



नई दिल्ली  
NEW DELHI

याचिका संख्या./ Petition No. 22/MP/2023

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson  
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member  
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member  
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 18<sup>th</sup> of January, 2024

**IN THE MATTER OF:**

Petition under section 79(1)(b) and 79 (1)(f) of the Electricity Act, 2003 seeking issuance of direction(s)/ order(s) against the respondent for payment of outstanding principal amount and applicable late payment surcharge for renewable power supplied during the period from 01.04.2020 to 07.04.2020 under power sale agreements dated 31.03.2015, 24.11.2017, 23.03.2018 executed between the petitioner and respondent.

**AND IN THE MATTER OF:**

**Solar Energy Corporation of India Limited,**  
6th Floor, Plate-B, NBCC Office Block  
Tower-2, East Kidwai Nagar  
New Delhi-110023

...Petitioner

Versus

**Punjab State Power Corporation Limited,**  
The Mall, Patiala  
Punjab- 147001

...Respondent

**Parties Present:** Shri M. G. Ramachandran, Sr. Advocate, SECI  
Ms. Anushree Bardhan, Advocate, SECI  
Ms. Surbhi Kapoor, Advocate, SECI  
Ms. Srishti Khindaria, Advocate, SECI  
Shri Aneesh Bajaj, Advocate, SECI  
Ms. Suparna Srivastava, Advocate, PSPCL  
Shri Tushar Mathur, Advocate, PSPCL  
Ms. Tejasvita Dhawan, Advocate, PSPCL  
Ms. Divya Sharma, Advocate, PSPCL

### **आदेश/ ORDER**

The Petitioner, Solar Energy Corporation of India Limited (SECI), is a Government of India enterprise and is designated as the nodal agency for the implementation of the schemes of the Central Government for developing grid-connected wind and solar power capacity in the country. SECI is also an inter-state trading licensee under the Electricity Act 2003. SECI has filed this Petition under section 79(1)(b) and 79 (1)(f) of the Electricity Act, 2003 seeking issuance of direction(s)/ order(s) against the respondent for payment of outstanding principal amount and applicable late payment surcharge for renewable power supplied during the period from 01.04.2020 to 07.04.2020 under the Power Sale Agreements (PSAs) dated 31.03.2015, 24.11.2017 and 23.03.2018.

2. The Respondent, Punjab State Power Corporation Limited (PSPCL), is a distribution licensee undertaking the distribution and retail supply of electricity in the state of Punjab.
3. The Petitioner has made the following prayer:
  - a) *Direct PSPCL to be liable to pay and to forthwith pay SECI the Outstanding Principal amount of Rs. 2,79,74,062 along with applicable Late Payment Surcharge for the power supplied from 01.04.2020 to 07.04.2020 in terms of the PSAs dated 31.03.2015, 24.11.2017 and 23.03.2018 till full payment and discharge of the late payment surcharge and principal amount; and*
  - b) *Pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.*

**Factual Matrix:**

4. The brief facts of the case are as follows

RfS	Scheme	PPA	Capacity and Tariff	PSA with PSPSCL	COD
28.10.2013	Setting up of 750 MW Solar Power Projects (JNNSM Phase II Batch I Scheme)	PPAs with <i>Today Green Energy Private Limited</i> 27.03.2014 28.03.2014 and 28.03.2014	10MW 10MW 10MW  Solar Power Tariff(5.45/kWh)  from the power project in State of Rajasthan	31.03.2015 for 30 MW Solar power (Rs. 5.45/kWh)	<i>10MW:04.10.2015</i> <i>10MW:04.10.2015</i> <i>10MW:12.05.2016</i>
31.05.2017	Setting up of 1000 MW ISTS connected Wind Power Projects (Tranche-II Wind Scheme)	PPA with <i>Adani Green Energy (MP) Limited</i>  29.12.2017	<i>50 MW (Wind Power)</i> Tariff: <i>Rs.2.65/kWh</i>  <i>from the power project in State of Gujarat</i>	24.11.2017 for 150 MW (Rs. 2.65/kWh)	<i>50MW: 05.03.2020</i>
		PPA with <i>ReNew Power Ventures Private Limited</i>  02.01.2018	<i>250 MW (Wind Power)</i> Tariff: <i>Rs.2.64/kWh</i>  <i>from the power project in State of Gujarat</i>		
12.01.2018	Setting up of 2000 MW ISTS connected Wind Power Projects (Tranche-III Wind Scheme).	PPA with <i>Green Infra Wind Energy Limited</i>  23.05.2018	<i>300 MW (Wind Power)</i> Tariff: <i>Rs.2.44/kWh</i>  <i>from the power project in State of Gujarat</i>	23.03.2018 for 200 MW (Rs. 2.45/kWh)  22.03.2021 (Supplementary agreement)	<i>73.5MW: 05.07.2019</i> <i>50.4 MW: 06.09.2019</i> <i>52.5 MW: 02.11.2019</i> <i>50.4 MW: 03.01.2020</i> <i>73.2 MW: 18.06.2020</i>
Government of Punjab, Department of Health and Family Welfare, enforced restrictions to contain the spread of Covid-19 in the State of Punjab					22.03.2020

