



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4thFloor, Singareni Bhavan, Red Hills, Hyderabad 500004

WEDNESDAY, THE FIRST OF FEBRAURY,
TWO THOUSAND AND TWENTY THREE

Present
Justice C.V. Nagarjuna Reddy, Chairman
Sri P. Rajagopal Reddy, Member
Sri Thakur Rama Singh, Member

OP No. 112 of 2021 & OP Nos.9,10,11,32,42,43,57 and 59 of 2022

OP No. 112 of 2021

Between

Walwhan Renewable Energy Limited, (Erstwhile known as
M/s. Welspun Renewables Energy Private Limited),
Through its Authorized Representative, Registered office at
C/o. The Tata Power Company Limited, Corporate Center B,
34 Sant Tukaram Road, Carnac Bunder Mumbai, Maharashtra-400009

... Petitioner

And

- 1 Southern Power Distribution Company of Andhra Pradesh
Limited, Through its Director, Srinivasapuram, Tiruchanoor Road,
Tirupati-517503, Andhra Pradesh.
- 2 Andhra Pradesh State Load Despatch Centre,
Through the Chairperson/Chief Engineer, 3rd Floor,
APSLDC Building, Vidyut Soudha, Gunadala,
Vijaywada, Andhra Pradesh – 520 004
- 3 Transmission Corporation of Andhra Pradesh
Through the Chairperson, Vidyut Soudha, Gunadala,
Eluru Road, Vijaywada, Andhra Pradesh – 520 004
4. Andhra Pradesh Power Co-ordination Committee
Through its Chief Engineer, 1st Floor, APPCC Building,
Vidyut Soudha, 48-12-4/1, Eluru Road, Gunadala,
Vijayawada, Andhra Pradesh 520008

... Respondents

OP No. 9 of 2022

Between

Greenko Solar Power (Dharanavaram) Ltd.,
(Erstwhile known as M/s. Rain Coke Ltd.), Registered office
at Plot No.1071, Road No.44, Jubilee Hills, Hyderabad,
Telengana-500033, Having Admin Office at Block D, Survey
No.64 Part, Hi-Tech City Layout, Madhapur Hyderabad 500 081
... Petitioner

And

M/s. Southern Power Distribution Company of Andhra Pradesh Limited
Srinivasapuram, Tiruchanoor Road, Tirupati-517503, Andhra Pradesh
...Respondent.

OP No. 10 of 2022

Between

SEI Arushi Private Ltd., 10th Floor,
Menon Eternity, Old No. 110 [New No.165], St. Mary's Road,
Alwarpet, Chennai – 600018, **Having its corporate office at**
Block D, Survey No.64 Part, Hi-Tech City Layout, Madhapur,
Hyderabad 500 081.
...Petitioner

And

Southern Power Distribution Company of
Andhra Pradesh Limited ('APSPDCL') Srinivasapuram,
Tiruchanoor Road, Tirupati-517503, Andhra Pradesh.
...Respondent

OP No. 11 of 2022

Between

SEI Green Flash Private Limited
Registered office at Flat No.6J, Century Plaza
560-562, Anna Salai, Teynampet, Chennai - 600 018
Having its Admin office at Block D, Survey No.64 Part
Hi-Tech City Layout Madhapur, Hyderabad 500 081
... Petitioner

And

Southern Power Distribution Company of
Andhra Pradesh Limited ('APSPDCL') Srinivasapuram,
Tiruchanoor Road, Tirupati-517503, Andhra Pradesh
...Respondent

OP No. 32 of 2022

Between

M/s Bright Solar Renewable Energy Private Limited,
Having Its Registered Office at, Mahindra Towers,
Dr.G.M.Bhosle Marg, PK Kurne Chowk, Worli,
Mumbai - 400 018, Maharastra, India

...Petitioner

And:

1. M/s. Southern Power Distribution Company of Andhra Pradesh Limited, Having its registered office at 19-13-65/a, Ragavendra Nagar, Kesavayana gunta, Truchanoor road, Tirupati, AP - 517501
2. Andhra Pradesh State Load Despatch Centre, Vidyut Soudha, Gunadala, Eluru Road, Vijayawada, Andhra Pradesh- 520004
3. Andhra Pradesh Power Coordination Committee, Vidyutsoudha, Gunadala, Vijayawada- 520004

...Respondents

OP No 42 of 2022

Between

Amaravathi Textiles Private Limited,
Having its Registered Office at
33-263, Kandimalla Road, Pandaripuram, Chilakaluripet,
Palnadu District, AP-522 616.

Unit at

Nellorepalem Village, Atmakuru Mandal, Nellore District,
A.P - 524 322, **Represented by its Authorized Signatory,**
Kandimalla Srinivasa Rao S/o Late Subbaiah
R/o D. No. 3-1-2, Stambalagaruvu, Guntur - 522 006

.... Petitioner

And

Southern Power Distribution Company of Andhra Pradesh Ltd.,
Rep. by its Chairman & Managing Director,
#19-13-65/A. Srinivasapurain, Tinichanoor Road,
Tirupati, Chittoor District. Andhra Pradesh-517503.

...Respondent

OP No. 43 of 2022

Between

Azure Power Infrastructure Private Limited
5th Floor, Southern Park, D-II, Saket, New Delhi-110017

... Petitioner

And

Southern Power Distribution Company of A.P. Limited

D.No. 19-13-65/A. Srinivasapuram Tiruchanoor Road
Tirupati-517503

...Respondent

OP No.57 of 2022

Between

Sumeru Energy Private Limited.
Having its Registered Office at
#210, Mehra Block, Garden Towers, Masab Tank Post,
Hyderabad - 500028.

.....Petitioner

And

Southern Power Distribution Company Of Andhra Pradesh Limited
Through its Chairman & Managing Director,
#19-13-65/A, Raghavendra Nagar, Kesavayanagunta, Tiruchanoor Road,
District Chittoor Tirupati - 517501.

.....Respondent

OP No. 59 of 2022

Between

Sai Achyuth Energy Private Limited,
Having its Registered Office at 51/14-68-C-1-1,
GLR Complex, 3rd Floor, Opp New RTC Bus Stand,
Kurnool, Andhra Pradesh - 518 003.

.....Petitioner

And

Southern Power Distribution Company Of Andhra Pradesh
Limited, Through its Chairman & Managing Director,
#19-13'65/A, Raghavendra Nagar, Kesavayanagunta,
Tiruchanoor Road, District Chittoor, Tirupati-517501.

...Respondent

These Original Petitions have come up for final hearing before us in the presence of Sri Sree Venkatesh, Sri K.Gopal Chowdary, Sri Hemanth Sahai, Sri V.Akshaya Babu, Sri Challa Gunaranjan, Sri Deepak Chowdary, Sri Aniket Prasoon and Sri N.Jeevan Kumar, learned counsel appearing for the respective petitioners; and Sri P.Shiva Rao, learned Standing Counsel for the DISCOM, APTRANSCO and APSLDC. Upon carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

COMMON ORDER

This batch of O.Ps., raise common issues. Hence, they are heard and being disposed of together.

The facts in a narrow compass are as follows:

The petitioners have established Solar Power Projects of various capacities. They entered into long-term PPAs with Southern Power Distribution Company Limited (for short "the DISCOM") for the supply of power on different dates in the year 2014. Except in O.P.Nos.57 and 59 of 2022, for which the term of PPAs is 20 years, in respect of other petitioners the duration of PPAs is 25 years. The PPAs provide, *inter alia*, for Contracted Capacity, Installed Capacity and Capacity Utilization Factor (CUF). The above factors vary among the petitioners. For brevity and better appreciation, a comprehensive table is prepared containing all the above mentioned details as Annexure, which shall form part of this Order.

