (ii) MOM dated 11.7.2013 between GRIDCO, GKEL and SLDC which records inter-alia that GKEL was issued verbal instructions by SLDC for compliance.

(c) GKEL had sufficient coal stock for operating the project and supply of power to GRIDCO as per its original availability declarations. GKEL reiterated that PAFM / PAFY ought to be computed strictly as per GKEL's original availability declarations and not as per the energy scheduled for supply to GRIDCO. GKEL has filed its



response to the ROP dated 30.07.2021 on 03.09.2021, which demonstrates that it had sufficient fuel in order to supply the original declared availability.

(d) Based on the directions of the Commission, SLDC has already revised the PAFM/PAFY calculation for 2016-17 based on the original declaration of GKEL. In view of this, the correct computation of PAFM/PAFY for 2015-16, as per original availability declarations made by GKEL are as under:

Month	Monthly Original Availability Declaration/ PAFM (%)	SLDC Monthly Availability/ PAFM (%)	GKEL Cumulative PAFM (%)	SLDC Cumulative PAFM prior to Order in Petition No. 115/MP/2019 (%)	SLDC Cumulative PAFM post Order in Petition No. 115/MP/2019 (%)
Apr-2015	89.797	66.284	89.797	66.309	66.284
May-2015	71.294	39.880	80.394	52.878	52.865
Jun-2015	87.683	58.826	82.797	54.850	54.830
Jul-2015	96.055	57.448	86.166	55.573	55.495
Aug-2015	88.767	74.862	86.693	59.502	59.419
Sept-2015	81.967	79.082	85.918	63.218	62.643
Oct-2015	108.555	89.207	89.197	67.669	66.491
Nov-2015	81.944	77.329	88.305	68.644	67.823
Dec-2015	81.141	67.315	87.497	68.310	67.766
Jan-2016	93.490	93.688	88.104	69.703	70.392
Feb-2016	78.939	76.106	87.072	69.797	70.887
Mar-2016	100.852	98.390	88.239	71.121	73.216
<b>PAFY for 2015-16</b>			<b>88.24</b>	<b>71.12</b>	<b>73.22</b>

The Commission may consider the above PAFM/PAFY calculated as per GKEL original declaration for 2015-16.

(e) GKEL had raised invoices for PAFM claims between 31.12.2015 to 11.4.2017. These invoices had been placed on record in Petition No. 115/MP/2019 at Annexure P-36. Since the PAFM order upheld the computation methodology proposed by GKEL, there is no requirement for raising any new invoice for PAFM claims. The only additional amounts are towards LPS for which invoices were raised on 13.3.2020;

(f) GRIDCO has filed Appeal No. 254 of 2021 challenging the PAFM order. During the course of hearing of the interim application for stay, GRIDCO withdrew its application for stay. In light of dismissal of the stay application and Article 9.1 of the



PPA which requires 75% of the invoice amount to be paid, notwithstanding any dispute between the parties, GRIDCO be directed to forthwith release this amount.

15. The Respondent GRIDCO in its response to the submissions of Respondent SLDC dated 24.8.2021 and additional submissions of GKEL dated 3.9.2021 and 8.9.2021 (as above) has mainly submitted the following:

(a) GRIDCO does not dispute the submissions made by SLDC vide affidavit dated 24.8.2021;

***Response to submissions of GKEL***

(b) The original and revised declarations submitted by GKEL on 3.9.2021 are completely contrary to the binding PPA between the parties. Reference in this regard may be made to the affidavit dated 26.08.2014 submitted vide letter dated 27.08.2014 of GKEL to GRIDCO.

(c) It is evident from the coal stock data along with monthly energy bills that GKEL did not have sufficient coal stock as per Regulation 28(a)(i) of the 2014 Tariff Regulations which mandate for maintaining coal stock for 15 days (Pit-head) and 30 days (non-Pit-head generating stations), as the generators are being paid interest on working capital by the long-term beneficiaries for that purpose.

(d) The methodology of PAFM % calculation for 2015-16 submitted by SLDC as Annexure-I to affidavit dated 24.8.2021 is in consonance with the 2014 Tariff Regulations. From the true copies of e-mails with time stamping filed by SLDC vide affidavit dated 24.8.2021, it establishes that:

(i) There were technical constraints during 2015-16, because of which DC in favour of GRIDCO has been revised by GKEL as many as seven (07) times in a day on account of Oil leakage in TD, BFB, heavy leakage in PA Duct of Boiler, Electrical fault, Fluctuations in CTU side, Tripping of Unit-1, 2 connected with CTU Network, PA Fan problem, curtailment by NRLDC, SRLDC for CTU schedules etc.

