

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 592/MP/2020

- Subject : Petition under Regulation 1.5(iv) read with Regulation 5.2(u) and Regulation 6.5 (11) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 read with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking direction to State Load Dispatch Centre to implement the Must Run station accorded to the Petitioner's Solar Project in letter and spirit and compensate the Petitioner for the unlawful and arbitrary curtailment of generation from the Petitioner's Solar Project.
- Date of Hearing : 21.3.2023
- Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Solairepro Urja Private Limited (SUPL)
- Respondents : Andhra Pradesh State Load Despatch Centre (AP SLDC) and 3 Ors.
- Parties Present : Ms. Priya Dhankhar, Advocate, SUPL
Shri Rishabh Bhardwaj, Advocate, SUPL
Shri Ashutosh Srivastava, Advocate, NTPC
Shri Aashwyn Singh, Advocate, NTPC
Shri Sidhant Kumar, Advocate, AP SLDC
Ms. Muskan Gopal, Advocate, AP SLDC

Record of Proceedings

At the outset, learned counsel for the Respondents, AP SLDC submitted that the Respondent has filed its reply on jurisdiction and maintainability of the present Petition before this Commission and the Commission may, therefore, first decide the issue of jurisdiction as preliminary issue in the matter.

2. Learned counsel for the Petitioner submitted that despite the specific direction to the Respondent, AP SLDC to file its reply on merits vide Record of Proceedings for the hearing dated 11.11.2021, AP SLDC has not filed its reply on the merits. Learned counsel submitted that the aspects involved in the present matter are similar to those of in Petition No. 342/MP/2019 (Prayatna Developers Pvt. Ltd. v. AP SLDC and Ors.)



wherein the Commission vide order dated 27.9.2019 has upheld the jurisdiction of this Commission. Learned counsel submitted that while the proceedings in the said case has been stayed by the Hon'ble High Court of Andhra Pradesh vide order 1.12.2021 in WP No. 28245/2021 filed by AP SLDC, the said stay does not, *ipso facto*, apply to the present case. Learned counsel further submitted that the Petitioner as such has no objection in the event the Commission, taking cognizance of the stay operating in respect of proceedings in Petition No. 342/MP/2019, intends to defer the proceedings in the present case also. However, the Respondent ought to be directed to at least file its reply on the merits.

3. In response, learned counsel for the Respondent, AP SLDC submitted that very basis of direction to the Respondent to file its reply on merits vide Record of Proceedings for the hearing dated 11.11.2021 was the Commission's earlier order dated 27.9.2019 in Petition No. 342/MP/2019, which subsequently came to be stayed by the Hon'ble High Court of Andhra Pradesh vide order dated 1.12.2021. Therefore, the jurisdiction aspect in the present case has to be decided at the threshold. Learned counsel submitted that as per Section 33(4) of the Electricity Act, 2003 ('the Act'), for any dispute in respect of direction issued by the SLDC under Section 33(1) of the Act, the appropriate Commission is the State Electricity Regulatory Commission and the provisions of the Grid Code, being the sub-delegated legislation, cannot override the provision of parent Act. Learned counsel added that in Petition, the Petitioner itself has stated that since commissioning of its solar project located in Andhra Pradesh, the entire electricity generated therefrom is being supplied to AP Discoms in terms of the provisions of the PPA read with PSA and it is only in its rejoinder, the Petitioner has sought to contend that it has composite scheme of generation and supply of power in respect of the its project. Learned counsel further added that if the Commission so directs, the Respondent will file its reply on merits, however, the issue of jurisdiction has to be decided at threshold as a preliminary issue prior to hearing the matter on merits.

4. Learned counsel for the Respondent No.3, NTPC submitted that the stay granted by the Hon'ble High Court of Andhra Pradesh in respect of proceedings in Petition No. 342/MP/2019 does not automatically apply to the present case. Learned counsel also pointed out that in the present case, the Petitioner's project has been set-up under Batch II Tranche I of NSM Phase II State Specific Bundling Scheme as per which the expensive solar power is bundled with cheaper power from NTPC's coal based stations out of unallocated quota of Govt. of India in the ratio of 2:1 and since this power from these coal based stations flows from the various stations of NTPC located across the country, there is a composite scheme of generation and supply in the present case attracting the jurisdiction of this Commission under the Act.

5. Keeping in view the Petitioner having expressed its no objection towards deferment of the present proceedings in light of the stay on the proceedings in similar matter bearing Petition No. 342/MP/2019 by the Hon'ble High Court of Andhra Pradesh, we deemed it appropriate to defer the hearing in the present case till the vacation of the aforesaid stay as granted by the Hon'ble High Court of Andhra Pradesh. However, in the meanwhile, the Commission directed the Respondents to file their reply on merits, if

any, within two weeks with copy to the Petitioner, who may file its rejoinder, if any, within two weeks thereafter.

6. The Petition shall be listed for hearing in due course for which date shall be intimated separately.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**