The Vigilance Wing of the A.P. Transmission Corporation (APTRANSCO) allegedly inspected the project sites of the petitioners on different dates in the year 2019 (In respect of petitioners in OP Nos.57 and 59 of 2022, the inspection was carried out on 04-5-2022) and purported to have detected installation of additional solar panels. Based on the alleged Inspection Reports, the DISCOM withheld certain amounts payable to the petitioners in all the OPs., except OP Nos.57 and 59 of 2022, proportionate to the alleged excess installed DC capacity. This action is questioned in this batch of Petitions.

At this stage, it needs to be pointed out that in OP Nos.112 of 2021, the petitioner has also raised additional issues relating to the alleged deliberate curtailment and non-grant of connectivity for its 12 MW idle capacity plant by APTRANSCO and DISCOM. In OP No. 32 of 2022, the petitioner has raised the additional issues of alleged deliberate curtailment and non-opening of LC by the DISCOM. In O.P.No.42 of 2022, the petitioner

has raised an issue relating to the deduction of rebate amounts for the Financial Years 2017-18 and 2018-19. All these issues shall be adverted to later.

The DISCOM, APTRANSCO and APSLDC have filed separate counters seeking to justify their actions. We shall now concisely deal with the respective pleadings and contentions of the respective parties.

THE PLEADINGS OF THE PETITIONERS:

- (i) The action of the respondents is against the provisions of the PPAs inasmuch as in all the OPs, except OP Nos.57 and 59 of 2022, Article 2.5 of the PPAs read with the Explanation therewith (in the case of OP Nos.57 and 59, Article 2.6) shows that there is only a bar on the installation of excess capacity on the AC side and that it does not envisage any restriction or inhibition, whatsoever, on the installation of excess capacity on the DC side;
- (ii) The Developers have not added any additional or extra solar modules, either on AC or DC side, after the date of commissioning;
- (iii) As per the MNRE clarification dated 05-11-2019, the Developers are well within their rights under the PPAs to install additional capacity DC modules as long as the installed capacity of the solar project is in accordance with the Contracted Capacity and meets the range of energy supply based on the CUF requirement stipulated in the PPAs;
- (iv) The petitioners (except in OP Nos.57 and 59 of 2022 for which no minimum CUF is prescribed) shall maintain a CUF between 14% and 25% in a Tariff year as per the PPA; and that to maintain the CUF at the said prescribed levels, it is essential to install high DC capacity;
- (v) It is recognized world over that DC capacity is always higher than the AC capacity so as to match the AC capacity at the interconnection point after accounting for conversion and transmission losses up to the interconnection

point; and that the APTEL in its Judgment dated 16-11-2021 in Appeal No.163 of 2020 also recognized the fact that there was no restriction in the PPAs on the installation of higher DC capacity and also observed that the DC overloading is an accepted industrial practice for solar projects;

- (vi) The Vigilance Wing of TRANSCO has no legal competence to make inspection as the Commission is the only competent authority for holding investigations under Section 128 of the Electricity Act, 2003; and that the alleged Vigilance Reports being self-serving and one sided, they are liable to be rejected;
- (vii) Under Article 5.2 of the PPAs, any payment made by the DISCOM beyond the due date, i.e., 30 days from the meter reading date, shall carry interest at the prevailing SBI Bank interest rate, and, therefore, the DISCOM is liable to pay interest/LPS on the amounts withheld;
- (viii) The issue of excess solar panels was never raised by the DISCOM till the Vigilance team's inspection;
- (ix) The Regulation and orders of CERC recognize the installation of DC capacity higher than the Contracted Capacity;
- (x) As per Section 171 of the Indian Contract Act, 1872, only a banker, factor, wharfingers, attorney or policymaker enjoys a lien over the goods of a counterparty. Therefore, unless the PPAs provide a right of lien over the monies payable to the Developers, APSPDCL cannot withhold any money;
- (xi) There is no excess AC capacity installed/excess energy generated by the Developer in violation of the terms of the PPA. At no point in time, the Developer has generated power more than the 25% CUF prescribed in the PPA;

- (xii) It is well settled by way of the order dated 15-03-2022 in W.A. No.383 of 2019 & batch passed by the High Court that APSPDCL by way of citing its financial condition cannot shirk away from its payment obligations under the PPA. Further, it is a well settled principle that the mere filing of an appeal does not operate as a stay on the said order of the High Court of A.P;
- (xiii) APTEL in the judgment dated 20-09-2021 in Appeal No. 164 of 2020 relying upon the advisory issued by the MNRE has opined that the Solar Power Developer can set up higher DC capacity as it is the whole sole prerogative of the generator/developer as generation is a delicensed activity;
- (xiv) The CEIG granted approval for the DC Capacity Installed; and
- (xv) The DISCOM may be directed to release the withheld amounts along with interest/LPS as per the PPA terms and the DISCOM may be restrained from making any deductions while making payments against future invoices.

DISCOM's PLEADINGS:

- (i) The Developer, either after entering into PPA or after commissioning the project, is absolutely prohibited from adding any additional panels or equipment;
- (ii) The excess panels, which were installed in the project, were identified by the APTRANSCO Vigilance Wing in their regular inspection. The Synchronization Committee, at the time of commissioning of the project, also identified such excess installations. Hence, the deduction of certain amounts from the monthly bills is valid, correct in law and, consequently, paying LPS on the amounts already recovered, for the installation of extra panels, does not arise;
- (iii) The parties are covered only by the terms of the PPAs and that, therefore, the MNRE Clarification regarding DC/AC capacity is irrelevant;

- (iv) Solar energy generation directly depends upon the installation of solar panels and the inverters will convert the DC into AC and, as such, the AC capacity directly depends upon the installed DC panels;
- (v) By installation of excess solar panels, the Developers have injected more power nearer to 25% CUF for wrongful gain, thereby causing losses to the DISCOM;
- (vi) Every unit of solar energy purchased by the DISCOM imposes an additional burden of Rs.2.75 ps per unit on it in the form of adequacy cost, balancing cost and grid integration cost as per the CEIG report;
- (vii) The approval issued by the CEIG is relevant to safety aspects only and it has no relevance on the subject matter of the dispute. It is incorrect to state that the CEIG Certificate and the Commissioning Certificates referred to the AC capacity as they relate only to the capacity of the Projects;
- (viii) The delay in making the regular payments is not intentional and the same is due to the precarious financial position of the DISCOM;
- (ix) The DISCOM has filed an SLP before the Hon'ble Supreme Court challenging the judgment of the Hon'ble High Court of Andhra Pradesh, which upheld the PPAs., and that, therefore, the liability to pay tariff as per the PPAs is subject to the outcome of the Orders that may be passed by the Hon'ble Supreme Court;
- (x) The excess energy injected on the installation of additional panels was disallowed by the DISCOM on pro-rata basis for different periods;
- (xi) It is absolutely incorrect to state that the Developer has an obligation to maintain CUF in the range of 14% to 25%;

