



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 196/MP/2024

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री रमेश बाबू वी., सदस्य/Shri Ramesh Babu V., Member
श्री हरीश दुदानी, सदस्य/Shri Harish Dudani, Member

आदेश दिनांक/ Date of Order: 24th of March, 2025

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 and Regulations 1.5(iv), 5.2(u) and 6.5(11) of the CERC (Indian Electricity Grid Code) Regulations, 2010 read with Regulations 49(1)(f)(iii), 49(3)(a)(A)(ii)(III), 49(3)(a)(A)(iii)(II) and 56(k) of the CERC (Indian Electricity Grid Code) Regulations, 2023 and Rule 3 of the Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021 seeking directions to State Load Dispatch Centre to implement the Must Run status accorded to the Petitioner's Solar Power Project in letter and spirit and to compensate the Petitioner for generation loss for unlawful and arbitrary curtailment of generation from Petitioner's Solar Project.

AND IN THE MATTER OF:

1. Solairepro Urja Private Limited

504 & 505, 05th Floor, Windsor,
Off CST Road, Kalina, Santacruz (East),
Mumbai – 400098

...Petitioner

Versus

1. Andhra Pradesh State Load Despatch Centre

Through its Chief Engineer

3rd Floor, APSLDC Building
Vidyut Soudha, Gunadala, Elum Rd,
Vijayawada, Andhra Pradesh – 520004

2. NTPC Limited

Through its Chairman & Managing Director
NTPC Bhawan, Scope Complex, 7,
Institutional Area, Lodhi Road,
New Delhi – 110003

3. NTPC Vidyut Vyapar Nigam Ltd.

2nd Floor, Core-5, Scope Complex, 7,
Lodi Road, Institutional Area,
New Delhi – 110003

**4. Eastern Power Distribution Company of
Andhra Pradesh Limited**

Through its Chairman & Managing Director
P&T Colony, Seethammadhara,
Vishakhapatnam,
Andhra Pradesh – 530013

**5. Southern Power Distribution Company of
Andhra Pradesh Limited**

Through its Chairman & Managing Director
19-13-65/A, Srinivasapuram,
Tiruchanoor Road, Tirupathi,
Chittoor District, Andhra Pradesh – 517503

6. Transmission Corporation of Andhra Pradesh Limited

Through its Chairman & Managing Director,
Vidyut Soudha, Gunadala, Eluru Rd,
Vijayawada, Andhra Pradesh – 520004

7. Andhra Pradesh Solar Power Corporation Private Limited

Through its Authorized Representative,
3rd Floor, Vidyut Soudha, Gunadala
Vijayawada, Andhra Pradesh – 522501

...Respondents

Parties Present:

Shri Vishrov Mukerjee, Advocate, SUPL
Shri Pratyush Singh, Advocate, SUPL

आदेश / ORDER

The Petitioner, SPUPL, is a generating company that owns and operates a 250 MW Solar Power Project located in the 1000 MW Kadapa Ultra Mega Solar Park in Kadapa District, Andhra Pradesh. The Petitioner, in the instant petition, is seeking to direct the State Load Dispatch Centre to implement the Must Run status accorded to the Petitioner's Solar Power Project in letter and spirit and to compensate the Petitioner for generation loss for unlawful and arbitrary curtailment of generation from Petitioner's Solar Project.

2. Respondent No.1, Andhra Pradesh State Load Despatch Centre (APSLDC), is the State Load Despatch Centre established by the State of Andhra Pradesh in terms of Section 31 of the Act. APSLDC is responsible for the integrated operation of the power system in Andhra Pradesh in terms of Section 33 of the Act. Further, APSLDC is responsible for carrying out *inter alia* real-time operations for grid control and dispatch of power in the State of Andhra Pradesh through secure and economic operation of the State grid in accordance with the IEGC and the AP Grid Code.
3. Respondent No.2, NTPC Ltd. (NTPC), is an Indian government-owned electric utility company and is engaged in the business of purchase and sale of electricity and allied activities. The Power Purchase Agreement (PPA) dated 07.02.2018 has been executed between SPUPL and NTPC for the purchase of 250 MW of solar power from the Project.
4. Respondent No.3, NTPC Vidyut Vyapar Nigam Ltd. (NVVN), is a trading licensee. In terms of the PPA dated 07.02.2018, NVVN will purchase power from SPUPL on behalf of NTPC and sell it to AP Discoms after bundling it with unallocated thermal power.
5. Respondent No.4, Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL), is a distribution licensee in terms of Section 2 (17) of the Act and is engaged in the business of distribution of electricity in its respective area of operation in the State of Andhra Pradesh. Under the Power Sale Agreement dated 11.12.2017 executed between NTPC and AP Discoms, NVVN

will purchase power from the Solar Power Developer, i.e., SPUPL, on behalf of NTPC and sell it to AP Discoms.