PSPCL issued force majeure notice claiming force majeure event qua Covid-19	30.03.2020
MNRE issues an O.M. stating that <i>the RE generating stations have been granted a 'Must Run' status and the said status remains unchanged during the period of Covid-19 lockdown</i>	01.04.2020
MNRE issued another OM clarifying that any curtailment by the distribution companies but for grid safety reason is to amount to deemed generation.	04.04.2020
SECI raised invoices on PSPSCL for pending payment for the month of April 2020	06.05.2020 & 09.05.2020
PSPCL allowed all RE generators including the present Petitioner to inject power into the distribution/transmission system in the State with immediate effect.	07.04.2020
PSPCL denied that it is liable to pay any tariff for the period between 01.04.2020 and 07.04.2020	11.08.2020
SECI requested PSPCL to pay the amount deducted for the period from 01.04.2020 to 07.04.2020) along with the applicable Late Payment Surcharge (LPS)	24.08.2020 & 18.03.2021
Punjab State Electricity Regulatory Commission (PSERC) disposed of the Petition No. 21/2021	24.09.2021
SECI requested PSPCL to pay the balance amounts deducted by it from the energy bills of April, 2020.	01.12.2021
PSERC disposes of Petition No.'s 25 and 26 of 2022 filed by the biomass power projects.	15.11.2022
PSPCL paid amount to SECI amounting to Rs. 64,96,201 for the period 01.04.2020 to 07.04.2020	18.01.2022

5. The petition was filed on 30.12.2022 and was listed for hearing on 29.05.2023, wherein the Commission, after hearing the submissions of SECI, admitted the petition and directed SECI to serve the copy of the petition to PSPCL, who may file its Reply. Further hearing was conducted on 11.10.2023, and the Commission, after hearing the submissions of the parties, reserved the matter for orders and directed the parties to file their respective submissions. Pursuant to the direction of the Commission, the parties filed their submissions.

### **Analysis and Decision**

6. We have heard the learned counsels for the Petitioner and the Respondent and have carefully perused the records and considered the submissions of the parties.
7. On the basis of the submissions of the contracting parties, the following issues arise for adjudication:

***Issue No. I: Whether this Commission has the jurisdiction under section 79 of the Electricity Act, 2003, to adjudicate the present matter?***

**Issue No. II: Whether the Respondent should be directed to pay:**

- a) *outstanding principal amount of Rs. 2,79,74,062/- along with LPS for the ‘wind power’ supplied for the period from 01.04.2020 to 07.04.2020 in terms of the PSAs dated 24.11.2017 and 23.3.2018;*
- b) *balance LPS for the ‘solar power’ supplied for the period from 01.04.2020 to 07.04.2020 in terms of the PSAs dated 31.03.2015; and*
- c) *applicable LPS for delayed payment of invoices for the period 08.04.2020 to 30.04.2020 for wind and solar power in terms of the PSAs dated 24.11.2017, 23.03.2018 and 31.03.2015.*

8. Now, we proceed to discuss the above issues.

**Re: Issue No. I**

***Whether this Commission has the jurisdiction under section 79 of the Electricity Act, 2003, to adjudicate the present matter?***

