



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P. No.14 of 2010

Dated 15.04.2013

Present

Sri A.Raghotham Rao, Chairman
Sri C.R.Sekhar Reddy, Member
Sri R.Ashoka Chari, Member

Between:

A.P. State Load Despatch Centre (APSLDC) through APTRANSCO

... Petitioner

AND

M/s. GVK Power & Infrastructure Ltd (Phase - II)

...Respondent

This petition has come up for hearing on 05.01.2013 in the presence of Sri P.Shiva Rao, Advocate for the petitioner and Sri L.Venkateswara Rao, Advocate for the respondent, the Commission passed the following:

ORDER

The Petition filed by the above said petitioner u/s 33 r/w Section 143 & 144 of the Electricity Act, 2003 in the matter of Non-compliance of backing down instructions of APSLDC by the Independent Power Producers (IPPs) during the period from June 2007 to May 2010.

2. The averments of the petition are briefly shown hereunder.

- i) The petitioner is the A.P. State Load Despatch Centre (APSLDC), Hyderabad. But since no separate company is incorporated and since the same is being managed by APTRANSCO, as per G.O.Ms. No. 8 Energy (PR-III dt. 17.01.2004 and as per the provision under Section 31 (2) of the Electricity Act, 2003, this petition is filed through APTRANSCO.

- ii) Generating Stations, Licensees or any other person using the State grid has to comply with the instructions of APSLDC. Section 32 (2) of Electricity Act, 2003 enumerates the functions of the State Load Despatch Centre.
- iii) In the interest of system security, SLDC shall have full control for real time operations of power system and SLDC shall issue suitable instructions to any Generating Company Station or Licensee or User of safe grid operation, according to the provisions in Grid Code. Any User experiencing difficulty in complying with the instructions issued by SLDC, shall promptly report such difficulty to SLDC and take remedial action as directed by SLDC and in case of repeated non compliance with the SLDC instructions, the SLDC will take appropriate action according to Grid Code for ensuring the security of the system. In preparation of the despatch schedule, SLDC shall take into account, the priority of the Generation Stations provided by the Distribution Licensees keeping in mind the technical constraints. SLDC also prepares the day ahead generation schedule.
- iv) SLDC may also require Generating Companies as well as the IPPs and Generating Stations owned by the Distribution Licensee to generate MVAR within their respective capability limit to maintain station bus voltages within the specified band of maximum and minimum. And in turn, the Generating Companies shall promptly report to SLDC regarding changes of Generating Unit availability or capability, or any unexpected situation, which would affect its operation.
- v) With respect to frequency management, the SLDC shall endeavour to run the system within the frequency band stipulated by CERC from time to time (49.0 to 50.5 Hz upto 31.03.2009, 49.2 to 50.3 Hz upto 02.05.2010 and 49.5 to 50.2 Hz from 03.05.2010 onwards. In other words it is the endeavour of SLDC to check generation scheduling vis-à-vis actual generation and request concerned generating companies as well as the IPPs and generating stations owned by the distribution licensees to conform to generation schedule, under normal frequency and load conditions. In case, the frequency is in rising trend and expected to raise above the maximum threshold level of the frequency

band stipulated by CERC, the SLDC gives generation backing down instructions to all the generating units as well as IPPs and generating units owned by licensee to back down generation upto required level in order to contain the raise in frequency beyond the maximum limit. In the backing down instructions, the SLDC requests the generator to reduce generation as per the technical backing down limits as the quantity of generation is to be reduced by the generator on backing down instruction which is already agreed upon in the PPA in the respective PPAs of the generators. Reduction of generation through backing down is instructed by SLDC as per the Merit Order with the highest variable cost generator to reduce the generation and goes upto the least variable cost in the descending order of the variable cost of generation, as per the grid parameters to maintain the frequency within the stipulated band. Thus the quantity of generation as requested by the SLDC in the backing down instructions is to be reduced by the generator for frequency control for safe and secure grid operation.

