



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

O.P. No.14 of 2010 & I.A.No.39 of 2013
Dated 03.06.2016

Present
Sri P. Rama Mohan,
Member and Adjudicating Officer

In the matter of enquiry into non-compliance of backing down instructions of the Andhra Pradesh State Load Dispatch Centre (APSLDC) by M/s GVK Power & Infrastructure Limited., during the period from June, 2007 to May, 2010 and for imposing penalty in the petition filed by APSLDC under Section 33 read with Sections 143 and 144 of the Electricity Act, 2003 in O.P. No.14 of 2010 and I.A.No.39 of 2013 before the Commission.

Between:

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

....Petitioner
(Petitioner in O.P.No.14 of 2010)

AND

M/s GVK Power & Infrastructure Limited
Jegurupadu Power Plant (Phase-II)
Kadiyam – 533126, East Godavari

....Respondent
(Respondent in O.P.No.14 of 2010)

Between:

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

....Petitioner
(Petitioner in I.A.No.39 of 2013 in O.P.No.14 of 2010)

AND

1. M/s GVK Power & Infrastructure Limited
Jegurupadu Power Plant (Phase-II)
Kadiyam – 533126, East Godavari

2. M/s GVK Industries Limited
Jegurupadu Power Plant (Phase-II)
Kadiyam – 533126, East Godavari

....Respondents

(Respondents in I.A.No.39 of 2013 in O.P.No.14 of 2010)

Counsel for the petitioner : Sri P. Shiva Rao
Sri G.V.Brahmananda Reddy

Counsel for the Respondent(s) : Sri L.Venkateswara Rao
Sri B.Mukesh
Sri M. Sodekar Sr. Manager-Legal

These petitions have come up for hearing finally on 29-12-2015 in the presence of Sri P. Shiva Rao, Legal Advisor for the petitioner, APSLDC and Sri M. Sodekar, Advocate for the Respondents and after hearing both the parties extensively and carefully going through the material on record passed the following:

ORDER

A Petition is filed by the above petitioner u/s 33 r/w Sections 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 praying for certain reliefs.

Background Facts in brief:

- 1) On 23-07-2010, APSLDC filed a petition before the Commission alleging that M/s GVK Power & Infrastructure Limited did not comply with the backing down instructions given by it under Section 33 of the Act and requested the Commission to appoint an Adjudicating Officer to enquire into the matter, to direct the Adjudicating Officer to pass order requiring M/s GVK Power & Infrastructure Limited Ltd. to pay Rs.5,00,000/- for each non-compliance and to direct the Respondents to pay the costs of litigation.
- 2) The said petition in O.P.No.14 of 2010 came up for hearing before the Commission on 05-01-2013 and after hearing the rival contentions, the Commission

passed a detailed Order on 15-04-2013, wherein, in exercise of powers vested with it, the Commission appointed Sri.R. Ashoka Chary, the then Member of Commission as an Adjudicating Officer to conduct enquiry into alleged non-compliance of backing down instructions issued by APSLDC to the GVK Power & Infrastructure Limited (Phase-II).

3) In pursuance thereof, the Adjudicating Officer commenced enquiry proceedings in the presence of representatives of the parties concerned and while the matter was in progress before him, the petitioner filed I.A.No.39 of 2013 under Order I Rule 10 of the Code of Civil Procedure, 1908 read with Section 94 (2) of the Act, contending that though the original respondent is obliged to perform duties under the Power Purchase Agreement entered into by GVK Industries Limited (Phase-II) with APTransco and is an absolutely necessary party, by way abundant caution, the petitioner proposed to implead GVK Industries Limited(Phase-II) as 2nd respondent. The petitioner claimed that the Commission/Adjudicating Officer has wide powers to add a party. The respondents in the Interlocutory Application contended that the Adjudicating Officer has no jurisdiction to join any new party to the dispute referred to him by the State Commission. The petition to implead the 2nd respondent filed more than three years after the non-compliance with the backing down instructions is barred by law of Limitation. Order I Rule 10 of the Code of Civil Procedure, 1908 and Section 21 of the Limitation Act, 1963 stand against the petitioner. There is no privity of contract between the petitioner and the 1st respondent and the 1st respondent cannot be made liable to any damages/claims and no relief is claimed against the 2nd respondent. All the obligations arising out of the Power Purchase Agreement, the Electricity Act, 2003 and the Grid Code are to be performed by the petitioner and the 2nd respondent and the 1st respondent is responsible only to perform its obligations under the OEM contract. The 2nd respondent reserved its right to file a detailed counter against the allegations, averments and claims of the petitioner in the main petition and hence requested for dismissal of the petition for want of jurisdiction for the Adjudicating Officer.

4) The original respondent filed a Memo on 22-11-2013 narrating the events making it evident that the petitioner is aware of the respondent being the O & M operator of the proposed respondent and that the respondent is authorised to issue despatch instructions on behalf of GVK Industries Limited(Phase-II).

5) The Adjudicating Officer passed orders on 27-12-2013 referring to the pleadings and contentions of both the parties and opined that the delay in filing the implead petition by itself is not an incurable defect. He also opined that the power to implead the parties to the proceedings is not given to the Adjudicating Officer under Section 143 of the Act and the Commission alone is competent to take a decision with regard to the said petition. It would be appropriate to the Commission to examine the judgements cited and hence the Adjudicating Officer referred the petition for impleadment of the 2nd respondent to the Commission for taking necessary action.

6) The learned counsel for both the parties were heard in extenso, and the Commission, in its Order dated 23-05-2015 has held that the impleadment of the 2nd respondent cannot be considered impermissible or illegal though there is no specific provision for the same and such a question has to be considered as incidental, consequential and an inherent part of the jurisdiction conferred on the Commission and the Adjudicating Officer under Section 33,143 and 144 of the Act.