9. SECI has submitted as under:

- a) The nature of the transactions involved in the present matter is inter-state operation. The wind power developers have established wind power projects in the state of Gujarat for the sale and consumption of wind power in the state of Punjab. In the present case, the power is being supplied from the solar power projects in the state of Rajasthan and the wind power projects in the state of Gujarat for the sale and consumption of power in the state of Punjab, the transactions involved in the present matter is inter-state operation. Reliance is placed on the Hon’ble Supreme Court *in Energy Watchdog v CERC & Ors. (2017) 14 SCC 80*. The jurisdiction under section 86(1)(b) of the Electricity Act, 2003 refers to the initial stage of approval to be granted for procurement of power at the price and the terms and conditions specified under the PSA. In cases of agreement with a generating company falling under section 79(1)(a) or (b), section 86(1)(f) of the Electricity Act,2003 will have no application but section 79(1) (f) of the Electricity Act,2003 will apply.
- b) In terms of the PPA and PSA, SECI is acting as an intermediary nodal agency as appointed by the Central Government. The PPAs and PSAs are back-to-back agreements, i.e. interconnected and inextricably linked to each other, and as such,

there is privity between the renewable power developers and the PSPCL, which is the distribution company and the ultimate beneficiary of the PPA. The PSA and PPA are back-to-back agreements, they are part and parcel of one single transaction, and therefore, the disputes under the PPA cannot be adjudicated by one body while those under the PSA are adjudicated by another.

- c) In the present case, out of total contracted capacity of 250 MW under the PPA dated 02.01.2018 executed with ReNew Power Ventures under Tranche-II Wind Scheme, the power allocated to PSPCL is only 100 MW under the PSA dated 24.11.2017 and the remaining quantum is mapped to other States; and out of total contracted capacity of 300 MW under the PPA dated 23.05.2018 executed with Green Infra Wind Energy Limited under Tranche-III Wind Scheme, the power allocated to PSPCL is only 200 MW under the PSA dated 23.03.2018 (read with Supplementary PSA dated 22.03.2021) and the remaining quantum is mapped to other states. The entire transaction of generation and sale of electricity under the PPAs with renewable power developers and PSAs with PSPCL will be governed by section 79 of the Electricity Act, 2003, there being a composite scheme for generation and sale in more than one State, thereby conferring jurisdiction on this Commission in respect of all the matters arising out of PPAs and PSAs (which are back-to-back agreements). PSPCL itself has filed Petition No.64/MP/2022 in regard to PSA dated 24.11.2017 (which is also a subject matter of the present petition) before the Commission. SECI is a party to the above petition.

10. PSPCL has submitted as under:

- a) The present Petition is not maintainable for want of jurisdiction. The Power Sale Agreements (PSAs) under which the energy is being supplied to the Respondent have been approved by the PSERC vide Orders dated 07.09.2021 and 15.03.2022 passed in Petition No. 42 of 2021.
- b) Any dispute relating to such price (i.e. the agreed tariff as approved by the PSERC) must also necessarily be brought before the PSERC for its adjudication only. The Power Purchase Agreements which the Petitioner has entered into with the solar/wind generators situated outside the state of Punjab do not have a bearing on the exercise of a statutory function by the PSERC of regulating power purchase of the Respondent-

distribution licensee and adjudicating any tariff-related dispute arising under the contracts entered into in that behalf.

- c) The present petition filed by the Petitioner suffers from inordinate delay and laches, and as such, the same is liable to be dismissed at its threshold. It is a settled legal position that *'delay defeats equity'*, and that relief can be denied on the ground of delay alone, even though relief is granted to other similarly situated persons who have approached the Courts in time. Reliance is placed on Hon'ble Supreme Court, in *Municipal Council, Ahmednagar Vs. Shah Hyder Beig, [(2000) 2 SCC 48]*

11. We observe that the solar project located in Rajasthan under 750 MW solar power projects (JNNSM Phase-II Batch-I Scheme), wind power projects located in Gujarat and established under 1000 MW ISTS connected wind power projects (Tranche-II Wind Scheme), and wind power projects established in Gujarat under 2000 MW ISTS connected wind power projects (Tranche-III Wind Scheme) are being utilised for the supply of power to the Respondent under PSAs dated 31.03.2015, 24.11.2017 and 23.03.2018 respectively. It is also noted that the solar and wind plants which are supplying power to PSPCL are also being utilised for supplying power to other states.

12. Briefly, the factual matrix is as under:

RfS	PPA	Capacity and Tariff	PSA with PSPSCL	As per SECI	
				Power being supplied under PSA	Power being mapped to other States
31.05.2017	PPA dated 02.01.2018 with <i>ReNew Power Ventures Private Limited</i>	<b>250 MW</b> (Wind Power) from the power project in <b>Gujarat</b>	24.11.2017 for 150 MW	100	150
12.01.2018	PPA dated 23.05.2018 with <i>Green Infra Wind Energy Limited</i>	<b>300 MW</b> (Wind Power) from the power project in <b>Gujarat</b>	23.03.2018 for 200 MW	200	100

13. We observe that section 79(1) of the Electricity Act, 2003 stipulates as under:

- 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;***

...