6. Respondent No.5, Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL), is a distribution licensee in terms of Section 2(17) of the Act and is engaged in the business of distribution of electricity in its respective area of operation in the State of Andhra Pradesh. NTPC and APSPDCL executed a Power Sale Agreement on 11.12.2017 for the sale of bundled power of up to 250 MW capacity by NTPC to AP Discoms.
7. Respondent No.6, Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) is the electricity transmission company of the Government of Andhra Pradesh.
8. Respondent No.7, Andhra Pradesh Solar Power Corporation Private Limited (APSPCL), is the designated Solar Power Park Developer (SPPD) for the facilitation and implementation of the Kadapa Ultra Mega Power Solar Park, to be developed at Mylavaram Mandal of Kadapa District in Andhra Pradesh.
9. The Petitioner has made the following prayers:
 - a) *Direct APSLDC to stop issuing arbitrary back-down instructions to SPUPL's Project forthwith being in violation of the 'Must Run' status and permit SPUPL to inject power at full capacity;*
 - b) *Direct Respondent No.1, APSLDC, Respondent No.4, APEPDCL and Respondent No.5, APSPDCL to make payment of Rs. 7,96,96,878/-, along with LPS at the rate of 1.25% per month amounting to Rs. 2,68,95,442/-, to SPUPL towards generation loss on account of issuance of instructions to curtail / back down generation of power at its Project from 18.01.2020 to January 2024 by APSLDC, at the behest of APEPDCL and APSPDCL;*
 - c) *Direct Respondent No.1, APSLDC to pay deemed generation at the PPA Tariff to the Petitioner for curtailment being done for reasons other than those of grid security;*
 - d) *Direct the Respondents to pay the cost of the present litigation;*
 - e) *In the interim, direct that no curtailment directions are issued by APSLDC, contrary to law, during the pendency of the present Petition*
 - f) *Pass such order(s) as this Hon'ble Commission may deem fit and proper in facts and circumstances of the present case.*

Factual matrix:

10. The brief details of the Petition are as under:

Particulars	Date
The Government of India launched the Jawaharlal Nehru National Solar Mission (JNNSM)	11.01.2010
NTPC issued a Request for Selection (RFS) for setting up of projects of aggregate capacity of 3000 MW through an e-bidding process based on Guidelines for Selection of Grid Connected Solar PV Projects under Batch II Tranche I of National Solar Mission Phase II State Specific Bundling Scheme (“ National Solar Mission ”) issued by MNRE	27.10.2016
NTPC executed a Power Sale Agreement (“ PSA ”) with AP Discoms for the sale of power generated from the Project	11.12.2017
Letter of Intent (LoI) issued by NTPC in favour of SEIPL for the development of the Project. Pursuant to the LOI, SEIPL incorporated SPUPL as the Special Purpose Vehicle to execute the Project.	11.12.2017
Petitioner (Solairepro Urja Pvt. Ltd.) entered into PPA with NTPC for the supply of 250 MW power from SPUPL’s Project for a period of 25 years at a levelized tariff of Rs. 3.15 / unit	07.02.2018
Petition No. 592/MP/2020 filed by SPUPL was admitted by the Commission	11.11.2021
SPUPL and APSCL executed the Land Lease Agreements (LLA)	18.02.2021
The Petitioner wrote to NTPC with reference to the verbal/written backdown instructions issued by NTPC from June, 2019 to till date to the Petitioners’ solar power projects.	04.10.2019
NTPC issued a Letter of Intent (“ LOI ”) in favour of SEIPL for the development of the Project	11.12.2017
MNRE issued a letter stating that 'Must Run' status has been accorded to Renewable Energy, i.e., solar and wind power as per IEGC and various State Grid Codes/Regulations under the Act.	01.08.2019
MNRE issued an amendment to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects.	22.10.2019

11. The solar power projects of the Petitioners were commissioned in the following manner:

S. No.	PPA	Capacity (MW)	Location in Karnataka	Commercial Operation Date (COD)
1	07.02.2018	200	Kadapa District	03.05.2019
2	07.02.2018	50	Kadapa District	08.02.2020

12. The instant petition was filed on 23.04.2024. The hearing was conducted on 07.10.2024, wherein the Commission, after hearing the Petitioner, admitted the Petition. The hearing was thereafter held on 06.11.2024, wherein Respondent No.’s 1 & 4-7 submitted that an identical matter, Petition No. 592/MP/2020 involving the same parties, had been deferred

due to an interim stay by the Hon'ble High Court of Andhra Pradesh in WP No. 28245 of 2021 vide order date 1.12.2021 in connection with Petition No. 342/MP/2019 (Prayatna Developers Pvt. Ltd. v. AP SLDC and Ors.), which concerned similar matter. In response, the Petitioner submitted that Petition No. 592/MP/2020 pertains to the period of illegal and arbitrary curtailment and the consequent loss of generation from July 2019 to 17.1.2020. However, since curtailment continued beyond this period, the Petitioner filed the present Petition for the subsequent period, i.e., from 18.1.2020 onwards. After hearing both parties, the Commission permitted them to file their respective submissions. The matter was again listed for hearing on 26.12.2024, wherein the Respondents reiterated their argument that the Commission may not be able to proceed until the stay is vacated by the Hon'ble High Court. They further contended that discussions on the merits of the case could not take place until the issue of jurisdiction was decided. The Petitioner submitted that the interim stay granted by the Hon'ble High Court of Andhra Pradesh dated 1.12.2021 in WP No. 28245 of 2021 cannot apply to the present case, as the Hon'ble High Court had only stayed proceedings in Petition No. 342/MP/2019. The Petitioner argued that the issue involved in Petition No. 342/MP/2019 was with respect to the interpretation of provisions of IEGC, whereas the present Petition relates to the provisions for tariff-related issues. After hearing the arguments/submissions made by the parties at length, the Commission reserved the matter for order.