7) As the then Member of the then Commission had to leave the enquiry half way through due to the subsequent circumstances leading to constitution of the present Commission, a fresh Adjudicating Officer, who is a Member of the Commission as of now was to be appointed to continue and complete the process of inquiry against both the respondents.

8) The undersigned was appointed as Adjudicating Officer under Section 143 of the Act to conduct enquiry into the matter, as contemplated under Sections 33,143 and 144 of the Act and in conducting such enquiry, he shall also be guided by the orders of the Commission dated 15-04-2013 and any rules framed by the State Government under Section 143 (1) read with Section 180 (2)(1) of the Act.

Enquiry Details

9) Accordingly, the Adjudicating Officer commenced enquiry proceedings and called for hearing both the parties on 14-09-2015 and directed the parties to appear before the Adjudicating Officer either in person or through their authorized representatives.

10) On 08-10-2015, the Petitioner filed certain information relating to Project profile, backing down clauses as per PPA and the ramp rates as detailed hereunder.

11) A copy of the same has been handed over to the Respondent and the matter was posted to 05-11-2015, for reply by the respondent.

Project profile – GVK II

Installed capacity: 464 MW (152.4 MW x 2 GTG + 168 MW STG)

Tariff Year: 1st April to 31st March

PPA SCHEDULE – D

3.4 Despatch Rights

- (i) Generation of Net Electrical Energy with alternate fuel shall be with prior approval of APTRANSCO. In despatching the project, the company shall follow the directives of the APTRANSCO to back down generation and to resume generation of Net Electrical Energy in each case consistent with project's

Technical limits, prudent utility practices, the recommendations of the manufacturers of major equipment, the agreement and other arrangements between the company and the APTRANSCO regarding communication and co-ordination of operations (each such directive being called a “Despatch Instruction”). (The APTRANSCO shall not be required to reimburse the company for any incremental costs of damages in respect of Despatch instructions in compliance with the foregoing and with the following provisions.)

- (ii) No Despatch instructions shall require the Company to:
 - (a) Operate the project at a gross generating capacity below 60% of the project’s installed capacity or such lower declared capacity for any period of time except in an emergency.
- (iii) The aggregate duration of back down of generation pursuant to Dispatch (including ramping time).
 - (a) For gross generating capacity between 85% to 100% of the project installed capacity, a back down limit of a maximum of about 280MUs in a year.
 - (b) For a capacity from 60% to 85% - maximum limit for backing down of 1000 hours in a year.
- (iv) The number of Dispatch instructions shall not exceed two (2) per day. However if the company re – declares its declared capacity, the APTRANSCO is entitled to one more Dispatch instruction.
- (v) Any despatch instruction issued by the APTRANSCO in violation of Technical Limits specified in the Schedule A shall not constitute a Despatch instruction for the purpose of this agreement. (As per schedule A the Dynamic parameters established shall be replaced and shall be deemed incorporated into the schedule Dynamic parameters. Minimum load is also compromised as one of the Dynamic parameters.)

RAMP RATES: (CONSIDERED ON PAR WITH 216 MW GVK-1)

COMBINED CYCLE HOT START RAMP RATE : 18 MW / MINUTE

OPEN CYCLE: 4 MW / MINUTE / COMBUSTION TURBINE.

In all the non-compliance instructions the duration is more than or equal to ten minutes and operating in combined cycle mode. So as per Ramp Rate @ 18 MW/ Minute, they can back down upto 180 MW. Hence the insufficient Ramping time does not arise.

The total duration of backing down requested in a Tariff Year is not exceeded 1000 hours (As per the annexure enclosed). Based on the information filed in the enclosure, the total duration of backing down during the financial year 2009-2010 is 501:47:00 hours and there are 128 instructions each of which are allegedly punishable under section 33 (5) of the Electricity Act, 2003.

12) In response to the above mentioned information furnished by the APSLDC on 08-10-2015, the respondents submitted their written submissions on 05-11-2015 giving detailed reply against each backing down instruction given by the petitioner that is covered under the present dispute.

13) Further, in the above reply M/s. GVK Industries Ltd. (Phase-II) submitted that:

a) The respondents humbly request the Ld. Adjudicating Officer to treat the Counter Affidavit, Sur-rejoinder and additional information filed by it in the matter, as part and parcel of this reply. The respondent is not repeating or reproducing the said contents for the sake of brevity. At the same time, the respondent is herewith filing data against each backing down instruction shown by the petitioner in its compilation dated 08-10-2015, along with the copies of correspondence showing the objections raised by it in complying with the improper instructions, categorically stating that such instructions are not in order. The said data of the respondent is filed and marked as Annexure I thereof.

b) In the statement filed by the petitioner on 8th October, 2015, it is submitted that the petitioner wantonly and deliberately did not mention the time of issuing any particular instruction, though, the duration of backing down was mentioned in the said statement. It is because of the said instructions were given instantaneously, without any end time and for no valid reason and that the petitioner has utterly failed to prove with the help of any evidence that the said instructions were given under emergency conditions. This fact can be established from the copies of backing down instructions given by the petitioner that were brought on record by the respondent. Further, from a plain observation of a number of instructions given in a month, it can be safely inferred that the same were not given under emergency conditions, but at the same time, the said instructions were issued for load management. As such, the claim of the petitioner

falls off as envisaged under section 4.3.8 of the grid code read with Clause 2 & 3 of Schedule-D of the PPA.

c) Further, it can be observed from the data provided by the petitioner that the respondent was instructed to reduce generation below 60% of its declared capacity, that too without giving sufficient time to ramp down the generation machines. As and when such instructions are received the respondents had immediately responded by reducing load up to the level of technical limits and intimated the petitioner the difficulties in complying with instructions, as envisaged under article 2 & 3 of Schedule-D to the PPA as well as in terms of the Grid code. As per the said terms, the petitioner is obliged in law, to issue revised instructions with immediate effect and that if the petitioner fails to do so the respondent can continue generation as per the availability declaration given by it on the previous day, as contemplated under section 4.3.4 of the Grid Code.