- vi) In order to ensure grid discipline, all generating companies and IPPs as well as generating stations owned by licensee and the licensees and users shall comply promptly with despatch instructions issued by SLDC unless such instruction affect the safety of plant or personnel. They shall promptly inform SLDC in the event of any unforeseen difficulties in complying with an instruction. Wrong declaration of capacity, non-compliance of SLDC's instructions for backing down without adequate valid reasons, non-furnishing of data etc., shall constitute non-compliance of grid code and shall be subject to financial penalty as may be decided by the Commission.
- vii) In the present case, the petitioner has issued backing down instructions on several instances, which were not complied by the respondent. The reasons stated by the respondent for non-compliance of the generation backing instructions, given by the respondent are far from truth and are untenable at law. Thus there exists a dispute.
- viii) The SLDC backing down instructions to reduce generation were not complied by the respondent and other generators viz., M/s. GVK Gauthami Power Ltd and M/s.GVK Power & Infrastructure Ltd (Stage -

- l). Thus to control the increase in frequency, for safe grid operation, the generation of other generators having lesser variable cost of generation were instructed to reduce generation (back down) for the power system safety and security. This inaction by the above mentioned generators resulted in (i) non compliance of SLDC instructions and hence violation of the grid code resulting in threat to the system security and (ii) consequently resulted in higher power purchase cost to the licensees by way of pumping of higher cost power by the respondent generators into the grid and reduction of the lower cost power of other generators and thus creating unsafe grid conditions which was eventually controlled by reduction of generation by other generators. The cumulative effect of such grid indiscipline by the respondents causing enormous disturbance in grid operations, resulting in unjust burden on the end-consumers.
- ix) The backing down limits have been fixed / specified after taking into consideration all the relevant factors / technical parameters and according to the pre-arranged plan / pattern based on merit order despatch and on mutually agreed terms and conditions of the PPAs. The generator is bound to conform to the generation schedule and follow despatch instructions issued by SLDC. The explanation offered in reply to the notices served on the respondent are far from justification of the deviation in dealing with the grid discipline. It is required under the grid code to intimate (inability to comply), if any generator fails to implement the SLDC instructions due to reasons beyond its control and seek revised instructions under the circumstances. The respondent's repeated non-compliance of the back down instructions without prior intimation amounts to breach of contractual conditions and violation of grid code.
- x) Section 33 of the Act contemplates achieving maximum economy and efficiency in the operation of power system in the State and the said Section deals with operation of SLDC and this necessity of compliance with the instructions of SLDC has also been outlined under clause 4.3 (Schedule of Dispatch) of the code of technical interface (Grid Code) 2001 approved by the APERC, that any non-compliance with the

instructions of SLDC by the respondent generators amounts to violation of the Grid Code. As per the Grid Code under clause 4.3.8.1 (High Frequency Related Emergencies), the SLDC's instructions to reduce generation are to be followed by the generator and the failure to follow the SLDC instructions in this context will constitute a violation of the (State Grid Code) and will entail penalties. During periods of high frequency operations, the SLDC telephonic instructions to generators shall supersede other provisions of the CTI, and all Acts, Rules and regulations of the State and Central Governments, to enable SLDC to take spot / instantaneous decisions for safe and secure on line operation of the grid.

- xi) It is not possible to quantify the disproportionate gain or unfair advantage earned by the respondent generator as a result of non-compliance of the directions of SLDC, for determination of penalty for such non-compliance. In the absence of an appropriate regulation to penalise the generator for non-compliance of directions of SLDC, the petitioner is placed at a disadvantage of substantial loss in addition to endangering the system security.
- xii) The cause of action arose on the dates when the respondent committed default in complying backing down instructions issued by the petitioner / SLDC and when the respondent violated the grid code and is recurring with the invain attempts of the respondent to justify his illegal action of non-compliance of the SLDC instructions.
- xiii) In the light of the above submissions, the Commission may be pleased to
 - a) appoint an adjudicating officer to enquire into the matter,
 - b) direct the so appointed adjudicating officer to pass orders requiring the respondent to pay Rs. 5,00,000/- for each non-compliance
 - c) direct the respondent to pay the costs of litigation
 - d) and pass such other relief or reliefs deemed fit and proper in the interests of justice.