(ii) There is no mention of any verbal instructions issued by SLDC in the e-mails exchanged by GKEL with SLDC;

(iii) GKEL itself was following the principle of supplying 25% of Energy sent out from Power plant as per the PPA, which is evident from E-mails of GKEL w.e.f. 05.12.2012 to 31.12.2015 wherein GKEL had mentioned "Declared Capacity" (DC) and "Despatch Schedule". It may be stated that "Despatch Schedule" is to be issued by SLDC and not GKEL. During the said period "Despatch Schedule" was less than DC of 243 MW.



(e) Vide letter dated 21.11.2015, GRIDCO requested GKEL to maintain/limit the supply of power to GRIDCO up to 25% of its total generation since GRIDCO had earlier requested GKEL to supply additional power vide letters dated 02.09.2015 and 08.10.2015. GKEL has relied upon the said letter to mislead the Commission pertaining to procurement of additional power from GKEL and endorsement by GRIDCO to restore source of coal from MCL instead of ECL.

(f) In the MOM dated 11.7.2013 which pertains to period prior to disputed period 2015-16 and 2016-17, there is no such mention regarding the fact that GKEL was issued verbal instructions by SLDC.

(g) GKEL is trying to wriggle out of the practice followed by it till December, 2015 taking shelter of Regulations de hors the binding provisions of PPA and GRIDCO code, in order to get undue and unwarranted advantage. The submission of GKEL that the Commission may consider the PAFM as per GKEL's original declarations is devoid of merits.

(h) There is no liability on GRIDCO for payment of fixed charges as no revised bill/s of supply have been raised by GKEL based on PAFM% issued by SLDC on 3.3.2020. The claim of LPS is also, therefore, completely untenable and unjustified. As on date, there is no invoice pending with GRIDCO in the absence of revised bill of supply not raised by GKEL till date as per PAFM order. GRIDCO had made payment of Rs.515 crores towards fixed charges against the disputed period which is almost 86% of revised fixed charges as per PAFM order;

(i) GKEL never raised any monthly energy bills considering duly certified energy accounting statement of SLDC containing PAFM % during the disputed period as per provision so Clause 5.3 and Clause 7 of approved PPA dated 4.1.2011.

(j) GKEL never approached SLDC for issuance of PAFM to raise the monthly energy bills as mandated under the PPA. Vide letter dated 6.5.2017, for the first time GKEL disputed the PAFM issued by SLDC in April, 2017 for the period in question;

(k) GKEL is deliberately trying to claim DPS under the shelter of invoices raised in 2015-16 and 2016-17 based on PAFM calculated on their own contrary to and in violation of the subsisting PPA between the parties. The claim of GKEL for LPS without raising any invoice on the basis of revised PAFM issued by SLDC on 3.3.2020 is unwarranted and without any basis.

(l) Vide letter dated 19.8.2021, GKEL requested GRIDCO for payment of Rs.79 crore without raising any revised energy bills of supply. Vide letter dated 4.9.2021, GRIDCO intimated GKEL that revised invoice has to be raised based on PAFM %





issued by SLDC on 3.3.2020, in similar manner as was raised on 26.3.2018 for the period April, 2017 to December, 2017 so as to give effect to PAFM order.

### **Hearing dated 21.12.2021**

16. During the hearing of the matter through video conferencing on 21.12.2021, the learned counsel for the Petitioner and the learned counsel for the Respondent GRIDCO and Respondent SLDC made detailed oral submissions, mainly on the lines of their submissions noted in the above paragraphs. The Commission, after hearing the parties, permitted the Respondent, GRIDCO to file its written submissions and the Petitioner to file its response to the same and reserved its order in the matter.

### **Written Submissions of the Respondent GRIDCO**

17. The Respondent GRIDCO in its written submissions dated 17.1.2022 has mainly reiterated the submissions made in its reply/response to the additional submissions of the Respondent GRIDCO and Petitioner GKEL as mentioned in the paragraphs above. It has however added that till date GKEL has not raised any bill of supply/invoices for revised fixed charges on the basis of PAFM certified by SLDC. It has stated that after the PAFM order, GKEL has only raised bill for LPS and not raised any bill for capacity charges on the basis of PAFM certified by SLDC on 3.3.2020 as per PAFM order. Accordingly, the Respondent has submitted that it is not liable to make any payments towards differential fixed charges in the absence of a revised invoice based on the PAFM issued by SLDC as mandated under the 2014 Tariff Regulations and the PPA.