d) It may further be noted that the respondent had categorically intimated to the petitioner about the stabilization issues the generating units are facing soon after plant commissioning and that the instantaneous instructions would not only cause damages to the machinery but also leads to further liabilities with the gas suppliers and further stated that ***“.... our station is designed to operate on steady-state condition only variation loads for such short periods will result in cyclic fatigue of Gas turbines, Steam turbines and HRSCs.”*** As per the terms of the PPA under clause 3.4 of

Schedule-D as well as that of section 4.3.6 of the Grid code the respondent need not have to compromise on the safety of its plant, in order to comply with the inappropriate backing down instructions of the petitioner. Copies of correspondence addressed to the petitioner may kindly be referred to this effect. It is further submitted that the petitioner is misleading the Ld. Adjudicating Officer by misstating that the ramping down can be down at the rate of 18 MW per minute is utterly false. As per the technical limits of the project, the ramping shall be at the rate of 8 MW per minute. As such, the instantaneous instructions given by the petitioner could not be complied with keeping in view the safety of the plant, men and machinery. Even then, the respondent had complied with all backing down instructions within the possible technical limits in order to safeguard its plant, men and machinery.

e) It is also humbly submitted that the respondent took up the problem of machine tripping on flame instability during the load reduction (burner group change-over at lower loads for maintaining the NO_x level). The OEM carried out elaborate analysis of the problem and the problem was subsequently resolved during maintenance outage of the units in the year 2010. Subsequent to the resolution of this technical problem, the respondent complied with all the backing down instructions given by the petitioner as admitted by the Petitioner.

f) It is further humbly submitted that the Respondent is obliged to respect the gas grid safety conditions envisaged under the gas supply and transmission agreements and that it is obligated to make good the losses the service providers thereunder may incur due to sudden non-drawl of the daily quantities of gas agreed to be drawn by the respondent. In the present case, due to the instantaneous backing down instructions given by the petitioner, the respondent was unable to issue backing down / non-supply instructions to its gas suppliers and there by incurred huge financial burden in terms of minimum fuel off take charges and / or ship-or-pay charges. As per Clause 3.4 of Schedule-D of the PPA, the petitioner is liable to make good the losses so incurred by the respondent. The entire liability of the respondent in this regard cannot be attributed to the respondent as the said liability was accrued by the respondent due to utter failure of the petitioner in complying with its obligations under section 4.3.3 of the Grid Code, whereunder, the petitioner is obliged to give despatch instructions under the non-emergency conditions, by 16.00 hrs on the previous day, to the generators (the respondent herein in this case), that too by duly considering availability declarations given by the respondent at 10.00 A.M. on the previous day. As such, the petitioner is liable to reimburse all such expenses incurred by the respondent in terms penalty towards the minimum off take charges, as envisaged under the Gas supply agreements, which were duly approved by the petitioner.

g) It can also be observed from the backing down instructions given by the petitioner that the same were not given under emergency conditions but the same were given only for normal load management under the head "*until further instructions*". This goes to show the failure of the petitioner in properly scheduling the power generation and in maintaining the Grid Safety. These failures tantamount to the violation of the grid code on the part of the petitioner as envisaged under section 4.3 of the grid code as

well as under Clause 3.4, Schedule-D of the PPA. As such the respondent shall not be made liable to the penalties demanded under the present petition. At times the petitioner has issued more than two (2) despatching instructions in a day in violation of the PPA terms.

14). On behalf of APSLDC, reply is filed on 19-11-2015 along with annexure-A & B. In the reply it is stated that:

a) At the outset all the claims of the Respondent submissions in reply to the data filed by the petitioner, are not tenable.

b) In reply to para 2,

As per PPA for short gestation Gas based extension power project agreement dated 18-06-2013 which is in force as on day, it is stated in para no.22 as PPA for 220 MW. In Schedule-D of PPA clause 3.4(ii) (a), it is stated as “No dispatch instruction shall require the company to operate the project at a gross generating capacity below 60% of the installed Capacity or such lower Declared capacity for any period of time except in an emergency;”. Duly considering above clauses of PPA and in compliance with the Act, Section 32 (2) (a) in accordance with contracts entered with generators, APSLDC, has been issuing backing down instructions. As above said section of the act we have to follow in accordance with contract which is PPA in this case. APSLDC was informing the company for their repeated non-compliance regularly as per the PPA clause 3.4 (ii) (a). Hence all the remarks claiming “complied up to Technical limits” is not acceptable. A copy of PPA clause 3.4(ii) is enclosed as Annexure-A.

Respondent in Annexure-1 of submissions remarked as “complied upto Technical Limits” but as per the annexure in many occasions Respondent not even backed down up to 140 MW which is technical limit as per the respondent claim.

Further, in 62 occasions the Respondent not even reduced the generation even upto 150 MW and on no occasion the Respondent reduced generation upto PPA technical limit as per PPA clause 3.4 (ii)(a). Hence all the remarks claiming “complied up to Technical limits” is not acceptable.

(c) In reply to para (3),

As per PPA and Grid Code only the dispatch instructions are given.

d) In reply to para 4

Ramping times are duly considered while calculating non-compliance. Non-compliance quantum of energy is calculated after deducting the ramping times. Instructions are as per Grid Code and PPA.

e) In reply to paras 5, 6, 7 & 8,

As per PPA and Indian Electricity Grid Code and Code of Technical Interface only the dispatch instructions are given. Ramping times are duly considered while calculating non-compliance.