14. We note that APTEL, vide judgment dated 02.07.2021 in Appeal No.52 of 2021 in the matter of *Solar Energy Corporation of India Limited –v- Delhi Electricity Regulatory Commission & Tata Power Delhi Distribution Limited* and Connected Appeal, inter-alia, held as under:

***78. As noted earlier, the trading of an Inter-State Trading Licensee is governed by Section 79(1)(e) and Section 79(1)(j) of the Electricity Act, 2003 and the Central Commission exercises regulatory jurisdiction in such respect. It is not in dispute that the appellant SECI has been granted Inter-State Trading License by the Central Commission for undertaking trading in entire territory of India in terms of section 79(1)(e) read with Section 14 and Section 15 of the Electricity Act, 2003. The contractual arrangements in each case clearly bring out that the Power Developers establishing Power Projects in another State (e.g. Rajasthan) have agreed to commit Solar (or hybrid) Power generated by them for sale and consumption in the State of Delhi and Punjab respectively. The PPAs and PSAs involved in the two matters represent composite schemes for generation and sale in more than one State and, thus, the matters of tariff will be governed by Section 79 (1) (b) of the Electricity Act, 2003.***

...

15. The Hon'ble Supreme Court vide judgement dated 11.04.2017 in the matter of *Energy Watchdog v. CERC & Ors. (2017) 14 SCC 80* has already clarified the expression *composite scheme* and jurisdiction of this Commission. The Hon'ble Supreme Court qua the aforesaid judgment held as under:

***“24. The scheme that emerges from these sections is that whenever there is inter-State 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 clauses (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 clauses (a), (b) and (d), and “intra-State” in 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.**

...  
26. 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.**

16. Article 6.5.5 of the PSAs dated 24.11.2017 and 23.03.2018 stipulates as under:

**6.5.5. SECI/WPD shall have the right to divert the Wind Power or part thereof and sell it to any third party namely;**

- i) Any consumer, subject to applicable Law; or
- ii) Any licensee under the Act;

*SECI shall request the concerned SLDC/RLDC to divert such power to third party as it may consider appropriate.*

17. We note that Section 79(1)(b) of the Electricity Act, 2003, fastens jurisdiction on this Commission to adjudicate upon matters having a composite scheme for the purchase and sale of electricity. We observe that the Hon’ble Supreme Court has held that the expression “composite scheme” does not mean anything more than a scheme for the generation and sale of electricity in more than one State. In a composite scheme, it is enough that a scheme for the generation and sale of electricity must be in more than one state. In the instant petition, we observe that projects selected under the JNNSM scheme are set up in the state of Gujarat and are supplying electricity (550 MW) through SECI. Further, SECI has two PSAs (350MW) with PSPCL. As per submissions from SECI, it is supplying 300MW to PSPCL under PSA, and the balance of 250MW has been mapped to other states. Further, as per the PPA, SECI has the right to divert the solar power or part thereof and sell it to any third party. We further observe that Article 6.5.5 of the PSA dated 24.11.2017 and 23.03.2018 gives SECI the right to divert the wind power or part thereof and sell it to any third party. Accordingly, we hold that as the purchase and sale of electricity is in more than one state, the

projects have a *composite scheme* and will be governed by this Commission under Section 79 (1)(f) read with Section 79(1)(b) of the Electricity Act.

18. The issue is decided accordingly.

**Re: Issue No. II:**

***Whether the Respondent should be directed to pay:***

- a) outstanding principal amount of Rs. 2,79,74,062/- along with LPS for the ‘wind power’ supplied for the period from 01.04.2020 to 07.04.2020 in terms of the PSAs dated 24.11.2017 and 23.3.2018;***
- b) balance LPS for the ‘solar power’ supplied for the period from 01.04.2020 to 07.04.2020 in terms of the PSAs dated 31.03.2015; and***
- c) applicable LPS for delayed payment of invoices for period 08.04.2020 to 30.04.2020 for wind and solar power in terms of the PSAs dated 24.11.2017, 23.03.2018 and 31.03.2015.***