3. The material averments of the counter filed by the respondent are briefly as follows :

- i) M/s. GVK Industries Ltd (GVKIL) and the APTRANSCO have entered into a Power Purchase Agreement (PPA) on 18.06.2003. By virtue the said PPA, GVKIL can engage an O & M Contractor to perform its obligations under the said PPA. GVKIL has engaged GVK Power and Infrastructure Ltd (GVKPIL) the respondent herein as its O & M Contractor vide an O & M Contract dated 13.10.2005. The respondents obligations are only to perform PPA on behalf of GVKIL. As such, GVKIL is the proper party to the case and not the respondent herein. As such, I humble submit that the present petition ex-facie not maintainable for misjoinder of party.
- ii) The allegations made by the petitioner herein are utter falsehood and are made with a complete misconception of the provisions of the Act. The petitioner never bothered to raise claims against the issue of respondent's not-complying with the backing down instructions given to it, prior to filing of the present petition. As such the claims made by the petitioner are clearly hit by delay and laches and they are made only with a view to cover up the violations of the relevant laws by the petitioner.
- iii) The respondent has complied with the instructions of the petitioner except those instructions, which have a cascading effect on the men and machinery of its company. As per Section 32 (2) (a) of the Act, the petitioner is duty bound to act **in accordance with the contracts** (emphasis supplied) entered into by the Licensees (APTRANSCO) with the Generating Companies (the Respondent). Backing down instructions given by the petitioner herein are in violation of such laws and in breach of the terms of the PPA, and as such, the petitioner cannot have any claim or case against the respondent under the principles of "doctrine of clean hands".
- iv) It is true that in the interest of system security, the petitioner shall have full control for real time operations of power system and can (only) issue suitable instructions to any Generating Company for safe grid operation. It is also true that any user experiencing difficulty in

complying with the instructions of the petitioner shall promptly report such difficulty (inability) to the petitioner and take the remedial actions as directed by them. But the petitioner never gave any **“suitable instructions”** for the inability of the respondent to comply fully with the instructions of the petitioner for backing down. The respondent has three (3) gas based turbine with a generation capacity of 45 MW each and one (1) steam based turbine with a generation capacity of 80 MW. The petitioner herein issued backing down instructions not to use any supplementary fuel to generate power as a standing instruction to the respondent. This constitutes a dispatch instruction each day in accordance with the PPA. As per clause 2.1 (a) of the PPA only one dispatch instruction per each day shall be given. In addition to the standing dispatch instruction in vogue, the petitioner continued to issue another dispatch instruction to the respondent to back down the generation capacity which is in violation of the PPA conditions. Though the second dispatch instruction was in violations of PPA, the respondent brought down the generation levels to the ‘Minimum Technical Limits’ recommended by the Original Equipment Manufacturers (OEM). In bringing down the generation levels, to the required output, the generating units follow a predetermined ramping down rate as per the technical requirements for safe and prudent operation of the generating set as per the recommendation of the OEM. Hence, the output of the plant should be brought down gradually and in a manner consistent with the controls of the gas turbines and cannot be brought down suddenly as instructed by the petitioner. Hence, to comply with the backing down instructions there shall be a ramp down of the machinery, which will take prescribed time. Otherwise, if the turbines are turned off suddenly, they will have cascading effect on the entire plant. In addition to this there would be huge commercial implications on the respondent / generators in terms of the **“Discipline Charge”** payable by it to its gas suppliers and gas transporters as per the gas supply / transportation agreements (GAIL)

- v) At the time of commencement of project operations, Naptha was being used to supplement the available gas to operate the plant at its full

capacity. Sudden load variations will cause disturbance to the gas supply grid as well. As per the agreements with the gas suppliers and transporters, the gas drawal by the power plant should be on continuous constant flow rate throughout the day of the total scheduled quantity of gas for that day. The pressure at the gas supply pipelines stations would build due to the unplanned stoppage of drawal of the predetermined amounts of gas. It should also be noted here that if all the offtakers of gas in the region suddenly reduce drawal of gas, there will be a sudden built up in gas pressure in the gas supply lines / grid which can lead to the tripping of gas supply wells / supply control system.

- vi) The petitioner's acts are in violation of the CTI. Chapter 4 of CTI deals with "Operation Code". The CTI has categorically explained the duties and obligations of the petitioner herein (SLDC). A plain reading of the CTI provisions clarifies that the petitioner is obligated under clause 4.3.3 to produce hourly MW entitlements from ISGS by 11.00 hrs on a day ahead basis and that the petitioner shall produce **a day ahead** hourly generation schedule after consolidation of the data provided by the Generators and SRLDC. The generation schedule so prepared **for the following day** shall be intimated to the generators by 16.00 hrs of that day. Against such intimation generators shall promptly inform / report to the SLDC about their inability (if any) to comply with such instructions. Further, clause 4.5.1 (f) provides that if any entity cannot implement an instruction due to reasons beyond its control or due to equipment limitation, then the entity must immediately intimate the same (inability to comply) to SLDC or SRLDC and seek revised instructions, which can be implemented under the circumstances. Upon receipt of said reports SLDC shall advise users as soon as possible of any necessary rescheduling. **At the same time, in the absence of any such instructions, generation shall generate according to the day ahead generation schedule.** It is submitted that the petitioner did not issue the day ahead generation schedule to the respondent. In the absence of such day ahead generation schedule the respondent

planned and operated the plant in accordance with the daily availability declaration submitted by the respondent to the petitioner.