As per Schedule-A clause 3: The dynamic parameters of each unit and the project will initially be those projected in the EPC contract. During testing under the EPC contract, the company will establish Dynamic parameters being adjusted and verified prior to the COD, the dynamic parameters established by the company shall replace those projected in the EPC contract and shall compromise minimum load and etc. Further even in amendment of PPA, 60% of backing down limit is not amended.

The respondent stating that their station is designed to operate on steady state condition only but PPA provides for 1000 hours of backing down.

All non-compliance instructions are enclosed as Annexure – B.

All non-compliance instructions where non-compliance is more than 40% is enclosed as Annexure-C.

Under these circumstances and submissions, it is clearly evident the respondent has not complied with the instructions of APSLDC. Hence it is prayed that the Hon'ble Adjudicating Officer may be pleased to reject the memo and submissions of Respondent, and allow the petition as prayed for.

15) The Respondent in his written submissions made on 5-12-2015, referred to daily order of the Ld. Adjudicating Officer wherein the parties to the captioned matter were directed to file documents to be dealt with in the matter of non-compliances with its backing down instructions of the Petitioner by the Respondent. In compliance with the said directions, the Respondent has filed a copy of the Memo dated 21-02-2014 along with the copies of relevant technical documents, filed by it before the then Ld. Adjudicating Officer appointed by the erstwhile APERC while adjudicating the disputes

before the present Adjudicating Officer. It is further submitted that it may please be considered that the technical inspection by the OEM Contractor were made jointly along with GVK Industries Limited, Phase-II, and a common report was submitted by the OEM Contractor. It was requested therein that this report may please be considered for assessing the technical specifications and technical limits of the Respondent's plant in assessing the compliances done by the Respondent with the backing down instructions given by the Petitioner.

It was further requested to condone the one day delay caused in filing the present Memo.

The Respondent submitted the following documents as enclosures to the reply.

1. Copy of the Memo dated 22-02-2014, filed by the Respondent,
2. Copy of the Unloading curve dated 15-08-2013,
3. Copies of the correspondence dated 01-10-2009 between Petitioner and the Respondent and
4. Copies of the correspondence dated 27-11-2008 between Petitioner and the Respondent.

16) In the written arguments submitted on 5th January 2016, the respondents have stated that the Respondent No. 2 is a Generating Company, as defined under Sec.2 (28) of the Electricity Act, 2003 and has entered into a Power Purchase Agreement dated 18-06-2003 ("PPA") for short gestation Gas based Extension of Power Project with the Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) for generation and sale of electrical energy/power from its 220 MW power plant situated at Jegurupadu (V), Kadiyam (M), East Godavari District of Andhra Pradesh ("Project") (Phase-II) and that, as per the PPA the Respondent No.2 is entitled to engage contractor for Operation, Engineering and Maintenance (OEM Contractor) of the Project and accordingly had engaged the respondent No.1 as its OEM contractor and the respondent No.1 is entitled only to generate power to supply to the APTRANSCO and that it has not been assigned with any of the rights or obligations of the respondent No.2, under the PPA and as such, the respondent No.1 was not a proper party to the case in hand.

17) The Respondent submitted that as per the "PPA", the respondent No.2 is obliged to generate and supply the entire power that has been generated by the Project solely to the APTRANSCO/DISCOMS. The said generation and sale shall be in accordance with

certain rules and regulations laid down by the Electricity Act 2003 ("the Act") and the Grid Code, 2000 ("the Code"), in addition to the terms of the PPA. Section 33 of the Act empowers the petitioner to "optimally schedule" the power generation and maintaining the grid safety in a particular State that includes the Project and the Respondent No.2 is obliged to follow the scheduling done by the Petitioner in order to maintain the grid safety, provided the said scheduling instructions are proper and should not be in violation of any statutory and contractual obligations imposed upon the Petitioner. At the same time the said powers of the Petitioner are not exhaustive in nature and as per Section 33 of the Act: the Petitioner is obliged to follow the procedure enumerated under the Code in consonance with the provisions of the Act and the terms of the PPA. Clause 4.3.6 of the Code categorically prescribes that if any instruction given by the Petitioner is in violation of the prescription of the Code, the instruction will not be considered as an instruction and that the generator can continue generation of power as per the availability declaration given by it on the previous day. Therefore it is binding on the Petitioner that it shall respect the technical terms of the PPA while scheduling the power dispatch. The respondent contends that the provisions under the section 32 of the Act should be read in conjunction with provisions of the section 33 of the Act and the order of the sections also determines that the petitioner should honour first the contractual terms between the parties before issuing any dispatch instructions to the respondents.

18) The Respondent contended that from the facts available on record, the Respondent No.1 is not a party to the PPA, any alleged violations or discrepancies in complying with the same should be between the Petitioner and the Respondent No.2, shall not bind or have any impact on the Respondent No.1 and as such, the Respondent No.1 is not a proper party to the case nor in any way having relationship with the Petitioner. But, the Petitioner had originally filed the present case only against the Respondent No.1. When the Respondent NO.1 has raised a preliminary objection on the maintainability of the case due to the "non-joinder of the necessary party", the Petitioner has sought the Hon'ble Andhra Pradesh Electricity Regulatory Commission ("APERC") to permit it to join the Respondent No.2 and make it a party to the case. The Respondent, while accepting that the APERC was pleased to appoint a fresh Adjudicating Officer to enquire into the facts of the matter, including but not limited to the issue of legality in making Respondent No.1 as a party to the present case, for the reasons that were submitted before the APERC while appointing a fresh Adjudicating Officer, again

reiterated its contention that it is only an OEM Contractor to the respondent No.2 and that it is not a party to the PPA and as such, it will not fall within the purview of these proceedings and that its name shall be deleted from the list of Respondents to the case as it amounts to misjoinder of parties.