Analysis and Decision

13. We have considered the submissions of the Petitioner and the Respondents perused the documents on record, and considered the submissions made by the parties.
14. We observe that the Petitioner, Solairepro Urja Pvt. Ltd. (SUPL), had filed Petition No. 592/MP/2020 on 28.07.2020, raising issues identical to those in the present petition, for the period July 2019 to 17.01.2020. In the said petition, the Petitioner sought directions against the Respondent, APSLDC, restraining it from issuing backing down instructions for power generated from renewable sources and seeking compensation on account of deemed generation. The reliefs sought by the Petitioner therein were as follows:
 - (i) *Direct the Respondent No. 1 and Respondent No. 2 to strictly enforce/implement the MUST RUN status accorded to the Petitioner's Solar Project in letter and spirit;*
 - (ii) *Direct the Respondent No. 1 that the backing down of the Petitioner's Solar Project having MUST RUN status, can be resorted to only after exhausting all other possible means of*

achieving and ensuring grid stability and reliable power supply;

- (iii) Declare that all directions issued by the Respondent No. 1 to the Petitioner's Solar Project to back down generation as recorded in Annexure P/6 herein, including the directions issued during the period when power was procured and scheduled from /EX/STOA, are arbitrary and illegal;*
- (iv) Direct the Respondent No. 1 to compensate the Petitioner for the loss incurred by the Petitioner on account of the illegal backing down instructions, by way of making payment for the loss of generation as specified in paragraph 86 above, along with interest; and*
- (v) Award costs of these proceedings against the Respondent and in favor of the Petitioner.*

15. This Commission, vide order dated 21.03.2023 in Petition No. 592/MP/2020, held as under:

*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.

16. The Hon'ble High Court, vide order dated 01.12.2021 in W.P No. 28245 of 2021 in Petition No. 342/MP/2019, Prayatna Developer Private Ltd. v. APSLDC & Ors, held as under:

"In the considered opinion of this Court, all these issues raised by the learned Advocate General are required to be examined after filing counter-affidavits by the respondents and this Court finds prima facie case in favor of the Petitioners herein.

*In View of the above reasons, **there shall be interim stay of all further proceedings in Petition No. 342/MP/2019 on the file of Central Electricity Regulatory Commission- first respondent herein, pending further orders.**"*

17. During the course of the hearing on 25.04.2023, SUPL submitted that the interim stay granted by the Hon'ble High Court of Andhra Pradesh dated 01.12.2021 in WP No. 28245 of 2021 cannot apply to the present case, as the Hon'ble High Court had only stayed proceedings in Petition No. 342/MP/2019. SUPL argued that the issue involved in Petition No. 342/MP/2019 was with respect to the interpretation of provisions of IEGC, whereas the present Petition relates to the provisions for tariff-related issues.

18. Petition No. 342/MP/2019 was filed by the Solar Power Developer - Prayatna Developers Pvt. Ltd. against APSLDC, seeking enforcement of the 'Must Run' status accorded to the Petitioner's solar power project. The Petitioner further prayed for directions restraining the

Respondents from issuing back-down instructions and for consideration of deemed generation charges for the loss of generation incurred due to such back-down instructions.

The reliefs sought by the Petitioner are as follows:

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

19. In view of the above observations and findings, it is evident that Petition No. 592/MP/2020 and the instant Petition, i.e., 196/MP/2024, involve the same parties and seek identical reliefs. Further, from the reading of the reliefs sought in Petition No. 342/MP/2019, it is apparent that the issues raised therein also bear substantial similarity to the issues raised in the aforementioned petitions.

20. It is noted that the proceedings in Petition No. 592/MP/2020 were deferred in light of the interim stay granted by the Hon’ble High Court of Andhra Pradesh in W.P. No. 28245 of 2021, which stayed the proceedings in Petition No. 342/MP/2019. Given that the present Petition is similar in nature and involves the same set of issues, judicial propriety demands similar treatment in both cases. Accordingly, the Commission decides to defer the proceedings in the instant petition until the stay on Petition No. 342/MP/2019 is vacated.

21. The parties are at liberty to approach the Commission upon the vacation of the stay granted by the Hon’ble High Court of Andhra Pradesh in W.P. No. 28245 of 2021.

22. Petition No. 196/MP/2024 is adjourned sine die to be taken up on application of either of the parties on vacation of stay as per Paragraph 21 above.

Sd/-
हरीश दुदानी
सदस्य

Sd/-
रमेश बाबू वी.
सदस्य

Sd/-
जिष्णु बरुआ
अध्यक्ष