- vii) The petitioner issued dispatch instructions for reducing the generation without advance notice for the respondent to comply with the dispatch instructions. **As provided by the CTI, the generator need not comply with the dispatch instructions by compromising safety of its men and machinery as contemplated under clause 4.3.6 especially when it has promptly expressed its inability to comply with such instructions.** As such, the contentions of the petitioner that it has issued suitable instructions are false and not maintainable.
- viii) Further, in various letters / correspondence exchanged with the petitioner, while expressing its inability to comply with the instantaneous instructions given by the petitioner, the respondent has categorically explained that it has obtained technical advice from its OEM, who advised it, that operating gas turbine below 70% load on a continuous basis is not advisable due to uneven temperature distribution including higher thermal stresses in the material of the hot gas path components. Therefore, operating gas turbine below 70% capacity involves certain amount of risk of damage to the equipment. The petitioner never before filing this petition, had alleged that the respondent herein has not complied with their backing down instructions and did not serve either a notice or made a claim for the same.
- ix) As per provisions of the PPA dated 19.04.1996, the petitioner shall reimburse all such additional O & M expenses incurred by the generators / respondent herein and make good the losses incurred by it in complying with such instructions. The respondent herein had incurred such losses many a time while complying with the unscheduled and instantaneous backing down instructions given by the petitioner, and the additional O & M expenses and Notional Generation claims for the yester years incurred thereby, were not reimbursed by the petitioner till date, even after several requests. Copies of correspondence with the petitioner seeking them to reimburse the

additional O & M expenses incurred as mentioned above are enclosed hereto as Annexure – 3.

- x) The instructions given by the petitioner herein are not only against the provisions of CTI but also are in violation of the terms of the PPA. Relevant terms of the PPA between the respondent herein and the petitioner are enclosed hereto as Annexure – 4.
- xi) As per clause 2.1 (a) of the PPA, the petitioner cannot issue more than one dispatch instruction per day. Whereas, there were several such instructions given by them in a day that too just before 5 – 10 minutes prior to the start time of implementation of the said instructions and without the end time of the said instruction, with an endorsement “**till further instructions**”. As per clause 2.1 (b) of the PPA, the petitioner cannot give instructions for backing down period exceeding 1200 hours in a tariff year. Whereas, the instructions given were far beyond this limit in almost every tariff year right from 2006 till the end of tariff year 2010, in spite of the respondent bringing this fact to the notice of the petitioner. As per clause 2.1 (b) of the PPA, the petitioner is liable to reimburse all additional operation costs involved in complying with such instructions beyond the agreed limit. These were not paid till date even after several requests made by the respondent. Therefore, the instructions given by the petitioner are in complete violation of provisions of CTI as well as in breach of the terms of the PPA.
- xii) The acts of the petitioner are illegal, arbitrary and are done in utter failure to render its duties to coordinate the scheduling and controlling of the transmission of power generated, as contemplated under clause 4.2 and 4.3 of the CTI. Being at fault, the petitioner cannot claim damages from the respondent for the alleged violations.
- xiii) Respondent had adhered to the requirement of maintaining the generation of MVAR from its plant within the generator capability limits to meet the requirement of maintaining the voltage levels.
- xiv) The allegations made against the respondent that it did not comply with the several back-down instructions issued by the petitioner are false and hence denied. The petitioner on almost all occasions issued instructions to the respondent to back-down instantly without even

giving a minute to comply with. Further, the said instructions also were given for unlimited time with an endorsement **“till further instructions”**. It is submitted that the ramping up and the ramping down of the turbines has a definitive time and any tampering with the same will not only have cascading effect on the entire plant, but might also endanger the lives of the personnel working in the plant. It is well established that if any such dangerous affects are there, the CTI vide clauses 4.3.6 and 4.5 enables the respondent / generator to report immediately to the petitioner / SLDC. The respondent suspected such threats to its personnel and property / plant in complying with the “unscheduled, inordinate, illegal and arbitrary” instructions given by the petitioner and immediately informed them clearly intimating its inability in complying with such instructions. The petitioner neither responded nor revised the dispatch instructions following the communications from the respondent. Therefore, there is no violation of Grid Code by the respondent.