19) Further, the respondents have stated that the petitioner is obliged to follow the terms of the PPA, the Act and the Code. All instructions issued by it shall be within the precincts of the binding principles envisaged thereunder. It can be observed from the original list of compliances filed by the petitioner in the present case, in comparison to the list of non-compliances shown by them in the data sheet submitted on 22-12-2015, the number of violations initially alleged were brought down from 128 to 9. Thus it can be safely interpreted that the petitioner has admitted and conceded that its claim of relating to 119 alleged non-compliances against the original number of 128 non-compliances was in fact improper and not correct and that the compliances made by the respondent No.2 with reference to the said 119 instructions were proper and legal as the same were within the precincts of the Act, the Code and the PPA thereby leaving only 9 alleged non-compliances that are to be dealt with by the Ld. Adjudicating Officer to test the compliances made by the respondent No.2. The Annexure -1 table reflects the final 9 alleged non-compliances that are to be dealt with by the Ld. Adjudicating Officer.

The respondents contended that as per the Code, the petitioner can instruct the respondent to back down its generation, as part of Grid operations and maintenance. But at the same time, the petitioner has to comply with certain terms of PPA, the Code and with the Act. As per the PPA, the petitioner has to observe and respect the technical limits of the generating turbines either to ramp up or ramped down the power generation. The petitioner is also obliged to respect the obligations of the Respondent No.2 if it has any obligations to be complied with under ancillary or incidental agreements that were entered into with any 3rd party, for the purpose of generating power. The Respondent No.2 has entered Gas Sales and Supply Agreement with the Reliance Industries Limited and NECO Ltd and Gas Transmission Agreement with the Gas Authority India Limited (GAIL) (both these Agreements will be referred to as the "Fuel Supply Agreements"). The petitioner is obliged to consider the threat the project and the men working therein, as and when there are sudden backing down instructions seeking the reduction of larger quantum of generation, which may lead to tripping of the gas turbine, throwing the lives of

the men to danger. In addition to it the petitioner will also be liable to make good the loss that the respondent No.1 had to incur in reference to the said instantaneous instructions as well as any liabilities incurred under the fuel supply agreements. While this being so, as per clause 4.3.6 of the Code, as and when there is an instruction from the petitioner, if the respondent No.2 feels that the same cannot be complied with due to the prevailing plant conditions/circumstances and under the influence of the said conditions/circumstances if the respondent No.2 intimates immediately to the petitioner, the petitioner is obliged to modify the instruction suitably. Failing which the instruction shall be considered as no instruction and that the respondent No.2 is entitled to continue the generation as per the availability declaration given by it on the previous day. The respondent No.2 could not comply with the **Annexure-I** backing instructions of the petitioner, as the same were given instantaneously without giving sufficient time to ramp down the generation and that the said instructions were given without any end time. When the respondent No.2 immediately intimated to the petitioner about the difficulties in complying with the said instructions, the petitioner did not take any steps to modify the instructions. As such, as stated above as per clause 4.3.6 of the Code, the instructions shall not be treated as instructions at all, and any non-compliance with the same as per the petitioner shall not be treated as non-compliance and that the respondent No.2 shall not be liable for any penalty. The copies of such correspondence, it is stated, is already on the record and as such is not annexed now.

20) It was argued by the Respondent that the Petitioner claimed that the backing down instructions were given under emergency conditions and that it is fully empowered by the Code to give such instantaneous instructions under emergency conditions. But the Petitioner from his statement filed on 8th October, 2015 wantonly and deliberately did not mention the time of issuing any particular instruction, though the duration of backing down was mentioned in the said statement. It is because of the said instructions were given instantaneously, without any end time and without assigning any reason and that the Petitioner has utterly failed to provide with the help of any evidence that the said instructions were given under emergency conditions. The respondent submitted that as per clause 4.3.8.1 of the Code the petitioner is obliged to justify that the instantaneous backing down instructions given under certain specific emergency condition, once the said emergency conditions were met with and that even after repeated requests made by it, the Petitioner never justified that the instantaneous instructions so given were in fact,

given to meet the emergency condition. It is submitted by the Respondent that the Respondent No.2 never denied such instantaneous instructions in toto and in fact, the Respondent No.2 had complied with such instructions to the maximum extent possible and within the technical limits of the projects keeping the safety of the project, men and machinery therein. It was further submitted that the ramping down could be done at the rate of 8 MW/Minute only and that, thus as per Cl.4.3.8.1 of the Code, the acts of the

Respondent No.2 shall be treated as compliant with the instantaneous instructions given by the Petitioner.

21) It is further submitted that the Respondent had categorically intimated to the Petitioner about the stabilization issues the generating units are facing soon after plant commissioning and that the instantaneous instructions would not only cause damages to the machinery but also leads to further liabilities with the gas suppliers and further stated that **“...our station is designed to operate on steady state conditions only and variation loads for such short periods will result in cyclic fatigue of gas turbines, steam turbines and HRSCs.”**

22) It is further submitted that the Respondent No.2 took up the problem of machine tripping on flame instability during the load reduction (burner group change-over at lower loads for maintaining the NOX level). The OEM carried out elaborate analysis of the problem and the problem was subsequently resolved during maintenance outage of the units in the year 2010.

23) So far as the quantum of penalty sought by the petitioner is concerned, the respondent No.2 reiterated its stand that it has not violated any of the despatch instructions given by the petitioner and that it had complied with the same within the technical limits of the project and as such is not liable to pay any penalty.

With regard to the petitioner seeking to impose a penalty of Rs.5 lacs (Rupees five lacs) against each violation or non-compliance with its backing down instructions, the respondent No.2 relied upon the provisos to section 33, 143 read in consonance with section 144 of the Act. The respondent has tried to conclude that the Act is not prescribing penalty of Rs.5 lacs against each and every direction, but if there are more than one direction and if at all any violation is found, the maximum penalty that can be

imposed shall not exceed Rs.5 lacs. Further, it contends that in the present case the petitioner has not proved with any evidence that the respondent No.2 has made any disproportionate gain or unfair advantage by violating the instructions and that in the present case, the Respondent No.2 has not violated the terms of the PPA, the Code and the Act; in deed Petitioner has violated the same.