- (xii) The purpose and authority of the Committee which certified the Commissioning of the projects are not to find out violation or otherwise of the capacity of the projects;
- (xiii) Article 3.9.1 of PPA: The Solar Power Developer shall be further required to provide entry to the site of the Project free of all encumbrances at all times during the Term of the Agreement to APTRANSCO/DISCOM for inspection and verification of the works being carried out by the Solar Power Developer at the site of the Project;
- (xiv) Article 3.9.2 of the PPA: APTRANSCO/DISCOM may verify the construction works/operation of the Project being carried out by the Solar Power Developer and if it is found that the construction works/operation of the Project is not as per the Prudent Utility Practices, it may seek clarifications from Solar Power Developer or require the works to be stopped or to comply with the instructions of such third party;
- (xv) The Vigilance team was formed by APTRANSCO under the control of Addl. Superintendent of Police/APTRANSCO to analyse the MRI readings of Generators and to book cases where necessary against Generators selling power to APDISCOMs and Open Access Generators for any fraud in injecting energy into A.P. Grid. Hence, the Vigilance team is empowered to inspect each and every Plant which entered into PPAs with DISCOMs. It comes under the Prudent Utility Practices of the Agreement and should be adhered to by both parties;
- (xvi) As regards the LPS, as per CERC Power Regulation, 2010 and Article 10.2 of the PPA, the Developer has the option to terminate the PPA whenever there is a default of payment of monthly bills. Further, as per Clause 10.4.4 of the PPA, the Developer shall be free to sell the Contracted Capacity to

any third party of its choice. In spite of the above, the Developer continued to supply power. Rule 6 of the MOP Rules on Electricity (Late Payment Surcharge) clearly states that if a generating company supplies power without the payment security mechanism or without advance payment, it shall lose the right to collect the late payment surcharge from the distribution licensee. Because of the failure of the Developer to exercise its option of curtailing the power or terminating PPA, it is not entitled to LPSC. This principle is also supported by Part-III of Section 55 of the Indian Contract Act. Therefore, the petitioner is deemed to have waived off its right to LPSC claim; and

- (xvii) Due to the financial crisis and impossibility to perform its obligations under the PPA, APSPDCL is unable to pay monthly Power Purchase Bills regularly.

As the APSLDC filed counters only in the OPs., relating to curtailment, the pleadings thereof need not be specifically referred to.

During the hearing, we have heard Sri Sree Venkatesh, Sri K.Gopal Chowdary, Sri Hemanth Sahai, Sri V.Akshaya Babu, Sri Challa Gunaranjan, Sri Deepak Chowdary, Sri Aniket Prasoon and Sri N.Jeevan Kumar, learned counsel appearing for the respective petitioners; and Sri P.Shiva Rao, learned Standing Counsel for the DISCOM, APTRANSCO and APSLDC.

The learned counsel on both sides have advanced their contentions based on the above noted pleadings.

Having regard to the respective pleadings and contentions, the following points emerge for consideration:

- 1) Whether the PPAs envisage a ceiling on the DC capacity at the time of installation?

- 2) Whether there is any acceptable evidence on the record to show that the petitioners (all or any of them) have added DC panels in violation of the PPA terms?
- 3) Whether the PPAs authorise the DISCOM to withhold any part of the payments due to the petitioners if the Developers installed DC panels in violation of the PPAs' terms? If not, what action the DISCOM is entitled to take for such violation under the PPA terms?
- 4) Whether the action of the DISCOM in withholding payments is legally justifiable? and
- 5) Whether the DISCOM is liable to pay interest/LPS on the withheld payments?

DISCUSSION:

Re Point Nos.1 and 2:

- (1) Whether the PPAs envisage a ceiling on the DC capacity at the time of Installation?
- (2) Whether there is any acceptable evidence on the record to show that the petitioners (all or any of them) have added DC panels in violation of the PPA terms?

The fulcrum of the respondent's case is that the Developers shall not install DC modules in excess of the maximum AC Contracted Capacity. In other words, the DC Installed Capacity shall not exceed the AC Contracted Capacity. It is also the case of the respondents that, even if at the time of installation, the DC capacity was in excess of the AC capacity at the interconnection point, it constitutes a violation of the PPA terms. It is the further case of the respondents that in some cases the DC capacities were exceeded due to the Developers adding additional DC panels post COD/Commissioning.

In order to decide whether these contentions are acceptable or not, we would like to refer to the definitions, which are relevant for the adjudication of these OPs. The PPA

terms are more or less similar in all the cases. Hence, it will suffice if the definitions in the PPA pertaining to a few OPs are referred to. At random, we have picked up OP Nos.9, 10 and 11 of 2022.

Article-1 contains Definitions of Contracted Capacity, Interconnection Point, Installed Capacity, Unit, Project, Capacity Utilisation Factor (CUF) and Delivered Energy. In addition to the relevant definitions, as noted above, Article 2.5 along with Explanation thereto and Article 2.7 (Article 2.6 in OP Nos.57 and 59 of 2022) are also relevant. They read as under:

Contracted Capacity: "Contracted Capacity shall mean 22 MW (in OP No.9 of 2022, which varies from case to case) contracted with DISCOM for supply by the Solar Power Developer to DISCOM at the interconnection Point from the Project".

Interconnection Point: "Interconnection Point shall mean the point or points where the Project and the grid system of APTRANSCO/DISCOM are interconnected at the grid substation of 132/33 KV SS, Dharmavaram, APTRANSCO/DISCOM (Sub-station varies from case to case). The metering for the Project will be provided at the interconnection point as per Clause 4.1".

Installed Capacity: "Installed Capacity shall mean the sum total of nameplate capacity of all the Units of the Project".

Unit: "Unit when used in relation to the solar generating equipment, shall mean the set of solar panels multiplied by their nameplate capacity in MW in case of Solar PV Project and when used in relation to electrical energy, means Kilo Watt Hour (kWh)".

Project: "Project shall mean the solar power generation facility of Installed Capacity of 22 MW (in OP No.9 of 2022, which varies from case to case), located at 132/33 KV SS, Dharmavaram Village, Anantapur District, Andhra Pradesh (Sub-station varies from case to case); which includes all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement".

Capacity Utilization Factor: "Capacity Utilization Factor ("CUF") shall mean ratio of total kWh (units) of power generated by Solar Plant in a Tariff Year and Contracted Capacity in KW multiplied with number of hours in the same Tariff Year".

Delivered Energy: “Delivered Energy shall mean, with respect to any Billing Month, the kilowatt hours (kWh) of electrical energy generated by the Project and delivered to the DISCOM at the Interconnection Point, as measured by both energy meters at the Interconnection Point during that Billing Month at the designated substation of APTRANSCO/DISCOM”.

Explanation 1:

“Explanation 2: The Delivered Energy in a Billing Month shall be limited to the energy calculated based on the Contracted Capacity in KW multiplied with the number of hours and fraction thereof the Project is in operation during that Billing Month”.

Article 2.5 in OP No.9 of 2022: “The Solar Power Developer, at any time during the validity of this Agreement, shall not add any extra solar modules/equipment more than the Installed Capacity at the time of commissioning.

Explanation: The maximum AC capacity of the Project at the Interconnection Point at any time during the validity of this agreement shall not be more than the Contracted Capacity”.

Article 2.6 in OP Nos.57 and 59 of 2022: “The Solar Power Developer, at any time during the validity of this Agreement, shall not add any extra solar modules/equipment more than the Contracted Capacity”.

Article 2.7 in OP No.9 of 2022:

For Delivered Energy corresponding to less than or equal to 25% CUF, the applicable Tariff shall be as per Article 2.2 of this Agreement. Further,

a) For Deliverer, Energy corresponding to more than 25% CUF, the applicable Tariff shall be 50% of the Tariff calculated as per Article 2 of this Agreement. The above metric of 25% CUF shall be computed on Tariff Year basis;

b) For any tariff year, the minimum CUF should be greater than or equal to 14%. The solar power Developer is liable to pay compensation to DISCOMs if the CUF is less than 14%. The amount of compensation shall be payable at 25% of the tariff for that Tariff Year calculated as per Article-2 for the shortfall in energy delivered below the minimum CUF limit of 14%. The same will be recovered from the bills payable to the SPD.