19. SECI has submitted as under:

- a) On 06.05.2020 and 09.05.2020, SECI issued invoices for the month of April, 2020 for the wind power and solar power respectively supplied to PSPCL for the period 01.04.2020 to 30.04.2020. The due date for payment of invoices with respect to ‘solar power’ was 08.06.2020, and ‘wind power’ was 05.06.2020 as per the terms of the PSAs. In pursuance of the Order dated 24.09.2021 of PSERC on 18.01.2022, PSPCL has paid an amount of Rs. 64,96,201 to SECI pertaining to the principal amount outstanding for ‘solar power’ supplied by SECI during the period from 01.04.2020 to 07.04.2020 in terms of PSA dated 31.03.2015. However, PSPCL has failed to pay the amount withheld from invoices dated 06.05.2020 and 09.05.2020. PSPCL has not paid the applicable late payment surcharge (LPS) with respect to solar power supplied in terms of the PSA dated 31.03.2015. In the annual reconciliation statements signed by PSPCL and SECI, the amount against wind power and solar power supplied during the period from 01.04.2020 to 07.04.2020 is shown under the heading ‘Details of Outstanding Amount’. PSPCL has not paid the amount withheld with regard to (a) the invoices along with LPS in respect of PSAs dated 24.11.2017 and 23.03.2018 for wind power and (b) LPS in respect of PSA dated 31.03.2015 for solar power, which is the subject-matter of the present petition.
- d) PSPCL has no valid right to withhold the amount due to SECI. The claim made by PSPCL in its Notices dated 30.03.2020 to SECI for curtailment of wind power and

solar power from the projects on account of the outbreak of COVID-19 is not tenable in view of the Office Memorandum dated 01.04.2020 and 04.04.2020.

- e) The wind power projects and solar power projects having 'Must Run' status can be curtailed by RLDC/SLDC only on consideration of grid security or the safety of any equipment or personnel. The grounds for curtailment of wind power and solar power by PSPCL, as stated in its notices dated 30.03.2020, namely the existence of force majeure on account of COVID-19 or load crashes, do not fall within the scope of the said exceptions.
- f) The PSERC, in the Order dated 24.09.2021 in Petition No.21 of 2021, has dealt with a similar issue, namely the curtailment of solar power by PSPCL from 01.04.2020 to 07.04.2020 claiming the existence of Force Majeure on account of COVID-19 and has rejected the claim of PSPCL. PSPCL, having remitted the amount of Rs.64,96,201 pertaining to the principal amount outstanding for solar power supplied by SECI in terms of PSA dated 31.03.2015 during the period 01.04.2020 to 07.04.2020 in pursuance of Order dated 24.09.2021 of PSERC cannot withhold the amount in respect of:
- i. *Outstanding Principal amount along with applicable Late Payment Surcharge for the wind power supplied by SECI from 01.04.2020 to 07.04.2020 in terms of PSAs dated 24.11.2017 and 23.03.2018; and*
  - ii. *the applicable late payment surcharge (as per the calculation sheet annexed herewith as Annexure N) for the solar power supplied by SECI from 01.04.2020 to 07.04.2020 in terms of PSAs dated 31.03.2015.*
- g) The wind power and solar power were scheduled during the period from 01.04.2020 to 07.04.2020 under the PSAs dated 24.11.2017, 23.03.2018, and 31.03.2015 and utilized by the PSPCL to meet its demand requirements. The power having been scheduled for the said period, PSPCL is obligated to pay for the same as per the provisions of the PSAs. In the circumstances, it cannot be claimed that PSPCL was wholly or partly prevented from performing its obligations under the PSAs on account of COVID-19 as an excuse for making deductions in the payment of the invoice for April 2020.

20. PSPCL has submitted as under:

- a) When the Respondent suffered a force majeure event, it was excused from the obligation to buy the entire power generated during the period a force majeure event continued. If any power was injected during the period of force majeure, the same did not fall within the contractual bindings under the PSAs, and consequently, the Respondent was not obligated to pay any tariff for the same.
- b) In the wake of the consequent declaration of lockdown in the state, there was a sudden decline/dip in the electricity demand due to the closure of industries, commercial establishments, offices, etc., which forced the Respondent to curtail its power purchase/generation.
- c) On account of the force majeure occurrence as stated in the force majeure notice dated 30.3.2020, the Respondent was not liable to pay for the energy unilaterally injected under the Petitioner's PSA for the curtailment period from 01.04.2020 to 07.04.2020.
- d) SECI has placed selective reliance on the Orders passed by the PSERC to claim the amounts deducted under the energy bills for the power injected by the wind power projects during the curtailment period. In the subsequent Order, there is a categorical finding that the COVID-19 lockdown was a force majeure event, which drastically brought down the energy generation/procurement requirements of the Respondent. If the force majeure notice dated 30.03.2020 issued to SECI is seen in light of this finding, then SECI's denial of the same, followed by a unilateral injection of power during the curtailment period, cannot be sustained. SECI must sink or swim with both the Orders of the PSERC. SECI has sought to wrongly assert its 'Must Run' status to claim a first right to supply for the reduced power demand, which is clearly impermissible. The reliance of the Petitioner upon the provisions of clauses 5.2(a) and 6.5(11) and (13) of the *Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010* (IEGC Regulations, 2010) to contend that supply of power from the solar/wind projects from whom power is being supplied by the Petitioner to the Respondent being 'must run' can never be curtailed by the Respondent, is wholly misplaced. That being so, the SECI's claim for the amount deducted during the curtailment period for the injection of wind power under the PSAs is not sustainable and is liable to be rejected by this Commission.