24) It further submitted that the respondent No.2 neither violated the instructions nor repeatedly violated the instructions. In fact, though the said instructions were bad in the eye of law, with intent to co-operating with the petitioner in safeguarding the grid safety the respondent No.2 had reduced / backed down the generation of the plant to the maximum level within the technical limits, while in doing so the respondent had to face certain liabilities under the fuel supply agreements it had entered into with 3rd parties. It is further submitted that it is pertinent to submit at this juncture, that there are certain cases pending before the APERC with claims made by the Respondent No.2 against the Petitioner, seeking reimbursement of the Ship-or-pay charges or Minimum Fuel Offtake charges it had incurred under the Fuel Supply Agreements, as the Respondent No.2 could not draw the agreed quantities of Gas from either the gas supplier or from the Gas transporter due to the sudden and unscheduled backing down instructions given by the petitioner and in consideration of the above, the Ld. Adjudicating Officer may be pleased to avoid imposition of any penalty against the Respondents.

25) For the reasons stated herein above, that respondent No.1 prayed that the Ld. Adjudicating Officer to consider the submissions made by it and be pleased to delete its name from the array of parties to the case; and to declare that the respondent No.1 is not liable to pay any penalty as demanded by the petitioner. The respondent No.2 prayed that the Ld. Adjudicating Officer to be please to considered the submissions made by it and to treat the Acts of the respondent No.2 are fully compliant with law, that the backing down instructions given by the petitioner were bad in the eye of law; the compliances made by the respondent No.2 in backing down the generation was proper in the prevailing circumstances, and that the respondent No.2 is not liable to pay any penalty, much less the penalty as demanded by the petitioner herein and that the Ld. Adjudicating Officer may please be dismiss the petition / claim made by the petitioner.

26) The petitioner submitted its reply on 03.02.2016 to the submissions made by the respondents wherein it submitted that:

- a) The claims of the Respondent submissions in reply to the data filed by the petitioner are not tenable.
- b) In his reply to para 1, the Petitioner has stated that the claim of the Respondent No.1 being not a proper party to the case on hand and that the respondent No.2 is entitled to engage contractor for operations without any consent from the petitioner is not correct.
- c) The petitioner, quoting section 33(2) of the Electricity Act, 2003 submitted that every Licensee, generating company, generating station and any other person connected with the operation of the power system shall comply with the directions issued by the State Load Dispatch Centre under sub-section (1) thereof will make the 1st and 2nd Respondents liable to comply with the directions of the SLDC and hence both the respondents are proper parties to the case.
- d) In reply to para 2, the claims made therein are incorrect. In fact all the instructions are given in discharging the responsibility of SLDC as per Electricity Act Section 32.2(a) and PPA technical limits for optimum scheduling in load crash, high frequency or spill-over conditions. In 4.3.6 clause of Code of Technical Interface it is stated to comply the dispatch instructions issued by SLDC. 4.3.6 clause of Code of Technical Interface (CTI) is reproduced as below:

4.3.6 Action required by Generators: All Generators shall provide hourly generation (MW and MVAR) to SLDC on real time basis. All Generators and CPPs shall comply promptly with a dispatch instruction issued by SLDC unless this action would compromise the safety of plant or personnel. The Generator and CPPs shall promptly inform SLDC in the event of any unforeseen difficulties in carrying out an instruction. All Generating Units shall have Automatic Voltage Regulator (AVR) in service. All Generators shall promptly transmit OUTAGE NOTIC to APTRANSCO/SLDC intimating all unplanned outages of any Generating Units / auxiliaries which reduce the generation

contribution to the grid. All Generating Units shall have the governor available and in service and must be capable of automatic increase or decrease in output within the normal declared frequency range and within their respective capability limit. Generators shall immediately inform SLDC by telephone of any loss or change (temporary or otherwise) to the operational capability of any Generating Unit which is synchronised to the system or which is being used to maintain system reserve. Generators shall inform SLDC any removal of AVR and/or governor from service with reasons. CPPs shall similarly inform any change in status affecting their ability in complying with dispatch instructions. In receiving Notice to synchronise by SLDC, generators shall synchronise the particular unit to the grid within the time prescribed. Inability to do so shall be intimated to SLDC without loss of time. Generators shall not desynchronise Generating Units, other than in respect of CPPs, without instruction from SLDC except on the grounds of safety to plant or personnel which shall be promptly reported to SLDC. Generators and CPPs shall report any abnormal voltage and frequency related operation of Generating Units/feeders promptly to SLDC. Generators shall not synchronise Generating Units, other than in respect of CPPs, without instruction from SLDC. In emergency situations, the Generator may synchronise Units with the grid without prior intimation in the interest of the operation of the grid following standing instructions developed for such purpose under "contingency planning". Should a Generator fail to comply with any of the above provisions, it shall inform SLDC promptly of this failure. SLDC may instruct generators to keep any CDGU as hot standby. The generator shall comply with such instructions. A clause shall be included into the PPA for the charges payable by APTRANSCO to the generator for keeping a CDGU as hot standby.

Articles of PPA do not envisage that generator can continue generation of power as per the availability declaration without complying with SLDC directions. In fact as per PPA generator has to comply with SLDC directive.

Hence as per sections 32 & 33 of the Electricity Act, 2003, Indian Electricity Grid Code, Code of Technical Interface and PPA, generator has to comply with the directives of SLDC and the respondent's contention of generating as per the availability declaration is factually incorrect, evidently false.

- e) In reply to para 3, the petitioner submitted that both the respondents are proper parties to the case.