### **Additional Written Submissions of the Petitioner**

18. The Petitioner, GKEL in response to the written submissions of the Respondent GRIDCO has, vide additional written submissions dated 21.1.2022, clarified the following;



- (a) GRIDCO's contention that DC was revised by GKEL during 2015-16 only on account of technical issues is wrong and denied. The issue of verbal instructions being issued by SLDC and the consequent revision of availability declarations by GKEL in the evening has already been raised and decided by this Commission in the PAFM order. GRIDCO cannot be permitted to re-agitate the issues already decided by this Commission in proceedings seeking execution of the order;
- (b) Revisions were carried out by GKEL due to verbal curtailment instructions from SLDC. Wherever revisions were attributable to technical constraints, the revised DC has been considered by GKEL in computing PAFM. However, technical constraints leading to revisions were only on a few occasions and the revisions on an almost daily basis were in fact on the verbal instructions from SLDC which is evident from (a) apart from verbal instructions to back-down, there is no evidence to show that GKEL had any other reasons to revise its original availability declarations; (b) GKEL had sufficient coal stock for operating the project (c) SLDC never issued any communication enquiring from GKEL as to why availability declarations were revised on a consistent basis (d) Whenever GRIDCO sought supply of additional power, GKEL was in a position to supply the same; and (e) Wherever the reduction was due to technical issues, the same was indicated in the e-mail and factored in GKEL calculation of PAFM (as evident from table-1 placed by GRIDCO in its written submissions, which shows that it was only for 13.4.2015 and 23.4.2015, the declaration was revised for technical issues).
- (c) GKEL's emails dated 12.10.2015, 14.10.2015, 15.10.2015, 25.10.2015, 26.10.2015, 27.10.2015, 28.10.2015, 4.11.2015, 5.11.2015 and so on, issued to SLDC categorically records that the revised dispatch schedule is as per GRIDCO's requirement. This clearly demonstrates that the availability declaration was revised by GKEL on verbal instructions of SLDC;
- (d) The revisions (other than due to technical reasons) resulted in the power being scheduled by SLDC based on GRIDCO's instructions being approximately 25% of power sent out from the project;
- (e) GRIDCO's reliance on GKEL letters dated 18.8.2015 and 13.10.2015 and GRIDCO's letters dated 2.9.2015 and 16.10.2015 to contend that GKEL was not scheduling up to its full generation capacity in favour of GRIDCO is also misleading as these letters had already been placed on record by GRIDCO in Petition No.115/MP/2019 (Annexures-I and Annexures-K) and have been duly considered by this Commission; In any case, these letters relate to arrangement of supply of additional power of 81 MW , over and above, the 25% contacted capacity by GKEL to GRIDCO for the period of September,



2015 and October, 2015 to tide over the power deficit scenario in the State of Odisha;

- (f) The genesis of the case is that SLDC had incorrectly computed PAFM based on energy dispatch instead of declared availability of the project. The incorrect computation of PAFM on the basis of dispatch has been rejected by this Commission and the PAFM calculated by GKEL based on declared availability as per the 2014 Tariff Regulations and the original invoices raised in the PAFM order has been upheld. Since the invoices raised by GKEL have already been upheld by this Commission, GKEL is not required to raise invoices.
- (g) GRIDCO cannot be permitted to re-agitate the same issues in the present execution proceedings, which already stand decided pursuant to the PAFM order. This Commission has already decided the issue of LPS in the PAFM order, by holding that since GKEL was not being paid capacity charges due to it based on its availability declarations from 1.4.2015 to 31.3.2017, GRIDCO is liable to pay LPS to GKEL in accordance with Regulation 45 of the 2014 Tariff Regulations.
- (h) GKEL had raised invoices for capacity charges/fixed charges between 31.12.2015 to 11.4.2017, which have been upheld by this Commission in the PAFM order and the same needs to be paid by GRIDCO. Once GRIDCO has accepted the invoices and made part payments towards the same, there is no requirement to issue fresh invoices. The contentions advanced by Respondents GRIDCO and SLDC ought to be rejected and this Commission ought to pass orders directing payment of outstanding principal amount of Rs.116.78 crore and LPS of Rs.115.84 crore computed, as on 31.12.2021 for 2015-16 and 2016-17 due to GKEL.