21. We observe that the Section 5.2 (u) and 6.5 (11) of the *IEGC, Regulations 2010* provide as indicated below:

**“5.2 System Security Aspects**

.....

*(u) Special requirements for Solar/ wind generators*

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

.....

**6.5 Scheduling and Despatch procedure for long-term access, Medium – term and short-term open access**

.....

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

22. Article 10.3.3 of the PPA dated 02.01.2018 and 23.05.2018 stipulates as under:

*10.3.3. Late Payment Surcharge*

*In the event of delay in payment of a Monthly Bill/Supplementary Bill by Buyer within thirty (30) days beyond its Due Date, a Late Payment Surcharge shall be payable to the WPD at the rate of 1.5% per month on the outstanding amount calculated on a day to day basis subject to such late payment is duly received by the Buyer under the PSA. The Late Payment Surcharge shall be claimed by WPD through the Supplementary Bill.*

23. Article 6.3.3 of the PSAs dated 24.11.2017 and 23.03.2018 stipulates as under:

*6.3.3. Late Payment Surcharge*

*In the event of delay in payment of a Monthly Bill/Supplementary Bill by Buying Entity within thirty (30) days beyond its Due Date, a Late Payment Surcharge shall be payable by the Buying Entity to SECI at the rate of 1.5% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by SECI through the Supplementary Bill.*

24. We also observe that in Petitioner No 21/2021 filed by one Solar Power Developer Association, PSERC, vide its Order dated 24.09.2021, has held as under:

*“7. Observations and Decision of the Commission*

.....

*7.1 Curtailment Notices issued by PSPCL for curtailing solar power during the period from 01.04.2020 to 07.04.2020:*

.....

The Commission observes that, the terms and conditions of the PPAs specifies that, If any party is wholly or partially prevented from performing any of its obligations under this Agreement by reason of or on account of force majeure event(s) including epidemics, the order(s) of any civil authority etc., then such party shall be excused of its obligations/ liabilities under this Agreement and shall not be liable for any damage, sanction or loss resulting there from to the other party.

There are no two opinions regarding the issue of Covid-19 being an epidemic and declaration of lockdown by the Government to control the same. The petitioner has also admitted to the same in its submissions. However, to absolve either of the party from performing its obligations under the Agreement, it needs to be established that the party has been wholly or partially prevented from performing its obligations under the Agreement on account of such event(s). The Commission is of the view that notwithstanding that it was a force majeure event, the terms and conditions of PPAs needs to be read in conjunction with the provisions of the State Grid Code Regulations (SGC), which specifies as hereunder:

*“5.4 Special requirements for Solar/ wind generators 5.4.1 System operator (SLDC) shall make all efforts to evacuate the available solar and wind power and treat as a must-run station. However, System operator may instruct the solar /wind generator to back down generation on consideration of grid security or safety of any equipment or personnel is endangered and Solar/ wind generator shall comply with the same. ....”*

**As is evident, solar power having a ‘must-run’ status can be curtailed by the System operator (SLDC) only on consideration of grid security or safety of any equipment or personnel. The Commission observes that the SLDC has not indicated any such eventuality in its notice to the generators.**

Further, the Commission observes that PSPCL had served curtailment notices to the generators indicating load crash in its system, which is defined in the State Grid Code as under:

*“Sudden or rapid reduction of electrical load connected to a system that could be caused due to tripping of major transmission line(s), feeder(s), power transformer(s) or natural causes like rain etc.”*