- f) In reply to para (4), the petitioner submitted that the claim of the Respondent are not tenable and false. All the 128 instructions data submitted to the Adjudicating Officer are only non compliance instructions. All said instructions entail with consequences of penalties. Further the claim of the respondent that it had accepted all as dispatch instructions and submitted remarks to all the instructions as complied is not correct, and denied the remarks that for some of the instructions, they were complied up to technical limits. Hence once again the petitioner submitted the details of non-compliance i.e., list of non-compliance instructions as well as those which are not even backed down upto 70% of DC level to the Adjudicating Officer and that it cannot be construed as remaining instructions are exempted and stated that the petitioner never agreed for exemption of any of the instructions.
- g) In reply to para (5), the petitioner denied the claim of the respondent that all the instructions are complied with in terms of PPA, the Code and the Act as not correct. It contended that nowhere it is mentioned that the “petitioner is obliged to modify the instructions suitably, failing which the instructions shall be considered as no instruction”. It reiterated that as per CTI clause 4.3.8.1, in high voltage management, failure of generator to follow SLDC instructions will constitute a violation of CTI and will entail with consequence of penalties.
- h) As for the ramping rates, the petitioner contended that the ramp rate specified by the Respondent as 8.0 MW/Minute and that the Respondent has failed to state in their remarks to the data submitted by the petitioner that the ramping time is insufficient in respect of any particular instruction. The petitioner submitted that ramping time was allowed while deciding non-compliance and all the instructions have sufficient ramping time and hence all the instructions entail with penalties.
- i) In reply to para 6, the petitioner submitted that the frequency at the time of backing down, average frequency of backdown duration and maximum frequency data is enclosed as Annexure-1. The petitioner stated that all the instructions come under high frequency management while some instructions were given for load generation balancing in merit order dispatch.

- j) In reply to para 7, the petitioner stated that as per Electricity Act, 2003, Code of Technical Interface and PPA clauses only dispatch instructions are given and as per PPA, it is not to operate on steady state condition and backing down also was mentioned specifically. And hence the contention of the Respondent is wrong.
- k) In reply to para 8, the petitioner stated that it should come through proper amendment of PPA of mutual agreement in the contract and that the SLDC has to follow contracts of various generators while dispatching the generation and hence the respondent's remarks are not valid.
- l) In reply to para (9), the quantum of penalty considered by CERC in a similar case is enclosed. Hon'ble CERC penalized APTRANSCO against alleged non-maintenance of grid discipline; in petition no.80/2009 order dated 11th May, 2009 wherein for 122 instances, 1.22 Crores penalized at one Lakh per each instance. A copy of the order is enclosed as Annexure-2.
- m) Referring to the respondent's contention in para (10), that it had many pending payments from the petitioner, the petitioner stated that energy charges were already paid to the respondents and the respondent has not complied with any of the said instructions issued by APSLDC.
- n) Finally, the petitioner prayed that Hon'ble Adjudicating Officer may please reject all the claims made by the respondent in its written arguments and allow the petition as prayed for.

The list non-compliances day wise and the energy involved in each such non-compliance along with the cost of energy are furnished by the petitioner.

LEGAL PROVISIONS

27) Section 32 of the Electricity Act, 2003 prescribes the Functions of State Load Dispatch Centres and is reproduced hereunder:

“32. (1) The State Load Dispatch Centre shall be the apex body to ensure integrated operation of the power system in a State.

(2) The State Load Dispatch shall---

- a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the Contracts entered into with the Licensees or the generating companies operating in that State;***

- b) monitor grid operations;***
 - c) keep accounts of the quantity of electricity transmitted through the State grid;***
 - d) exercise supervision and control over the intra-state transmission system; and***
 - e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.***
- (3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.”***

28) Further, Section 33 of the Electricity Act.2003 specifies that:

“33.(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 directions 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 a penalty not exceeding rupees five lacs.”

29) The provisions of the Electricity Act, 2003 relating to adjudication are reproduced below:

Section 143

(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 maybe 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 office, 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.”

Section 144

“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.”***

ANALYSIS

30. The material on record and the submissions made by the parties concerned before the Adjudicating Officer is carefully examined and the following issues can be broadly identified where both the parties are having rival contentions.

(a) **ISSUE 1:** Whether the Respondent No.1 is not a proper party to the case.

(b) **ISSUE 2:** Whether all the 128 nos. backing down instructions allegedly not complied by the respondents (which constitutes violation of instructions), were valid

(c) **ISSUE 3:** Whether imposition of penalty is warranted? And if so, how much?

31. Coming to the first issue, the contention of the Respondents is that the Respondent No. 2 is a Generating Company, as defined under Sec.2 (28) of the Electricity Act, 2003 and has entered into a Power Purchase Agreement dated 18-06-2003 ("PPA") for short gestation Gas based Extension of Power Project with the Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) for generation and sale of electrical energy/power from its 220 MW power plant situated at Jegurupadu (V), Kadiyam (M), East Godavari District of Andhra Pradesh ("Project") (Phase-II) and that, as per the PPA the Respondent No.2 is entitled to engage contractor for Operation, Engineering and Maintenance (OEM Contractor) of the Project and accordingly had engaged the respondent No.1 as its OEM contractor and the respondent No.1 is entitled only to generate power to supply to the APTRANSCO and that it has not been assigned with any of the rights or obligations of the respondent No.2, under the PPA and as such, the respondent No.1 was not a proper party to the case in hand.

But if we see the provisions in Section 33 of the Electricity Act, 2003, by virtue of the words in sub-section (2) that every Licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system as being obligated to comply with directions issued by the State Load Despatch Centre under sub-section (1) thereof; and further by virtue of the words in sub-section (5) of Section 33 that 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 a penalty not exceeding rupees five lacs, the Respondent No.1 also becomes liable to comply with the directions of the Petitioner notwithstanding any claims about the nature of the

relationship of the Respondent No.1 in law with the Respondent No.2 or the Petitioner as observed by the Commission in its order dated 23rd May,2015 (Para 17). ***Thus the plea of the Respondents to delete the name of Respondent No.1 from the list of Respondents to the case cannot be accepted and hence is rejected.***

32. Now the second and third issues will be considered together since these two are related more closely than the first issue.