- xv) Under Clause 4.3.6 and 4.5 of CTI the petitioner is obligated to revise its backing down instructions when the respondent has informed them immediately after receipt of any instructions which cannot be complied with for technical reasons. In such a scenario, as per Clause 4.3.6, the petitioner shall issue revised instructions. There are no such revised instructions ever given by the petitioner. Instructions given by the petitioner are hit by the principle of *Res ipsa loquitur*. Copies of the backing down instructions given by the petitioner and responses given by the respondent to such instructions are enclosed herewith as Annexure – 4. The petitioner is put to strict proof that it had based its backing down instructions on a particular merit order. Thus, the present dispute arose due to the non-compliance of Grid Code / CTI by the petitioner itself and not due to the non-compliance of the said Code by the respondent herein. As such, the petition should be dismissed and is liable to be set aside for this reason alone with exemplary costs.
- xvi) Not only the respondent but the petitioner is also obligated and is duty bound to comply with the Grid Code / CTI as contemplated under clauses 4.2.6, 4.2.7 and 4.3.3 of the Grid Code / CTI. Extracts of

Clause 4.2.6, 4.2.7 and 4.3.3 of the CTI are enclosed hereto Annexure – 5. Without petitioner first having complied with the above said obligations it cannot pass on the obligations to the respondent / generators. CTI prescribes mandatory procedures to be followed by the petitioner in as much as in determining such instructions along with the timelines prescribed thereunder. In the present case, a mere perusal of the instructions given by the petitioner herein makes it abundantly clear that the same were issued at the last minute in haste, reflecting the lack of coordination and cooperation among the petitioner, DISCOMs and the APTRANSCO, thereby endangering the grid. To save its own skin, the petitioner had issued instantaneous backing down instructions under the guise of CTI provisions. All the dispatch instructions issued are clearly for load management or demand / supply management of the grid and none of the instructions were issued during any emergency. Thus, there is no non-compliance on the part of the respondent.

- xvii) The petitioner herein has grossly violated the provisions of PPA / contract, by issuing the respondent more than one back down instruction per day and by giving instructions exceeding 1200 hours in a tariff year, by failing to reimburse the additional O & M costs incurred by the respondent and by failing, even after several repeated requests, to pay Notional Generation claims raised by the respondent herein due to the unscheduled back-down instructions. Further, if any, unscheduled instruction given by the petitioner, cannot be complied with and the same has been immediately informed to the petitioner, then the respondent can continue generating according to the “the day ahead generation schedule” provided to it in terms of clause 4.3.4 of the CTI. However, the respondent always endeavoured to comply with all the instructions given by the petitioner up to the technical limitations of the plant. As such, the acts of the respondent are in absolute conformity with the provisions of CTI and it is fully compliant beyond the requirements of PPA and thus, are legitimately done far beyond its responsibility only with a view to support the grid.

- xviii) The claim of the petitioner falls between June, 2007 and September, 2009, which is belated and is made with laches. The respondent submits that the acts of the petitioner squarely fall under the principles of "*Vigilantibus Et Non Dormientibus Jura Subveniunt*" and as such are untenable in the eye of law. Therefore, there is no violation of either section 33 of the Act or clause 4.3.8.1 of the CTI on the part of the respondent. On the other hand, such violations are noticed repeatedly on the part of the petitioner.
- xix) The respondent reserves its right to file a counter claim, to make good the damages incurred by it, due to the violations of relevant laws, by the petitioner.
- xx) Therefore, the Commission to dismiss the present petition. As the Acts of the petitioner are *ipso facto ultra vires*, there is no need to appoint any adjudicator. The Commission cannot direct the so appointed adjudicator to impose penalty without adjudicating the matter. As the purported losses incurred by the petitioner attributable to its own acts of non-compliance as the relevant laws, it is not for the respondent, but for the petitioner to pay the costs and therefore, the Commission may impose penalty on the petitioner for issuing unscheduled instructions for non-compliance with the CTI and PPA provisions and for not reimbursing the additional O & M costs incurred by the respondent even after repeated requests.

- 4. The main grounds of the rejoinder filed by the petitioner are briefly as follows :
 - i) Without taking prior approval in writing from APTRANSCO, the reported act of respondent finalizing agreement with O & M contractor, GVK Power & Infrastructure Ltd (GVKPIL) is against clause 16.3 of the PPA and GVK Industries Ltd (GVKIL) commits breach of the terms and conditions of agreement.
 - ii) There is no provision in PPA about the penalties to be imposed by petitioner when the generator had not complied the instructions. Respondent of taking undue advantage of the absence of clause in PPA entailing with immediate consequences from non-compliance of SLDC back down instructions.