Explanation: If the CUF corresponding to the energy generation in any Tariff Year is 12%, then the generator shall pay the compensation for the energy shortfall corresponding to 2% CUF (CUF 14% minus CUF 12%)”.

The definition of “**Contracted Capacity**” in OP Nos.57 and 59 of 2022 reads as

under:

“Contracted Capacity shall mean (in MW) contracted with DISCOM for supply by the Solar Power Developer to DISCOM at the interconnection point from the project and same shall not be more than the installed capacity”.

The tariff payable beyond 25% CUF as per Explanation-3 under the definition of “Delivered Energy” in OP Nos.57 and 59 of 2022 reads as under:

“Explanation 3: Energy will be procured at Rs. 6.49 per unit up to 25% CUF calculated over a year. Beyond the same, the energy will be purchased at a flat rate of Rs.3.00/commercial (kWh) unit (without escalation) during the entire agreement period. Annual Truing up will be done at the end of each financial year and the excess amount paid if any during the year shall be recovered in lump sum from the last bill amount of the year/future bill amount payable to developer”.

In respect of other OPs, the tariff payable beyond 25% CUF is half of the normal tariff payable in that year. Further, the tariff payable in respect of OP Nos.57 and 59 of 2022 is Rs.6.49/kWh which remains the same throughout the tenure of the PPA, i.e., 20 years; whereas in respect of other OPs, the tariff increases by 3% every year from the 2nd to the 10th year and from the 11th to 25th year (tenure of the PPAs is 25 years), the tariff remains the same as that of the 10th year. There is no penalty clause in respect of OP Nos.57 and 59 of 2022 for the failure to achieve minimum CUF.

As the terms slightly vary in OP Nos.57 and 59 of 2022, we shall first deal with the rest of the OPs.

From the above reproduced clauses, it is abundantly clear that a distinction is maintained between AC capacity and DC capacity. While AC capacity falls under the definition “Contracted Capacity”, which is measured at the interconnection point, the DC capacity is covered by the definition of “Installed Capacity”, which shall mean the sum total of the nameplate capacity of all the Units of the Projects.

On a combined reading of the above definitions, we are inclined to agree with the submission of the learned counsel for the petitioners that the only bar provided in the PPAs relating to “Installed Capacity” (DC Capacity) is on the addition of extra solar

modules/equipment in excess of the installed capacity existing at the time of commissioning after the commissioning of the projects. This shall necessarily mean that there is no term in the PPAs, which provides that, at the time of installation, the total capacity of DC panels shall be of a certain capacity or that the same shall not exceed the "Contracted AC Capacity".

We shall now consider whether the Developers in each OP have exceeded the DC Installed Capacity after the commissioning of the Projects.

The details in this regard for each Developer have been shown in the Annexure. As could be seen therefrom, in OP No.11 of 2022 the AC Capacity is 30 MW. The DC Installed Capacity as per the Commissioning report is 41.01 MW, whereas the DC Installed Capacity as per the Vigilance report is 40.8 MW. Indeed, this petitioner has maintained the DC Capacity, as on the date of inspection, at lower than the Installed Capacity existing at the time of commissioning.

In OP No.42 of 2022, the AC Contracted Capacity is 10 MW as against the DC Installed Capacity of 11.5 MW at the time of commissioning. As on the date of inspection, this petitioner has connected 11.43 MW, which is also less than the DC Capacity existing at the time of commissioning.

In OP No.32 of 2022, the AC Contracted Capacity is 10 MW; while as per the Commissioning Certificate the DC Installed Capacity is 10 MW at the injection point. As per the Vigilance report, the DC Installed Capacity is 12.443 MW.

In OP No.43 of 2022, the AC Contracted Capacity is 50 MW; the DC Installed Capacity as per the Commissioning report is 50 MW; whereas as per the Vigilance report, it was 54.33 MW. In this regard, it needs to be noted that as per the memo filed by the respondent, the Installed Capacity as per the Commissioning Certificate is 54.33 MW. However, even as per the Commissioning Certificate filed by the petitioner (Annexure-P8) the DC Capacity at the time of commissioning was only 50 MW. Thus, as per the material

on record, the petitioner has connected additional DC panels of the capacity of 4.33 MW after the commissioning of the Project.

In O.P.No.112 of 2021, the petitioner owns two separate solar power projects of the capacities of 30 MW and 70 MW respectively, which are covered by a common PPA. As per the Commissioning Report, the installed capacities were 32.25 MW and 74.74 MW respectively. As per the Vigilance Reports, the connected capacities were 37.45 MW and 87.51 MW. In the separate Vigilance Reports, the petitioner's representative has specifically endorsed his remarks. For the 30 MW Project, it is endorsed as under:

"Remarks: - Walwhan Renewable Energy Ltd.

- 1. Total DC installed capacity is - 37.338 MW*
- 2. Total DC Load connected - 32.248 MW (connected to Grid)*
- 3. 5.09 MW DC Installed as standby and not connected to Grid".*

For the 70 MW Project, the remarks are as follows:

"Remarks of Walwhan Renewable Energy Ltd.

- 1. DC capacity of 74.74 MWP is electrically connected to grid.*
- 2. DC capacity 12.77 MWP was installed as a standby and not connected to grid."*

The petitioner specifically pleaded in paras 13.1 and 13.2 of their petition that the DC solar modules were kept as standby, disconnected from the grid and that the same has been affirmed by the inspection team, vide Inspection Report dated 27-8-2019. No doubt, in the counter the DISCOM has denied the said plea. It is pleaded therein that the excess capacity of solar panels were very much installed on mountings whereas it is the prevailing practice that the standby panels are stored in a separate place to make use of the same as per the requirements.

Dehors the pleadings, we have the contemporaneous record in the form of Vigilance Reports, wherein the above reproduced remarks were made by the petitioner's employee. No further remarks were made by the Vigilance team disputing the claim of the petitioner's representative that they were installed as a standby but not connected to the

grid. As the claim of the petitioner is not disputed by the Vigilance team, it can be construed that 32.248 MW and 74.74 MW capacities were connected to the grid at the time of the Vigilance team's inspection and the same can be treated as installed capacities. Since these capacities are equal to the installed capacities at the time of Commissioning, it can be concluded that no additional capacities have been added after the commissioning of the projects in these OPs also.

In OP No.9 of 2022, the AC Contracted Capacity is 22 MW; while the CEIG has given a certificate for 33.47 MW. The DISCOM officials have issued Commissioning Certificate for 24.19 MW. Letter dated 16-11-2019 addressed by the petitioner in this OP assumes relevance. This letter was addressed to the Divisional Engineer, MRT & Transformers, APTRANSCO, 220 KV, Bukkarayasamudram SS, Anantapur District. It is stated therein that the petitioner has submitted a bid for 22 MW AC capacity and entered into the PPA for that capacity; that as per the design considerations of the plant, to achieve 22 MW AC capacity delivered at the interconnection point, the DC installation shall be 33.47 MWp; that based on the design consideration of the Project, to deliver the Contracted AC Capacity, the petitioner has procured and installed 33.47 MWp DC modules and suitable inverters accordingly; that during the synchronization process, office of the addressee of the letter has instructed the petitioner to remove the DC modules as installed beyond 10% of the AC Capacity to accept the synchronization process; that, accordingly, the petitioner has submitted an undertaking, vide letter dated 22-10-2017; and that, at that time, the petitioner had no option but to disconnect 9.27 MWp DC modules from the system to synchronize the plant to achieve COD "even though synchronization approval was given by the APSPDCL". The letter referred to the MNRE Advisory dated 05-11-2019, wherein it was clarified that there shall be no limitation on the DC Capacity of a solar power plant and that the same will be at the Developer's choice. Accordingly, the petitioner informed that they propose to reconnect the DC panels lying unutilised in the

Project immediately. The petitioner assured that at any given point in time, the capacity delivered from their Solar PV plant shall not go beyond the “Contracted Capacity” and that they will also adhere to annual energy supply and purchase obligations as per the PPA entered into with APSPDCL.