To examine the matter, the Commission referred to the data submitted by the petitioner, which has not been contested by PSPCL. It indicates that, the peak/off-peak demand of PSPCL changed from 4932/3278 MW on 21.03.2020 to 3867/2318 MW on 22/23.03.2020 i.e. on the first day of declaration of Covid lockdown and thereafter the average peak/off-peak demand was about 3000/1800 MW upto 31.03.2020. **This indicates that there was a reduction in the demand of PSPCL, on account of shutdown of the commercial and Industrial establishments, upon declaration of the lockdown by the State Government to prevent spread of Covid epidemic. However, the same cannot be technically termed a load crash as per the definition contained in the State Grid Code.**

After the initial reaction and thereafter due to clarity about the sectors exempted from lock down, the average peak/ off-peak demand of PSPCL picked up slightly and was observed to be about 3400/ 2000MW during the curtailment period of 01.04.2020 to 07.04.2020. PSPCL, however opted for curtailment of solar power while continuing drawl of power from the conventional energy sources, ignoring the ‘Must-Run’ status accorded to solar power under the State Grid Code.

**Thus, the Commission is of the view that PSPCL’s unilateral action of curtailing solar power during the period of 01.04.2020 to 07.04.2020 is unjustified.”**



*“7.2 Payment for the energy injected by the Solar Developers during the Curtailment period of 01.04.2020 to 07.04.2020:  
It has been submitted by the petitioner that, most of the solar developers continued to inject the solar power in the PSPCL’s system during the period of curtailment, which was received and sold by PSPCL, for commercial gains.*

**The Commission is of the view that, the curtailment of solar power by PSPCL during the period from 01.04.2020 to 07.04.2020 has been held to be unjustified in the above para. Moreover, the said power injected into its system had been utilised by PSPCL to meet its demand requirements. Accordingly, PSPCL is required to make the payments for the same, along with the late payment surcharge as may be applicable, as per the provisions of the PPA.”**

25. We observe that the provisions of Regulations 5.2 (u) and 6.5 (11) of the IEGC, Regulations 2010, stipulate that solar and wind energy power plants shall be treated as ‘must run’ power plants and will not be subjected to ‘merit order despatch’ principles. SLDCs/RLDCs are to make all efforts to evacuate the available power so generated. However, the system operator can instruct the solar /wind generator to back down generation on consideration of grid security or the safety of any equipment or personnel that is endangered.
26. In the instant petition, we note that SECI is seeking (i) an outstanding principal amount of Rs. 2,79,74,062/- along with LPS for the ‘wind power’ supplied for the period from 01.04.2020 to 07.04.2020 in terms of the PSAs dated 24.11.2017 and 23.3.2018 and (ii) balance LPS for the ‘solar power’ supplied for the period from 01.04.2020 to 07.04.2020 in terms of the PSAs dated 31.03.2015 (iii) applicable LPS for delayed payment of invoices for period 08.04.2020 to 30.04.2020 for wind and solar power in terms of the PSAs dated 24.11.2017, 23.03.2018 and 31.03.2015.

**Re: Outstanding principal amount of Rs. 2,79,74,062/- along with LPS for the ‘wind power’ supplied for the period from 01.04.2020 to 07.04.2020**

27. We observe that SECI issued invoices on 06.05.2020 and 09.05.2020 for the period 01.04.2020 to 30.04.2020 for the wind power and solar power, respectively, supplied to PSPCL. The due dates for paying the invoices were 08.06.2020 (with respect to solar power) and 05.06.2020 (with respect to wind power). As per the documents submitted by SECI, PSPCL paid Rs. 64,96,202/- to SECI on 18.01.2022 towards the amount deducted from the invoice for April 2020 for the 30 MW solar power being drawn by it under the PSA dated 31.03.2015 and after reconciliation PSPCL paid the LPS amount of Rs. 14,89,677/- on 20.06.2023. However, PSPCL withheld an amount (invoice amount for wind power along



with LPS and balance LPS for solar power) from invoices dated 06.05.2020 and 09.05.2020. We note that PSPCL has submitted that due to the force majeure event qua COVID-19, it was not obligated to buy the entire power generated and supplied by SECI. Further, if power was injected during the period of force majeure, the same did not fall within the purview of the PSAs, and PSPCL was not obligated to pay any tariff for the same.