- iii) Petitioner's instruction to respondent to back down generation with immediate effect or 5 to 10 min prior to commencement does not mean to come to required levels of back down limit instantaneously, but to come down to required load, duly following its technical ramping down norms, It is only an intimation to start the process of backing down of generation. Generators ramp up and ramp down are considered for calculating non-compliance. The contention of respondent about the payment of imbalance charges is misquoted. However, these claims are under examination and appropriate action will be taken in accordance with PPA provisions.
- iv) The contention of respondent treating the one time intimation not to use supplementary fuel to generate power as one dispatch instruction per each day, is not correct. As per PPA 2.1 (a) emergency back down instructions can also be given in addition to one dispatch instruction under High frequency related emergencies. In recent past CERC narrowed down the frequency band as 49.5-50.2 requiring higher order of grid discipline entailing with consequences of heavy penalties for non compliance of grid discipline.
- v) SLDC has been complying all codes of CTI, IEGC and is daily corresponding with about 30 major generators while discharging its obligations in accordance with law.
- vi) Day ahead scheduling and on line operation are different nature of tasks. One line operators takes action based on the prevailing system frequency and other factors existing at that particular time. Clause 4.3.8.1 of CTI provides the duties of online operators of SLDC. Hence the online operators may issue back down instruction even without having scheduled back down on day ahead basis as per power system conditions. At any point of time, SLDC has not given back down instructions either contrary or beyond the scope of PPA provisions. It is not correct to state that SLDC is not following PPA terms and conditions without showing any iota of evidence.
- vii) In Article 2.1 (b) (i) of the PPA, the percentage of back down limit is stated as 50% declared capacity, and as per, Article 2.2 (b) of PPA,

Board may require the company to reduce generation to a level as low as the output of one turbine generating unit in combined cycle mode.

- viii) The instructions of not using Naptha can't be treated as dispatch instruction. It is only limitation for future planning of generation. Hence the contention of respondent that backing down period exceeded 1200 hrs during the tariff years 2006 to 2010 is not correct. There are certain situations where the operator cannot expect the final time to normalize generation in advance due to many factors and therefore it is absolutely justified to state "till further instruction" in the dispatch instructions. On-line operators some times can assess the end time but some times cannot. Advance intimation of end time in backing down instruction cannot be assessed due to weather conditions, variation in load generation balance of other constituents of southern region, and other regions. It is further to submit that specially during variation in wind generation of Tamilnadu, Karnataka, & in monsoon season as agriculture demand is predominant in southern region and sensitive to rain fall, the advance intimation of end time of backing down is not possible.
- ix) The non-compliance is calculated duly considering the ramp up and ramp down periods also. It is for the generator to follow the ramp rates once backing down instructions issued and withdrawn and the SLDC never insisted the generator to deviate ramp rates stipulated in PPA in its dispatch instruction.
- x) Giving back down instructions orally or instantly is not prohibited by law. It is based on the actual situation prevailing at that time. The time mentioned in the instruction is to start back down as per ramp down of generation. The claim of respondent that the SLDC instructions are "unscheduled, inordinate, illegal and arbitrary" is not tenable.
- xi) The petitioner is not facing non-compliance from any other generators except the respondent group which indicates the transparency of the functioning of SLDC. SLDC is following the same methodology of issuing back down instruction to all state generators.
- xii) Load / supply management, frequency / voltage management are all emergencies of SLDC and if they are not appropriately regulated as

per laid down operating procedures, the same would invite the penalties of A.P. State. The contention of respondent on rating them as high end generator who supply power at high cost is also not correct. There are other generators on high rate who were placed in top position in Merit Order Dispatch sequence and they are also complying the SLDC instructions. Back down instructions are issued in sequence of grading from highest variable cost generator to least variable cost generator. All other generators are complying to back down instructions of SLDC, except the respondent group. Whenever back down instructions are issued to respondent, they (respondent) intimate the only reason as technical limit as 150 MW or 120 MW which is not acceptable as per PPA.