Before discussing further on this aspect, it is relevant to point out that the claim of the petitioner in the letter dated 16-11-2019 that APSPDCL has accorded synchronization approval for 33.47 MWp is contrary to the record. In the Commissioning Certificate, dated 07-11-2017, the capacity was shown as 24.19 MW. The said certificate also certified that the date of synchronization of the plant was 07-11-2017. As no separate Synchronization Certificate has been filed by the petitioner, the Commissioning Certificate constitutes the sole basis to ascertain the total installed capacity of the plant at the time of commissioning. From the above mentioned letter dated 16-11-2019, it is clear that the petitioner has added the additional capacity to make the total DC capacity as 33.47 MWp as against the installed capacity of 24.19 MWp existing at the time of commissioning. Accordingly, the petitioner has added 9.28 MW in excess of the installed capacity existing at the time of commissioning.

Similar are the facts in O.P.No.10 of 2022, wherein, as per the Commissioning Certificate, the Installed Capacity is 33 MW and following the letter dated 21-11-2019 addressed to the Divisional Engineer, MRT & Transformers, APTRANSCO, 220 KV, Bukkarayasamudram SS, Anantapuramu, the petitioner added additional panels to make total DC capacity as 38.81 MWp. As on their own admission, they have added additional panels to the extent of 5.13 MW over and above the installed capacity existing at the time of commissioning, this petitioner also violated Clause 2.5 of the PPA.

From the facts discussed above, it is clear that in OP Nos.11 and 42 of 2022, the Installed Capacity (DC Capacity) is less than the capacity mentioned in the Commissioning Report. Still, the DISCOMs have treated both these petitioners as having

exceeded the DC Capacity by comparing Installed Capacity with the Contracted Capacity. In the light of the findings rendered hereinbefore, such an action is contrary to the terms of the PPAs, as both the petitioners have not exceeded the Installed Capacity existing at the time of commissioning. However, in OP No.43 of 2022, the petitioner therein has exceeded the Installed Capacity.

In OP No.32 of 2022, the DISCOM considered 10 MW as the DC Installed Capacity and thereby treated the petitioner as having a connected excess capacity of 2.443 MW. However, the Commissioning Certificate clearly mentions 10 MW of DC Capacity at 33 KV injection point. The DISCOM has erroneously proceeded on the premise that the petitioner has exceeded the DC Capacity at the installed site; whereas as per the Commissioning Report, the DC Capacity is mentioned with reference to the injection (interconnection) point. The Vigilance Report has not measured the capacity at the injection point. Therefore, the DISCOM has committed an error in treating this petitioner as having exceeded the Installed Capacity at the unit site.

To conclude on this aspect, the Developers in OP Nos.11 and 42 of 2022 have not violated the terms of the PPAs. In respect of OP No.112 of 2021 and 32 of 2022 also, the Developers have not added any additional capacity. The Developers in OP Nos.9 and 10 of 2022 have added excess panels to the extent of 9.28 and 5.13 MW, respectively. The Developer in O.P.No.43 of 2022 has added an additional capacity of 4.33 MW.

OP Nos.57 and 59 of 2022:

The definition of "Contracted Capacity" and "Article 2.6" in these two OPs, (reproduced hereinbefore), which vary with their counterpart Articles in other PPAs, appear to be somewhat peculiar. They envisage that the Contracted AC Capacity shall not be more than the Installed DC Capacity and the Developer is prohibited from adding extra solar modules/equipment more than the Contracted Capacity. Thus, while there is a prohibition on AC Capacity being more than the Installed Capacity, the terms of the

Contract are silent as to whether at the time of installation, the Installed Capacity of DC panels shall not be more than the Contracted Capacity. However, the only prohibition is that the Developer "shall not add any extra solar modules/equipment" more than the Contracted Capacity. Though Article 2.6 has not used the phrase "after commissioning" at the end of the words "more than the Contracted Capacity", the very words "shall not add any extra solar modules/equipment" imply that after the initial installation, there shall not be any further addition. In this context, it may be noted that there are no separate Commissioning Certificates in these two cases. Instead, we have on record the letter dated 29-9-2016 (Annexure-P4) addressed by the Chief General Manager, P&MM & IPC, APSPDCL, Tirupati, to the petitioner, wherein it is, inter alia, stated as follows:

"The Developer, M/s.Sumeru Energy Pvt Ltd, is permitted to declare the Commercial Operation Date (COD) with effect from 22-9-2016 as they have synchronized their solar power plant with full capacity of 5 MW, to the grid on 22-9-2016 at 33 KV voltage level with interconnection point at 33/11 KV, Jagadurthy SS, located at Jagadurthy (V) in Dhone (M) of Kurnool (Dist)".

In OP No.59 of 2022 also, a similar letter dated 14-11-2015 has been addressed by the Chief General Manager, P&MM & IPC, APSPDCL, Tirupati, to the petitioner therein. As in the other cases, there is no ceiling on the Installed Capacity in these cases as well. In the letter dated 21-07-2022, filed by the respondents in O.P.No.57 of 2022, addressed by JMD/Vigilance & Security, APTRANSCO to the Director Technical, APSPDCL, it is stated as under:

"MRT Vigilance Wing inspected the 5 MW Solar Power Plant of M/s Sumeru Energy Pvt Ltd., having registered office at #210, Mehra block, Garden tower, Masab tank, Hyderabad-63, Plant at Jagadarthi (V), Kurnool District on 04/05/2022. It is requested to arrange to take action on the following:

- i)*
- ii)*
- iii) As per PPA Article-1, Project shall mean the solar power generation facility of Installed capacity of 5 MW located at 33/11KV, Jagadurthy SS, Kurnool Dist. But installed capacity is 5.998 MW.
The extra solar panels installed equivalent to 998.16KW shall be dismantled immediately.*

iv) to (ix)”

In another letter dated 21-07-2022, filed by the respondents in O.P.No.59 of 2022, addressed by JMD/Vigilance & Security, APTRANSCO to the Director Technical, APSPDCL, it is stated as under:

“MRT Vigilance Wing inspected the 5 MW Solar Power Plant of M/s Sai Achyuth Energy Pvt Ltd., having registered office at 51/14-69-c-1-1, GLR Complex, 3rd floor, Opp. New Bus Stand, Kurnool, Plant at Jagadarthi (V), Kurnool District on 04/05/2022. It is requested to arrange to take action on the following:

i)

ii)

iii) *As per PPA Article-1, Project shall mean the solar power generation facility of Installed capacity of 5 MW located at 33/11KV, Jagadurthy SS, Kurnool Dist. But installed capacity is 5.502 MW.*

The extra solar panels installed equivalent to 502 KW shall be dismantled immediately.

iv) to (xi)”

It is difficult to comprehend as to how the Installed Capacity, which is in DC form at the Unit site could be compared with the installed Capacity at the Interconnection Point at the Sub-station, which is always in AC form. To our mind, they cannot be compared with each other. Merely because the DC Capacity at the site was found in excess of the AC Capacity at the Interconnection Point, the same cannot be viewed as a violation, as both are incomparable. Indeed, Article 2.6 appears to suffer from an inherent defect. The only way to reconcile Article 2.6 is that at the time of injection, after conversion from DC to AC, the AC Capacity shall not exceed the Contracted Capacity. Therefore, in the absence of any maximum ceiling on Installed Capacity and in the absence of the Commissioning Certificate reflecting the actual DC Capacity at the site, we are of the opinion that the petitioners in these OPs., cannot be said to have violated the PPA terms.