### **Analysis and Decision**

19. Based on the above submissions of the parties, the issues which emerge for consideration are as follows:

**Issue (A):** *Whether the PAFM computed by Respondent SLDC for the disputed period i.e from 1.4.2015 to 31.3.2016 (2015-16) is in accordance with the Commission's order dated 4.2.2020 in Petition No.115/MP/2019; and*

**Issue (B):** *Whether fresh invoices are required to be raised by GKEL on Respondent GRIDCO for payment of capacity charges (along with LPS), based on corrected PAFM;*

We examine the issues in following paragraphs.



***Issue (A): Whether the PAFM computed by Respondent SLDC for the disputed period i.e from 1.4.2015 to 31.3.2016 (2015-16) is in accordance with the Commission's order dated 4.2.2020 in Petition No.115/MP/2019;***

20. The Petitioner GKEL has submitted that in terms of Commission's order dated 4.2.2020 in Petition No.115/MP/2019, the PAFM is to be computed by the Respondent SLDC based on the 'original availability declaration'. It has submitted that though the Respondent SLDC on 3.3.2020, computed PAFM for 2016-17 as per directions of this Commission, it has adopted a different methodology for computing PAFM for 2015-16. The Petitioner has pointed out that the Respondent SLDC has not considered the original availability declaration made in the morning, but rather computed PAFM for 2015-16 on the basis of revised dispatch schedule submitted by the Petitioner on the verbal instructions of SLDC to match the Respondent GRIDCOs dispatch schedule.

21. Per contra, the Respondent SLDC has clarified that it has computed the PAFM of the Petitioner as per directions of this Commission in order dated 4.2.2020 and has not adopted different methodology for calculation of PAFM for 2015-16 and 2016-17. SLDC has also stated that it had never issued verbal instructions to the Petitioner to revise the DC to match the Respondent GRIDCOs schedule. The Respondent has submitted that the Petitioner used to forward multiple day ahead declared capacities for scheduling for next day and usually the Petitioner named the last day ahead DC as 'final day ahead schedule'. SLDC has considered the last day ahead DC submitted by the Petitioner following the provisions of IEGC, 2010 and Scheduling & Dispatch method laid down in operating procedure of Eastern Region. Referring to various e-mail communications received from the Petitioner, the Respondent has submitted that as the Petitioner was revising the DC for various reasons, the first day ahead DC submitted in the morning



cannot be designated as 'original availability declarations', by ignoring the subsequent revisions submitted by the Petitioner.

22. We have examined the matter. Petition No.115/MP/2019 was filed by the Petitioner amongst others, for a direction upon the Respondent SLDC to correct the PAFM of the project from 1.4.2015 till 31.3.2017 based on availability declarations made by the Petitioner. In the said case, it was contended by the Petitioner, that the Respondent SLDC had issued verbal instructions to the petitioner to reduce the energy being scheduled from the project for supply to Respondent GRIDCO, which was opposed by the Respondents. Some of the submissions made by the Petitioner and the Respondents as noted in the order dated 4.2.2020, are extracted hereunder for reference:

***Submissions of Petitioner***

*h) However, in spite of declaring availability in the morning from the dedicated Unit-3, SLDC (on behalf of GRIDCO) started issuing verbal instructions to GKEL to reduce the energy being scheduled from the Project for supply to GRIDCO, which is not in line with the provisions of IEGC. Initially, GKEL complied with the request of SLDC during the period from 18.03.2015 to 03.12.2015. However, when it became apparent that SLDC was reducing the plant availability to power actually scheduled, GKEL refused to revise the availability declaration. As a result, between 04.12.2015 to 31.03.2017, GKEL refused to revise the availability declarations in the evening based on such verbal instructions by SLDC on behalf of GRIDCO (page 4, para 4(h) of order dated 4.2.2020).*