- xiii) SLDC can issue instructions more than 1200 hrs in a tariff year in emergencies as per PPA and CTI and Electricity Act, 2003. Real time back down instruction be issued by SLDC based on the prevailing situation of power system at that time. Hence specifying of end time of back down instruction, is not possible in majority of the cases. Regarding O & M cost, all costs are included in tariff, hence need not pay any extra costs. The respondent never claimed that the back down instructions are causing danger to men and safety of machinery. Nowhere in PPA the technical limit is mentioned as 150 MW.
- xiv) High frequency related emergencies are to be taken care by SLDC to ensure grid security and economical dispatch of generation as required under Electricity Act, 2003. If required timely action is not taken the security of the grid will be endangered apart from deviation of merit order dispatch of generation. In view of the interest of State consumer high frequency related emergencies are also treated as emergencies in giving online back down instructions, as per clause 4.3.8.1 of CTI.
- xv) All other generators are complying with SLDC back down instructions except the respondent group. The defiance of backing down instruction of SLDC by respondent resulted in backing down of lower cost generators and in turn end consumer is burdened with unjustified cost.

- xvi) Back down instructions have been issued only according to Merit Order Dispatch sequence, as required under Electricity Act, 2003. Many other generators were also given back down instructions during the same period. The back down instructions issued by SLDC, enclosed with counter affidavit, proves evidently that SLDC has issued back down instructions to other generators also.

5. On behalf of the respondent reply to the rejoinder (filed by the petitioner) is filed. Counsel for the petitioner while acknowledging receipt of the same endorsed that there is no provision of law or practice in court of law for filing reply to the rejoinder. Notwithstanding the same the contents in the reply filed on behalf of the respondent in brief are as follows :

- i) Respondent was neither assigned any rights and obligations under the PPA that are to be performed by GVK Industries Ltd nor it was parted with any of such rights and obligations. Respondent is only acting as an O & M Contractor of the GVK Industries (Phase – II) for the purpose of PPA. The petitioner is exchanging all correspondence with the respondent for all these years (including the backing down instructions), though it is fully aware that the PPA was with GVK Industries (Phase – II) and not with the respondent herein. Hence the petition is liable to be dismissed on this sole ground of mis-joinder / non-joinder of necessary party.
- ii) It is true that respondent should comply with the backing down instructions in order to save the grid. At the same time, the same statutes viz., Grid Code / CTI, Electricity Act, 2003 and the PPA also envisages certain parameters to be followed by the petitioner while giving the backing down instructions. Failing which, the respondent is no way obligated to follow such flawed instructions.
- iii) Respondent complied with all instructions given by the petitioner irrespective of the adverse impacts on its men and machinery that may cause in complying with the said arbitrary and unscheduled instructions merely considering the Grid safety being a responsible generator.
- iv) Petitioner's contention that it cannot assess the end time of back down instruction goes to prove its incapability in maintaining a forecast

relating to power requirements as well as its inability in maintaining balance at the grid.

- v) The cost of the energy generated by the respondent may be higher when compared to the cost of other generators. This alone would not give any pre-emptive rights to the petitioner in giving maximum number of backing down instructions to the generators whose cost of energy is higher as the cost of energy has nothing to do or makes no difference when it comes to the question of Grid's safety. As such, the petitioner's contention that the back down instructions will be given in sequence of grading from highest variable cost generator to least variable cost generator is not only baseless, but, also shows its malicious commercial intent. Further, intimating technical inability in complying with the back down instructions is neither illegal nor unequipped.
- vi) CTI imposes an obligation on the petitioner to issue revised back down instructions. At no time, the petitioner had revised its instructions though the respondent promptly intimated its inability in complying with such instructions. As such, it is the petitioner, who violated the relevant provisos but not the respondent.
- vii) The aggregate period of backing down instructed by the petitioner not only exceeded 1000 hours, but, the at the same time, all backing down instructions were commercially related load management instructions and none were issued under emergency. As such, petitioner's contention that it is not possible to limit the period of backing down the generation in majority of cases is not correct.
- viii) Respondent requested the petitioner to limit the backing down to generation up to technical limit of 70% of the capacity as per the OEM recommendations not to operate the plant below 70% of capacity. The petitioner has never considered the respondent's request and continued issue backing down to limit the generation upto a lower plant capacity .
- ix) It is not the case of the respondent that the petitioner cannot issue back down instructions in emergencies, but, it is the case of the respondent that all such instructions given under emergency shall be duly and properly informed that they were instructed under emergency.

Therefore, it may be appreciated that the respondent had complied with all such instructions.