In light of the above findings, no further discussion on these points is necessary. However, since both parties made their submissions extensively on the orders of the

Hon'ble APTEL, CERC and the Advisory/Clarifications of the MNRE, we thought it necessary to discuss them.

The learned counsel for the petitioners/developers have placed strong reliance on the observations of the Hon'ble APTEL in the case of ***Nisagra Renewable Energy Private Limited Vs. Maharashtra Electricity Regulatory Commission and another*** (Vide order dated 16-11-2021 in Appeal Nos.163 & 171 of 2020). The question involved in the said Appeals was whether the impact of safeguard duty shall be allowed for the fully installed DC Capacity in a solar power project or not. While rejecting the stand of MERC that the said safeguard duty impact shall be restricted to the contract (AC capacity), the Tribunal made the following critical observations at para 36, which read as under:

“ In our view, under the PPAs, there is no restriction on the DC capacity to be set up or the maximum declared CUF. The CUF as declared by the appellants has been accepted by MSEDCL. The higher installed DC capacity results in higher generation from the Project while using the same AC infrastructure, thereby optimizing the utilization of the AC infrastructure, leading to a lower cost of energy, benefits of which have statedly been passed on to MSEDCL as lower tariff in terms of the PPAs. MSEDCL has already taken the benefit of higher generation at a lower tariff. MSEDCL cannot claim that DC overloading is high. Accordingly, there is no escape from the full DC capacity of the Projects being considered while computing the Change in Law compensation”

The respondents' case is that since the observations of the Hon'ble APTEL were made in a different context, unconnected with the present controversy in the cases on hand, the said order of the Hon'ble APTEL has no relevance. Undoubtedly, the context in which the above observations were made was different from the context of the present cases. However, these observations, nevertheless, are relevant in that, they pertain to universally recognized principles relating to solar technology world-over; and that it is undesirable that higher installed DC capacity results in higher generation from the project while using the same in AC infrastructure thereby optimising the utilisation of the AC infrastructure. As a fact, the respondents have nowhere denied the crucial observation of the Hon'ble APTEL that DC overloading is accepted as an industrial practice for Solar

Projects. The fact that, in the cases on hand, the respondents have not disallowed the capacity of the DC panels in excess of the AC capacities, wherever such higher DC Capacities were installed, lends support to the above observations of the Hon'ble APTEL that overloading of DC Capacity is accepted as an industrial practice of Solar Projects. We shall, however, enter a caveat that if the PPA specifically prohibits such overloading, in such cases the terms of the PPA will bind the parties and for those cases, the above observations of the Hon'ble APTEL may not apply.

The CERC, in the order dated 30.12.2019 in Petition No. 4/MP/2019 between Parampujya Solar Energy and NTPC & others in the matter of declaring the imposition of the IGST, CGST and Karnataka Goods and Services Tax as an event under Change in Law, observed in para 5.1.5 at page 37 of the order as follows:

“The Commission is of the view that this flexibility (of higher DC capacity arrays) has been provided so as to enable the SPDs to meet the requirement of generation (CUF) within the range stipulated in the Article 4.4.1 of the PPAs. It may be noted that the requirement of generation or the range of Capacity Utilization Factor (CUF) is an annual figure and the SPDs are required to adhere to this requirement over the entire contract period of the PPAs. It is for this reason that PPAs make a provision granting flexibility to the SPDs if required at any time during the contract period so that it is able to achieve the required level of generation....”

Coming to the MNRE Advisory/Clarification dated 05-11-2019, a perusal of the same would show that on certain Solar Developers/Associations approaching the MNRE pointing out that certain States have raised questions and concerns around the Developers installing additional DC Capacity over and above the nameplated/contracted AC Capacity with the objective of meeting the committed Capacity Utilisation Factor (CUF) in PPAs, the Ministry has issued certain clarifications, which read as under:

“(3) The issue has been examined in the Ministry of New & Renewable Energy (MNRE), and it is noted that:

- (i) *As per the present bidding practice, the procurer, whether State Government Agencies/DISCOMS or Central Government entities like SECI/NTPC, invite bids from solar power developers for setting up solar PV power plant of a certain capacity (MW). The capacity won by the successful bidder (solar PV power developer), on signing of Power Purchase Agreement (PPA) becomes the "Contracted Capacity", which is the capacity (MW) in AC terms, allocated for supply by that bidder;*
 - (ii) *Along with Contracted Capacity' the PPA also provides for a range of energy supply based on Capacity Utilisation Factor (CUF). While the procurer is not obligated to buy energy beyond this range, the developer is liable for penal charges for supply of energy less than the minimum committed energy or minimum committed Capacity Utilisation Factor (CUF);*
 - (iii) *Thus, the PPAs define the relationship between the Solar Developers and the procurer in terms of AC capacity, and range of energy supply based on CUF, with procurement obligation within this range;*
 - (iv) *The requirement of designing and installation of additional DC panels may emanate from the contractual need to supply the committed energy and does not cast any obligation the procurer to buy generation in excess of the contracted energy range;*
 - (v) *The procurer, without getting into the design and installation of solar capacity on the DC side, should only ensure that the AC capacity of the solar PV power plant set up by the developer corresponds with the contracted AC capacity and that, at no point, the power (MW) scheduled from the solar PV power plant, is in excess of the contracted AC capacity; "*
- (4) Accordingly, all concerned are hereby advised that:
- (i) As long as the solar PV power plant is in accordance with the contracted AC capacity and meets the range of energy supply based on Capacity Utilisation Factor (CUF) requirements, the design and installation of solar capacity on the DC side should be left to the generator/ developer.
 - (ii) Even if the installed DC capacity (MWp) [expressed as the sum of the nominal DC rating (Wp) of all the individual solar PV modules installed] in a solar PV power plant, is in excess of the value of the contracted AC capacity (MW), it is not violation of PPA or PSA, as long as the AC capacity of the solar PV power plant set up by the developer corresponds with the contracted AC capacity and that, at no point, the power (MW) scheduled from the solar PV power plant is in excess of the contracted AC capacity, ***unless there is any specific clause in the PPA restricting such DC capacity; (Emphasis added).***

- (iii) The contracting party is not obliged to buy any power in excess of the contracted quantum. There is a provision of penalty in case the supply falls short of the contracted;
- (iv) As per law, the setting up of generation capacity is an unlicensed activity and therefore any person is entitled to set up any capacity which he desires to set up and sell power to any entity which may want to buy it”.