*i) However, in spite of valid availability declarations by GKEL, SLDC has been calculating availability on the basis of scheduled energy off-take by GRIDCO, contrary to all regulations. As a consequence, the availability being considered by GRIDCO and SLDC is lesser than the actual capacity declared and made available to GRIDCO throughout this period i.e. from 01.04.2015 to 31.03.2017, resulting in idling of the balance capacity. This is also evident from the letter dated 21.11.2015 wherein GRIDCO has admitted that scheduling was being done as per schedule or requirement intimated by SLDC. Such instructions are contrary to the provisions of the 2009 Tariff Regulations, the 2014 Tariff Regulations, IEGC and the PPA and the same has resulted in under recovery of AFC (page 5, para 4(i) of order dated 4.2.2020).*

*l) The fact that verbal instructions by SLDC was a matter of practice is brought out through the Minutes of Meeting between GRIDCO, GKEL and SLDC dated*



11 July 2013, which records inter-alia that GKEL was issued verbal instructions by SLDC (**page 5, para 4(I) of order dated 4.2.2020**).

### **Rejoinder of Petitioner**

i) GRIDCO's contention that GKEL followed the same methodology disputed by it for scheduling power to GRIDCO, is misplaced. During the period when all three units were connected to the CTU and till 03.12.2015, GKEL had been lowering its declared availability to the power scheduled by GRIDCO based on verbal instructions of SLDC. From 04.12.2015, GKEL has been declaring availability without revising the same. However, in spite of valid declaration of availability, SLDC has computed PAFM on the basis of scheduled energy off-take by GRIDCO, which is contrary to the applicable regulations (**page 19, para 7(i) of order dated 4.2.2020**)

### **Submissions of Respondent GRIDCO**

v) There is no such document on record in support of contentions of the Petitioner regarding verbal instructions of SLDC to reduce the energy being scheduled from the project for supply to GRIDCO (**page 12, para 5(v) of order dated 4.2.2020**)

### **Submissions of Respondent SLDC**

(f) SLDC never instructed GKEL to reduce the schedule. Rather GKEL was forwarding the day ahead availability through a schedule in line with the provisions of the PPA i.e. considering 25% as State's share of the energy sent out from their generating station (i.e. one third of the energy schedule for other buyers) (**page 16, para 6(f) of order dated 4.2.2020**)

11. Respondent No. 2, SLDC Odisha vide affidavit dated 24.10.2019, further submitted that SLDC has never issued verbal instruction to revise declared capacity. The copies of the e-mails enclosed by the Petitioner are correspondences made from their side for submission/ revision of Declared Capacity (DC) which is a usual practice. It does not prove that SLDC has issued verbal instructions for revision of Declared Capacity (DC) (**page 24, para 11 of order dated 4.2.2020**)

12. The Petitioner vide affidavit dated 14.10.2019, in response to the Respondents submissions dated 27.08.2019 (SLDC) and 30.08.2019 (GRIDCO), further submitted that the fact that verbal instructions by SLDC was a matter of practice, is brought out through MoM between GRIDCO, GKEL and SLDC dated 11.07.2013, which records inter-alia that GKEL were issued verbal instructions by SLDC for compliance. The said Minutes were signed by representatives of SLDC and GRIDCO and thus had agreed to this position (**page 24, para 12 of order dated 4.2.2020**)

23. In addition to the above, the Petitioner in its written submissions dated 14.10.2019 filed in Petition No.115/MP/2019 had enclosed copies of e-mails evidencing dispatch of DC as per Respondent GRIDCO's requirement.



24. The Commission vide its order dated 4.2.2020 in Petition No.115/MP/2019 held as under:

*“33. Since provisions of regulations framed by this Commission override PPA provisions inconsistent with the regulations, we hold that irrespective of provisions in the PPA, the calculation of PAFM and consequent capacity charges payable by the Respondent No.1 are required to be done in accordance with the provisions of the 2014 Tariff Regulations. Also, in view of the provisions of the 2014 Tariff Regulations as regards calculation of PAFM and thereby payment of capacity charges, we hold that methodology adopted by the SLDC Odisha for calculation of PAFM based on the energy scheduled by the GRIDCO, is incorrect.*

Xxxx

*45. Having held that the provisions of the PPA in so far as they are not in line with the provisions of the 2014 Tariff Regulations, are not enforceable, we do not find it necessary to deal with the PPA provisions. The payment of capacity charges is to be done based on availability declaration by the Petitioner in terms of the 2014 Tariff Regulations.*