28. We are of the view that, as per the IEGC Regulations 2010 solar and wind energy power plants are treated as 'must run' power plants, and all efforts are to be made to evacuate the available power so generated. The system operator can instruct the solar /wind generator to back down generation on consideration of grid security or the safety of any equipment or personnel that is endangered. We note that though PSPCL had issued the force majeure notice to SECI, it continued to schedule power from 01.04.2020 to 07.04.2020 and thereafter. Having scheduled the power, PSPCL cannot now say that the injection of power was without its consent. Therefore, we are of the view that PSPCL shall pay the applicable tariff to the SECI. We note that PSERC, vide its Order dated 24.09.2021 inter-alia, held that the power injected into its system (for the period 01.04.2020 to 07.04.2020) had been utilised by PSPCL to meet its demand requirements and PSPCL's unilateral action of curtailing solar power during the period 01.04.2020 to 07.04.2020 is unjustified. Accordingly, PSERC directed PSPCL to make the payments for the same, along with the late payment surcharge as may be applicable, as per the provisions of the PPA. We note that subsequent to the above judgement of PSERC, PSPCL has made payment to SECI for the energy supplied between 01.04.2020 and 07.04.2020 from a 'solar' generation source under the PSA dated 31.03.2015.

29. We observe that under Regulation 6.5 (11) of the *IEGC Regulations, 2010*, wind generation also enjoys the same 'Must Run Status' as solar. Thus, the extension of the PSERC Order dated 24.9.2021 to other similar plants enjoying 'Must Run Status' is a natural corollary. Further, entities enjoying the same dispensation cannot be treated differently. Thus, PSPCL cannot be absolved from payment of energy supplied by wind power during the period 01.04.2020 to 07.04.2020. In view of the above discussion, we hold that PSPCL shall pay SECI for the energy supplied from the wind projects during the period from 01.04.2020 to 07.04.2020 along with LPS in terms of the relevant PSAs read with PPAs.

***Re. Balance LPS for the 'solar power' supplied for the period from 01.04.2020 to 07.04.2020 AND applicable LPS for delayed payment of invoices for period 08.04.2020 to 30.04.2020 for 'wind' and 'solar' power***

30. We note that the due date for the payment of invoices for 'solar' power was 08.06.2020, and the due date for payment of invoices for 'wind' power was 05.06.2020. The Late Payment Surcharge was applicable from 08.07.2020 for the invoices of 'solar' power and from 05.07.2020 for the invoices of 'wind' power. PSPCL, vide its email dated 11.08.2020 to SECI, stated that the energy bills submitted for the month of April 2020 have been verified for the energy supplied to PSPCL from 08.04.2020 to 30.04.2020. SECI, vide letters dated 24.08.2020, 18.03.2021, and 01.12.2021, repeatedly requested that PSPCL pay the amounts deducted (along with the applicable late payment surcharge) by PSPCL for the 'solar' and 'wind' power supplied by SECI from 01.04.2020 to 07.04.2020 to PSPCL and consumed by PSPCL. On 01.12.2021, pursuant to the PSERC Order dated 24.09.2021, SECI again requested PSPCL to pay the outstanding amount for the power supplied from 01.04.2020 to 07.04.2020. On 18.01.2022, PSPCL finally paid the amount of Rs. 64,96,201 to SECI pertaining to the principal amount outstanding for solar power only (for the period 01.04.2020 to 07.04.2020).
31. SECI, vide its Rejoinder dated 01.09.2023, has placed on record the computation with regard to balance payments to be made to SECI, including LPS for 'solar' power for the period from 01.04.2020 to 07.04.2020 and LPS for the delayed payment of invoices for the period 08.04.2020 to 30.04.2020 for 'wind' and 'solar' power. We note that the computation has not been challenged by PSPCL.
32. We note that Article 10.3.3 of the PPA dated 02.01.2018 and 23.05.2018 and Article 6.3.3 of the PSAs dated 24.11.2017 and 23.03.2018 stipulate that *in the event of delay in payment of a Monthly Bill/Supplementary Bill, (30) days beyond its Due Date, a Late Payment Surcharge shall be payable at the rate of 1.5% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by SECI through the Supplementary Bill.* In view of the above, PSPCL is directed to pay SECI on account of LPS in terms of the relevant provision of PSA for the delay in payment made for the energy supplied from the solar projects from 01.04.2020 to 07.04.2020 and LPS in terms of the

relevant provision of PSA for the delay in payment made for the energy supplied from the wind and solar projects from 08.04.2020 to 30.04.2020.

33. The issue is decided accordingly.

34. Petition No. 22/MP/2023 is disposed of in terms of the above.

Sd/-  
पी. के. सिंह  
सदस्य

Sd/-  
अरुण गोयल  
सदस्य

Sd/-  
आई. एस. झा  
सदस्य

Sd/-  
जिष्णु बरुआ  
अध्यक्ष