The gist of contents of the said Advisory/Clarification is as follows:

- 1) The Contracted Capacity is the capacity in AC terms allocated for supply by the successful bidder;
- 2) The PPAs provide for a range of energy supply based on CUF. While the procurer is not under obligation to receive supply beyond this range, the Developer is liable for penal charges if CUF is less than the minimum committed energy or minimum stipulated CUF;
- 3) The procurer should also pay interest in ensuring that the AC Capacity of the Solar PV power plant set up by the Developer corresponds to the Contracted AC Capacity and that at no point of time, the power scheduled from the solar PV power plant is in excess of the contracted AC Capacity. That, however, the procurer need not get into the design and installation of solar capacity on the DC side; and that it should be left to the Generator/Developer; and
- 4) Even if the Installed DC Capacity in a solar PV power plant is in excess of the value of the contracted AC Capacity (MW), it is not in violation of PPA or PSA as long as the AC of the Solar Power Plant set up by the Developer corresponds with the contracted AC Capacity; and that, at no point, the Power (MW) scheduled from the Solar PV Power plant is in excess of the Contracted Capacity, unless there is any specific Clause in the PPA restricting such DC Capacity.

The learned Standing Counsel for the respondents strongly urged that the MNRE Advisory/Clarifications cannot override the existing PPAs. We are in complete agreement with this submission of the learned Standing Counsel. Even the MNRE is conscious of this

fact, as evident from para 4(ii) wherein the Ministry has qualified the statement that it is not in violation of the PPA or PSA, if the installed DC Capacity is in excess of the value of the Contracted Capacity by adding the words “unless there is any specific clause in the PPA restricting such DC Capacity”. As discussed hereinabove, none of the PPAs has restricted the DC Capacity to the AC Capacity (Only in OP Nos.57 and 59 of 2022 there is a prohibition on AC Capacity being in excess of the DC Capacity). As found by us, the only prohibition is against the addition of DC Panels over and above the total DC Capacity existing at the time of commissioning. Therefore, if there is specific evidence that there was an addition in the DC Capacity after commissioning as found in OP Nos.9, 10, and 43 of 2022, action envisaged under the PPA can be taken. Thus, in our view, MNRE Advisory/Clarification has only recognized the established industrial practice for solar Projects of DC Capacity being in excess of contracted AC Capacity. The Ministry was also circumspect in excluding the PPAs, which have contrary terms thereby giving primacy to the terms of the PPAs. This document only fortifies the stand of the petitioners that the respondents cannot take exception to the DC capacity being higher than the Contracted AC Capacity at the time of commissioning. As already observed, only in cases where additional capacity is added after the commissioning, the Developers will be violating the specific term of the PPA.

The submission of the learned counsel for the petitioners that the Vigilance Wing of the APTRANSCO has no authority to inspect and report, can be referred only to be rejected. All the PPAs contain a term (Article 3.9.1), which makes it obligatory on the solar power Developer to provide entry into the site of the Project free of all encumbrances at all times during the term of the Agreement to APTRANSCO/DISCOM for inspection and verification of the works being carried out by the solar power generator on the site of the project. In our opinion, this term of the PPA empowers the Vigilance Wing of the APTRANSCO to inspect and submit the reports as they did in these cases. Reliance on

Section 128 of the Electricity Act, 2003 by the petitioners is of no help to them, for the said provision deals with the power of the appropriate Commission to order an investigation if it is satisfied that a licensee has failed to comply with any of the conditions of the licences or the generating company or licensee has failed to comply with any of the provisions of the Act or Rules or Regulations made thereunder. The present cases do not fall under any of the above contingencies, as there is no allegation against the petitioners (generation companies) that they failed to comply with any of the provisions of the Act, Rules and Regulations. They have allegedly violated the terms of the PPA leading to an inter se dispute between the petitioners/developers and respondents (recipients of power). Therefore, the present controversy does not fall within the realm of Section 128 of the Act and the Vigilance Wing of the APTRANSCO has rightly exercised its powers under the above discussed term of the PPAs.

In the light of the above discussion, Point No.1 is answered in the negative.

Under Point No.2, the Developers, other than the petitioners in OP Nos.112 of 2021 and 11, 32, 42, 57 and 59 of 2022, have added excess panels after commissioning, as discussed in the preceding parts of the order.

Points 3 and 4:

3) Whether the PPAs authorise the DISCOM to withhold any part of the payments due to the petitioners if the Developers installed DC panels in violation of the PPAs' terms? If not, what action the DISCOM is entitled to take for such violation under the PPA terms?

4) Whether the action of the DISCOM in withholding payments is legally justifiable?

As per the findings on Points 1 and 2, the Developers in OP Nos.112 of 2021 and 11, 32, 42, 57 and 59 of 2022 have not installed additional panels in violation of the PPA terms. In the rest of the OPs, there was the addition of DC panels. Though all the OPs prohibit the installation of additional panels after the commissioning, the PPAs do not contain any term stipulating payment of penalties or authorising the procurer to

deny/withhold any payment, which the Developers are entitled to receive for the power scheduled by them and received by the respondents, on the said ground. The PPAs only authorise the procurer to pay a reduced tariff in case the CUF exceeds 25%, and to impose penalties if the CUF falls below 14% (No such penalties are stipulated in OP Nos.57 and 59 of 2022).

It is trite that PPA constitutes the fulcrum of the relationship between the parties. The rights and obligations of the parties flow from the PPA. They are sacrosanct. The parties cannot arrogate to themselves any power or exercise a right, which is not otherwise vested in them under the contract. Therefore, in the absence of the PPAs envisaging any such right, the action of the DISCOM in withholding any amount, on the purported ground of installation of additional DC panels, is not sustainable. In the absence of such power, one may wonder whether the existing terms of the PPAs allow the Developers to go scot-free by violating Articles 2.5/2.6, as the case may be, by going on adding panels after commissioning. The Procurer in such an event is not helpless. It has a right under the PPA to terminate the PPA for violation of its terms, which constitutes a default and falls under the description of "Solar Power Developer's Events of Default". Such violation may fall under Article 10.1.1(iv) which reads that "except where due to any DISCOM's failure to comply with its material obligations, the Solar Power Developer is in breach of any of its material obligations pursuant to this agreement, and such material breach is not rectified by the solar power developer within thirty (30) days of receipt of first notice in this regard given by the DISCOM". In such an event, Article 10.3.1 authorises the DISCOM to issue a notice of its intention to terminate the Agreement. Under Article 10.3.4, after the expiry of the stipulated time, unless the parties otherwise agree or the solar developer rectified the default, the DISCOM may terminate the Agreement by giving written termination notice of 30 days. Admittedly, the respondents have not invoked the above discussed terms of the PPAs. Instead, they have resorted to the unauthorised act of

unilaterally withholding the part-payments purportedly towards proportionate excess DC Capacities. The proper course for the respondents would have been to issue a termination notice as per Article 10.3.1 and, if the Developers have not taken remedial steps by disconnecting the excess DC panels, the respondents would have been within their right to terminate the PPAs as per Article 10.3.4.

However, in the light of the findings that except in OP Nos. 112 of 2021 and 11, 32, 42, 57 and 59 of 2022, in other OPs additional DC panels were installed, the petitioners therein shall disconnect those additional DC panels within 30 days and report to the DISCOM, failing which the DISCOM shall be free to terminate the PPAs.

The stand of the respondents that as the tariff at which power is being procured from the petitioners is very high, the addition of DC panels is resulting in pushing the generation almost nearer to CUF of 25%, is somewhat perplexing. The PPAs have stipulated penalties for not maintaining the minimum CUF at one end (except in OP Nos.57 and 59 of 2022) and at the other end if the CUF exceeds 25% the petitioners would be entitled to receive the reduced tariff. Therefore, the above noted submission of the learned Standing Counsel for the respondents is without any merit. The respondents ought to have been wiser at the time of entering into the PPAs. Having entered into the PPAs, with their eyes wide open, the respondents cannot try to frustrate or water down the effect of the PPAs, by deploying artificial methods, such as the ones they have adopted in the instant cases.