Xxxxx

*51. Accordingly, we direct the Respondent No. 2 to correct the PAFM for the project for the disputed period i.e from 01.04.2015 to 31.03.2017 based on the original availability declarations made by GKEL. The Respondent No. 1 shall pay the capacity charges (along with late payment surcharge) to the petitioner based on the corrected PAFM as calculated by the Respondent no.2 in terms of 2014 Tariff Regulations, within one month from the date of issue of this order”*

25. Thus, the Commission, after considering all the submissions of the parties had allowed the prayer of the Petitioner and directed the Respondent SLDC to correct the PAFM for the period 2015-16 and 2016-17 based on the ‘original availability declarations’ made by the Petitioner. Being so, the submission of the Respondent SLDC that the order dated 4.2.2020 in Petition No.115/MP/2019 make no reference to the acceptance of the allegation of the Petitioner as regards verbal instructions of SLDC is misconceived. In our view, the Respondents cannot be permitted, in the present execution proceedings, to re-agitate these issues, which had already been decided by this Commission in order dated 4.2.2020.

26. The Respondent SLDC, in compliance to directions of the Commission vide ROP dated 30.7.2021, had, vide affidavit dated 24.8.2021, furnished the detailed calculation



of PAFY of 73.22% by Respondent SLDC for 2015-16 along with capacity declarations (all revisions made on day ahead basis and during the day of delivery) made by the Petitioner for 366 days and e-mail correspondences made by the Petitioner for capacity declaration. It has also submitted that on receipt of capacity declaration by the Petitioner for next day, the Respondent was preparing the 'day ahead dispatch schedule' in the afternoon considering the last DC of the Petitioner received till preparation of dispatch schedule and thereafter, also prepared revised dispatch schedules, if any revised capacity declaration were made by the Petitioner. It has added that all these dispatch schedules were uploaded in the SLDC website for information of Respondent, GRIDCO and the Petitioner. The Petitioner has also furnished the detailed calculation of as claimed PAFY of 88.24% with details regarding original and revised declarations made to STU, total original plant declaration and total plant despatch quantum of power for 2015-16. The Petitioner has added that revisions carried out by the Petitioner, were only due to verbal curtailment instructions from Respondent SLDC and not due to any technical constraints or non-availability of fuel. The Respondent GRIDCO has submitted that the submission of the Petitioner that revised DC submitted is as per oral instructions of Respondent GRIDCO is false and baseless. The Petitioner, in its response dated 8.9.2021, has submitted that the Respondent SLDC has admitted that it is using the final despatch declarations for computing PAFM/PAFY for 2015-16 and has not considered the original availability declarations made by the Petitioner for the said period. Therefore, the Respondent has used the same basis for computation of PAFM/PAFY which had been rejected in order dated 4.2.2020 in Petition No.115/MP/2019 and is contrary to the 2014 Tariff Regulations, IEGC, 2010 and the said order. The Petitioner has stated that the practice of revising the availability





declarations, based on request of Respondent SLDC, was followed during the period from 18.3.2015 to 3.12.2015 and thereafter, between 4.12.2015 to 31.3.2017, the Petitioner had refused to revise the availability declarations in the evening, based on such verbal instructions by Respondent SLDC on behalf of GRIDCO.

27. The matter has been examined. Admittedly, in the present case, the Respondent SLDC has computed PAFM for the period 2016-17 as per the directions of this Commission in order dated 4.2.2020. However, a different approach appears to have been adopted by Respondent SLDC for computation of PAFM for 2015-16, for which relief has been sought by the Petitioner in this petition. It is evident from the time stamped e-mails filed by SLDC that the DC of the Petitioner was revised on 13.4.2015 and 23.4.2015 for technical issues on account of Oil leakage in TD, BFB, heavy leakage in PA Duct of Boiler, electrical fault, PA Fan problem etc., Also, the e-mail relied upon by the Respondent SLDC for day ahead availability declaration for 28.5.2015 shows that the Petitioner had revised the declaration to 0 MW due to tripping of Unit-3 on account of ID fan problem. The term 'original availability declaration' as directed to be considered for computation of PAFM in the order dated 4.2.2020, would mean the 'availability declarations' made by the Petitioner initially and subsequent DC revisions, if any, based on technical constraints. It is pertinent to mention that, whenever, availability declarations were revised for technical issues, the same have been indicated and factored in the calculation of PAFM by the Petitioner. It is also clearly observed that the Respondent SLDC had never issued any communication enquiring from the Petitioner, the reasons for revision of availability declarations on a consistent basis. As we have already noted whenever availability declarations were revised by the Petitioner for technical issues, the same have been indicated. Therefore, it can be deduced that the



other cases of *suo moto* revisions by the Petitioner of its original availability declarations for the period 2015-16 were not for any technical issues, but for reasons like oral instructions from Respondent SLDC, as alleged by the Petitioner.