6. The learned advocate for the petitioner mainly projected the following grounds:

- (i) The petitioner has issued backing down instructions on several instances, but they were not complied by the respondent.
- (ii) It is necessary to control the increase in frequency, for safe grid operation, the generation of other generators having lesser variable cost of generation.
- (iii) They were instructed to reduce generation (back down) for the power system safety and security.
- (iv) The inaction on the part of the respondent resulted in non-compliance of SLDC instructions and violation of grid control resulting threat to the system and security consequently resulted in higher power purchase cost to the licensees by way of pumping of higher cost power by the respondent generators into the grid and reduction of lower cost power of other generators and thereby creating unsafe grid conditions which was eventually controlled by the reduction of generation by other generators. This resulted in enormous disturbance in grid operations, resulting in unjust burden on the end-consumers.
- (v) When the respondent did not follow the instructions issued by the petitioner / SLDC, it is necessary to appoint an adjudicating officer to enquire into the matter as contemplated under section 143 of the Electricity Act, 2003.

7. The learned advocate for the respondent is mainly harping upon the following grounds, in support of his contention.

- (i) The petitioner has grossly violated the provisions of PPA by issuing the respondent more than one back down instruction per day and by giving instructions exceeding 1200 hours in a tariff year to the respondent.
- (ii) The act of the petitioner resulted into failure to reimburse the additional O&M costs incurred by the respondents and the petitioner did not

consider several requests to pay Notional Generation claims raised by the respondents due to unscheduled back down instructions.

- (iii) The frequency related emergency shall be given vital priority and shall be considered as emergency in giving dispatch instructions. It also mandates that the frequency related emergency shall be issued with an endorsement. There is no such endorsement.
- (iv) The backing down instructions issued by the petitioner not only exceeded 1000 hours but at the same time they were not issued under emergency.
- (v) Hence, the contention raised by the petitioner is not sustainable and the petition filed by the petitioner is liable to be dismissed.

8. Now, the point for consideration is, whether the petitioner is entitled for appointment of an adjudicating officer to enquire into the matter as prayed for?

9. The main and foremost contention raised by the petitioner is that they have not followed the instructions issued by the petitioner / SLDC and it is the bounden duty of the respondent to adhere to the instructions issued by them.

10. Whereas, the respondent is claiming that it is only in the case of emergency the backing down instructions have to be followed as per PPA. The petitioner filed the above said petition u/s 33, r/w 143 and 144 of the EA 2003. It is necessary at this stage to extract the above provisions of the said Act and they are as hereunder:

33. Compliance of directions Despatch Centre:

(1) The State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that state.

(2) Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the direction issued by the State Load Despatch Centre under sub section (1).

(3) The State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.

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

Provided that pending the decision of the State Commission, the direction of the State Load Despatch Centre shall be complied with by the licensee or generating company.

(5) If any licensee, generating company or any other person fails to comply with the directions issued under sub-section(1), he shall be liable to penalty not exceeding rupees five lacs.

143 Power to adjudicate.

(1) For the purpose of adjudging under this Act, the Appropriate Commission shall appoint any of its Members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed by the Appropriate Government, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of section 29 or section 33 or section 43, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

144. Factors to be taken into account by adjudicating officer.

While adjudicating the quantum of penalty under section 29 or section 33 or section 43, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;**
- (b) the repetitive nature of the default.**

11. As per S.33(1), the SLDC may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in the State. It does not speak that instructions have to be issued in the emergency. There may be a condition in the PPA the Act prevails over the PPA. However, it is for the adjudicating officer to decide whether it can be entertained about backing down instruction only in the case of emergency or otherwise, and this cannot be decided at this stage by the Commission.

12. S.144 empowers the adjudicating officer to adjudicate the penalty u/s 29 or 33 or 143 of the said Act by following the clauses incorporated in the said Act.

13. So, this empowers the adjudicating officer to conduct an inquiry for violation of the grid operations as instructed by the SLDC. What is the quantum of penalty, etc has to be decided by the adjudicating officer alone but not by the Commission. It is the duty of the Commission to appoint an adjudicating officer being one of the Members of the Commission and the said adjudicating officer is the competent person to conduct an inquiry under the above said sections of the Electricity Act, 2003.

14. In the light of the above said discussion, we are of the considered opinion that Sri R.Ashoka Chari, Member of the Commission is appointed as an adjudicating officer u/s 143 of the said Act to conduct an enquiry as contemplated u/s 33, 143 and 144 of the EA 2003.

This order is corrected and signed on this 15th day of April, 2013.

Sd/-
(R.Ashoka Chari)
Member

Sd/-
(C.R.Sekhar Reddy)
Member

Sd/-
(A.Raghotham Rao)
Chairman