Following the above discussion, the answers to Point Nos.3 and 4 are in the negative, subject to the observations/directions issued to the Developers concerned for disconnecting the additional DC panels.

Point No.5: Whether the DISCOM is liable to pay interest/LPS on the withheld payments?

Article 5 governs Billing and Payment. The relevant Clauses in this regard are extracted herein below:

“ 5.1 For the Delivered Energy purchased, Solar Power Developer shall furnish a bill to the DISCOM calculated at the Tariff provided for in Article 2, in such form, as may be mutually agreed between the DISCOM and the Solar Power Developer, for the billing month on or before the 5th working day following the Meter Reading Date.

5.2. The DISCOM shall be entitled to get a rebate of 1% of the total amount billed in any billing month for payments made before the Due Date of Payment. Any payment made beyond the Due Date of Payment, DISCOM shall pay interest at prevailing SBI Bank rate and in case this rate is reduced, such reduced rate is applicable from the date of reduction.

*5.5. **Payment for bills raised:** Solar developer shall submit bills for the energy delivered during the billing period as per the provision of this PPA and there upon DISCOMs shall make payment for the eligible bill amount by the due date of payment.*

*5.6. **Billing disputes:** The DISCOM shall pay the bills of Solar Power Developer promptly subject to the Clauses 5.1 and 5.2.*

The DISCOM shall notify Solar Power Developer in respect of any disallowed amount on account of any dispute as to all or any portion of the bill. Solar Power Developer shall immediately take up issue with all relevant information with DISCOM which shall be rectified by the DISCOM, if found satisfactory. Otherwise notify its (DISCOM's) rejection of the disputed claim within reasonable time with reasons there-for. The dispute may also be decided by mutual agreement. If the resolution of any dispute requires the DISCOM to reimburse Solar Power Developer, the amount to be reimbursed shall bear interest at prevailing SBI Bank rate and in case this rate is reduced, such reduced rate is applicable from the date of reduction from the date of disallowance to the date of reimbursement”.

The DISCOMs defence in this regard is twofold. The first one relates to their liability to pay LPS on regular bills. This need not be discussed in these cases because this situation has not arisen therein. The second defence pertains to their liability to pay LPS on the amounts withheld due to the purported addition of DC panels. In this regard, they pleaded that since their action in withholding the amounts is proper and correct, they need not pay the LPS. As the Commission has already declared such action as illegal and unauthorised, the DISCOM is liable to pay the LPS as per Article 5.6 of the PPAs which envisages payment of interest at the prevailing SBI Bank Rate or at the reduced rate as applicable from the date of reduction from the date of disallowance to the date of reimbursement.

Hence, the DISCOMs, while releasing the withheld amounts due to the installation of additional DC panels, shall pay interest calculated as per Article 5.6 of the PPAs from the date of withholding of the amounts to the date of payment. This exercise shall be completed and payment shall be made within 30 days from today.

Point No.5 is accordingly answered.

Non-grant of Connectivity:

As regards the plea of non-grant of connectivity by APRANSCO and the DISCOM for the 12 MW idle capacity plant in OP No.112 of 2021, the learned counsel for APTRANSCO filed a memo on 03-01-2023 stating that a letter dated 28-07-2022 was issued to the petitioner permitting it to go for open access. Along with the said memo, a copy of the connectivity approval letter was also enclosed. In view of this subsequent development, the grievance of the petitioner in this regard stood redressed.

Curtailment, withholding of Rebate of 1% and opening of LC by the DISCOM:

In OP Nos.112 of 2021 and 32 of 2022, the petitioners therein have raised the issue of curtailment and claimed reliefs in connection thereto. In OP No.42 of 2022, the petitioner therein raised the issue that the DISCOM has illegally withheld 1% rebate from the bills payable to the former. Further, in OP No. 32 of 2022, the petitioner raised the issue that the DISCOM has not opened irrevocable Revolving LC in its favour for one month's billing value in terms of Article 5.4 of the PPA. As these issues give rise to separate causes of action, which ought not to have been joined with the issue relating to the connection of additional DC panels, the Commission is of the opinion that these petitioners shall avail separate remedies for redressal of their grievances in this regard.

Accordingly, without adjudicating the aspects of curtailment, rebate and the opening of LC, the petitioners in these OPs., are left with the liberty to avail separate remedies for the same.

In the result, the OPs are disposed of as indicated above. All the IAs filed in the respective OPs shall also stand disposed of.

Sd/-
Thakur Rama Singh
Member

Sd/-
Justice C.V.Nagarjuna Reddy
Chairman

Sd/-
P. Rajagopal Reddy
Member



Annexure

S.No.	Name of the project	O.P.No.	PPA date	COD	Term of the PPA from the COD	DC Installed Capacity as per commissioning report (MW)	DC Installed Capacity as per Vigilance (MW)	AC Contracted Capacity (MW)	Interconnection point	*Tariff in first year (Rs/kWh)	CUF (%) above which the tariff is reduced	Minimum CUFs below which penalties are levied (%)
1	Greenko Solar Power	9/2022	08.12.2014	07.11.2017	25 years	# 24.19	33.47	22	132/33 kV Dharmavaram SS	3.74	25	12/14
2	SEI Arushi Pvt. Ltd.	10/2022	05.12.2014	28.10.2017	25 years	## 33	38.13	30	132/33 kV kadiri SS	3.74	25	12/14
3	SEI Green Flash Pvt. Ltd.	11/2022	05.12.2014	27.10.2017	25 years	41.01	40.8	30	132/33 kV Burakayalakota SS	3.74	25	12/14
4	Brightsolar Renewable Energy Pvt. Ltd.	32/2022	04.12.2014	05.01.2016	25 years	10 (at injection point)	12.443	10	132/33 kV Jamulabanda SS	5.99	25	12/14
5	Amaravathi Textiles Pvt. Ltd.	42/2022	04.12.2014	31.03.2015 (5 MW) and 28.11.2015 (5 MW)	25 years	11.5	11.43	10	132/33 kV Atmakuru SS	5.84	25	12/14
6	Azure Power infrastructure Pvt. Ltd.	43/2022	05.12.2014	28.03.2016	25 years	50	54.33	50	220/32 kV Tadipatri SS	5.89	25	12/14
7	Sumeru Energy limited	57/2022	27.05.2014	22.09.2016	20 years	5 (at injection point)	5.998	5	33/11 KV Jagadurthy SS	6.49	25	-
8	Sai Achyuth Energy Pvt. Ltd.	59/2022	24.05.2014	18.10.2015	20 years	5 (at injection)	5.5	5	33/11 KV Jagadurthy SS	6.49	25	-

						point)						
9	Walwhan Renewable Energy Limited	112/2021	04.12.2014	24.03.2016 (30 MW) and 13.04.2016 (70 MW)	25 years	32.25 + 74.74 =106.99	37.45 + 87.51 =124.97	100	** 132/33 kV Balapanur SS (30 MW), 132 kV Nandyal-Banga napalli line (70 MW)	5.99	25	12/14
* The tariff for the projects (except the projects specified against the serial No. 7 & 8) increases by 3% every year for 2nd to 10th year and from 11th to 25th year, the tariff remains same as that of 10th year. For projects against S.Nos. 7 and 8, the tariff is Rs.6.49/kWh for entire tenure of the PPA, i.e. 20 years.												
** 5.09 and 12.77 MW solar panels kept as standby (in disconnected state)												
# After excluding the 9.27 MW of panels that were disconnected at the time of COD as per DE/MRT direction. ## After excluding the 5.81 MW of panels that were disconnected at the time of COD as per DE/MRT direction												