28. In the above background, we reject the submissions of the Respondents, and hold that the computation of PAFM/PAFY by the Respondent SLDC, by considering the 'final despatch declarations' instead of the 'original availability declaration' by Petitioner for 2015-16, is not in accordance with the directions contained in Commission's order dated 4.2.2020 in Petition No.115/MP/2019. The Respondent, SLDC is therefore, directed to correct the PAFM for 2015-16 (1.4.2015 to 31.3.2016), based on the 'original availability declarations' made by the Petitioner and subsequent revisions, if any, due to technical constraints.

***Issue (B): Whether fresh invoices are required to be raised by GKEL on Respondent GRIDCO for payment of capacity charges (along with LPS), based on corrected PAFM;***

29. The Respondent GRIDCO has submitted that the Petitioner has not, till date, raised any Invoice / bill on GRIDCO on the basis of PAFM certified by SLDC in terms of the PAFM order (which has been challenged before APTEL). Such invoice/bill is mandated under the PPA as well as GST Act, 2017 and Rules made there under. In the absence of any such invoice / bill, the question of Respondent making payment of any differential fixed charges does not arise. The Respondent has stated that supplementary invoice for LPS is meaningless in the absence of original invoice/ bill in respect of differential fixed charges, which has never been raised by the Petitioner on PAFM % issued in 2017 or on 3.3.2020. It has contended that Respondent SLDC has communicated the PAFM for 2015-16 and 2016-17 in terms of the order dated 4.2.2020 in Petition No.115/MP/2019, to the Petitioner vide letter dated 3.3.2020 and the



Petitioner is yet to raise the required monthly and yearly invoice for 2015-16 and 2016-17 as per SLDCs pre-revised and revised PAFM% for necessary consideration and processing by the Respondent GRIDCO. The Respondent has submitted that as per Section 31(3)(c) of the GST Act, 20174, the Petitioner is mandated to raise bills for revised fixed charges for each of the disputed period (2015-16 and 2016-17). It has also stated that payment of fixed charges for Rs.269.09 crore for 2015-16 and Rs.246.397 crore for 2016-17 based on PAFM % issued by SLDC was made to the Petitioner. Accordingly, the Respondent, GRIDCO has argued that the direction in order dated 4.2.2020 in Petition No.115/MP/2019 for payment by the Respondent within one month can be complied only after the Petitioner raises the required invoice/bill of supply on the basis of PAFM certified by SLDC.

30. Per contra, the Petitioner has submitted that raising of invoice is not a pre-requisite for payment of capacity charges by Respondent GRIDCO. The Petitioner has also submitted that it has vide invoice dated 13.3.2020 computed the capacity charges based on revised PAFM issued by SLDC along with applicable LPS (annexure-1 and annexure-2 of the invoice), which contain details of the original invoices raised for the specific month for 2015-16 and 2016-17. It has contended that the original bills were based on PAFM computed by GKEL, on the original availability declarations, which has already been upheld by this Commission in order dated 4.2.2020 in Petition No.115/MP/2019 and thus, there is no requirement for a fresh bill. The Petitioner has stated that vide invoice dated 13.3.2020, it had provided a detailed calculation of revised capacity charges based on PAFM issued by Respondent SLDC and based on the same, the Petitioner has also computed applicable LPS. This is in line with the



directions of this Commission in order dated 4.2.2020 and any attempt by Respondent GRIDCO to defy the same ought not to be permitted.

31. We have examined the matter. As regards payment of LPS, the Commission in its order dated 4.2.2020 in Petition No. 115/MP/2019 had observed and directed as under:

*“50. The Petitioner has also prayed for payment of Delayed Payment Surcharge (DPS) for the unpaid amount of capacity charge for the disputed period i.e. from 01.04.2015 to 31.03.2017. We note from the submissions of the petitioner that prior to the Commission’s order 12.11.2015 in Petition No.77/GT/2013, the petitioner billed GRIDCO on provisional basis. However, consequent to the above order of the Commission, the petitioner, starting from December, 2015 billed GRIDCO in terms of PAFM computations as per prevailing 2014 Tariff Regulations. It is observed from the Annexure-P-36 (page 511 of the petition) that petitioner also raised supplementary bills dated 31.12.2015 (bill nos.26 to 33) for the period from 1.4.2015 to 30.11.2015 based on PAFM computations as per prevailing 2014 Tariff Regulations. However, it is also true that the Petitioner has not been paid full capacity charges for the disputed period as per provisions of the 2014 Tariff Regulations since the Respondents have been paying capacity charges based on energy scheduled/ delivered and not on basis of availability declared by the Petitioner. In our view, due to incorrect PAFM prepared by the Respondent No. 2 (SLDC Odisha), the Petitioner was not being paid capacity charges due to it based on its availability declaration. Therefore, it is due to the fault of the Respondents that the Petitioner has not been paid full capacity charges for the period from 01.04.2015 to 31.03.2017. In our view, the Respondents cannot be allowed to benefit on account of their own fault and, therefore, the Petitioner needs to be compensated for not having received due amount. Accordingly, in our considered view, the Respondent No.1 is liable to pay DPS/ LPS as per provisions of the 2014 Tariff Regulations.*

*51. Accordingly, we direct the Respondent No. 2 to correct the PAFM for the project for the disputed period i.e from 01.04.2015 to 31.03.2017 based on the original availability declarations made by GKEL. The Respondent No. 1 shall pay the capacity charges (along with late payment surcharge) to the petitioner based on the corrected PAFM as calculated by the Respondent no.2 in terms of 2014 Tariff Regulations, within one month from the date of issue of this order.*

32. It is evident from the above that the Commission had directed the Respondent GRIDCO to pay the capacity charges along with LPS to the Petitioner, since it was due to fault of the Respondents that the Petitioner has not been paid full capacity charges, for the period from 1.4.2015 to 31.3.2017. It is pertinent to mention that the computation of PAFM based on energy scheduled/delivered and not on basis of availability declared by the Petitioner, was rejected by the Commission in its order dated 4.2.2020 in Petition



No.115/MP/2019. Thus, the original bills raised between 31.12.2015 to 11.4.2017, based on the PAFM computed by the Petitioner on 'original availability declarations' was upheld by the Commission in its order dated 4.2.2020. The contention of the Respondent GRIDCO that the existing GST Act requires the raising of fresh bill is misconceived, as the Petitioner cannot be directed to raise separate invoices for the same availability, unless the original bills are rejected. It is noticed that original invoices were never rejected by the Respondent GRIDCO and the Respondent had, made part payments of the said invoices raised by the Petitioner. Once the Respondent, GRIDCO has accepted the invoices and made part payments, there is no reason for the Petitioner to raise fresh bills, as contended by the Respondent GRIDCO. Only additional amount towards LPS is required to be raised through supplementary invoices by the Petitioner, on the outstanding amounts payable by the Respondent GRIDCO.

33. Thus, we have found that the Respondent SLDC has computed PAFM for 2016-17 in accordance with the directions of this Commission in order dated 4.2.2020. At the same time, we have found that the computation of PAFM by Respondent SLDC for 2015-16 is not in accordance with the directions of this Commission in order dated 4.2.2020. We hold that the computation of PAFM by Respondent SLDC for 2015-16 is required to be based on original availability declaration of the Petitioner. Accordingly, the Respondent, SLDC has been directed (paragraph 28 above) to correct the PAFM for 2015-16 (1.4.2015 to 31.3.2016) based on the original availability declarations made by the Petitioner. Consequently, we direct the Respondent GRIDCO to pay capacity charges, along with LPS, to the Petitioner, based on the corrected PAFM computed by Respondent SLDC as above, within two months from the date of this order.



34. It is noticed that during 2015-16, the Respondent GRIDCO, in addition to the contracted power of 262.5 MW under the PPA, has availed additional power of 81 MW through a separate agreement. This procurement of additional power and the DC declared for such power shall not be considered while determining PAFM for the contracted capacity of PPA. The DC and capacity charges thereof pertaining to the additional power of 81 MW shall be separately settled by the Petitioner with Respondent GRIDCO.

35. The Petition No. 498/MP/2020 is disposed of in terms of the above.

**Sd/-**  
**(Pravas Kumar Singh)**  
**Member**

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

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

**Sd/-**  
**(P.K. Pujari)**  
**Chairperson**