During the proceedings before the Adjudicating Officer, APSLDC reiterated its contention that M/s GVK Power & Infrastructure Limited (Phase-II) did not comply with the backing down instructions given by it, thus APSLDC was forced to back down the lower cost generators, which has resulted in higher power purchase costs to the Licensees by way of pumping higher cost power of M/s GVK Power & Infrastructure Limited (Phase-II) into the grid. On the other hand, the allegations of non-compliance of the backing down instructions of APSLDC are vehemently denied by M/s GVK Power & Infrastructure Limited (Phase-II), stating that the said backing down instructions were complied with up to the technical limits and for those units that were not able to back down were duly informed to the APSLDC at the earliest.

33. Further, the APSLDC has submitted that Hon'ble CERC while delivering its order in petition No 80/2009, has imposed a total penalty of Rs.1.22 Crores @ Rupees one Lac each for all the 122 nos. of violations on APSLDC for allegedly not maintaining grid discipline wherein the penalty was imposed for each instance.

34. Referring to the provisions of Section 32 of the Electricity Act, 2003, the petitioner maintained that, in the interest of system security APSLDC should have full control of the real time operation of the entire State Grid and maintain balance between the supply and demand at every moment, so that the Grid frequency remains within the safe limits as specified by the CERC and duly following the instructions of the Regional Load Dispatch Centre (RLDC).

In this process, whenever there is an increase in frequency beyond 50 Hz, (during which time the generation is more than the system demand), APSLDC issues instructions to marginal cost generators to back down their generation based on the merit order to ensure safety, security and economy of operations of the Grid.

35. It is the contention of APSLDC that M/s GVK Power & Infrastructure Limited (Phase-II) has violated the Grid Code by not complying with the directions of APSLDC to back down generation due to high frequency conditions in the grid on several occasions whereas all other generators have complied with such directions of the APSLDC which ultimately resulted in the backing down of low cost generation to maintain the system frequency within limits thereby the economy of operations in the system are affected to the detriment of the Licensees.

36. It is submitted by the Petitioner that, as per the procedure adopted by APSLDC, the Central Generating Stations (CGS) which operate under ABT Regime, the generators will be given choice of six (6) time blocks in case they need to back down. If there is an immediate requirement to back down, only the units of APGENCO or IPPs are to be backed down, as there is no ABT Regime for these generators.

37. In the question whether the other generators who have higher variable costs are backed down or not prior to M/s GVK Power & Infrastructure Limited (Phase-II), as can be seen from the details of backing down instructions produced by the Generator, most of the instructions were issued just for five (5) or ten (10) minutes, without mentioning how long such back down continues and in the instant case the generator was directed to back down as per system requirement.

38. It is noticed from the information provided by APSLDC, a number of backing down instructions were issued to various generators based on the Merit Order Despatch (M.O.D.) to back down their generation and such instructions were complied with by the other generators. It is mentioned therein that the Respondents have not complied with the backing down instructions of APSLDC on 128 occasions from June, 2007 to April, 2010.

39. The contention of the respondents is that the Petitioner is obliged to follow the terms of the PPA, the Act and the Code and that all instructions issued by the Petitioner shall be within the precincts of the binding principles envisaged thereunder. It is contended that the Petitioner has to observe and respect the technical limits of the generating turbines either to ramp up or ramp down the power generation and also to respect the obligations of the respondent No.2 if it has any obligations to be complied with under ancillary or incidental agreements that were entered into with any third party, for the purpose of generating power. It is stated that the Respondent No.2 has entered Gas Sales and Supply Agreement with the Reliance Industries Limited and NECO Ltd and Gas Transmission Agreement with the Gas Authority India Limited (GAIL). It is further stated that the petitioner is obliged to consider the threat to the project and the men working therein, as and when there are sudden backing down instructions seeking the reduction of larger quantum of generation, which may lead to tripping of the gas turbine, throwing the lives of the men to danger and that the petitioner will also be liable to make good the loss that the respondent No.1 had to incur in reference to the said instantaneous instructions as well as any liabilities incurred under the fuel supply agreements. While this being so, as per clause 4.3.6 of the Code, as and when there is an instruction from the petitioner, if the respondent No.2 feels that the same cannot be complied with due to the prevailing plant conditions / circumstances and under the influence of the said conditions/circumstances if the respondent No.2 intimates immediately to the petitioner, the petitioner is obliged to modify the instruction suitably, failing which the instruction shall be considered as no instruction and that the respondent No.2 is entitled to continue the generation as per the availability declaration given by it on the previous day. The respondent No.2 could not comply with the backing instructions of the petitioner, as the same were given instantaneously without giving sufficient time to ramp down the generation and that the said instructions were given without any end time. When the respondent No.2 immediately intimated to the petitioner about the difficulties in complying with the said instructions, the petitioner did not take any steps to modify the instructions. As such, as stated above as per clause 4.3.6 of the Code, the instructions shall not be treated as instructions at all, and any non-compliance with the same as per the petitioner shall not be treated as non-compliance and that the respondent No.2 shall not be liable for any penalty.

40. The Respondent, while admitting that the petitioner is fully empowered by the Code to give backing down instructions under emergency conditions, quoting clause 4.3.8.1 of the Code, claims that the petitioner is also obliged to justify the instantaneous backing down instructions given under specific emergency conditions once the said emergency conditions were met with.

41. The Petitioner, while contesting the claims made by the Respondents, stated that all the backing down instructions were given in discharging the responsibility of SLDC as per Section 32 (2) (a) of the Electricity Act, 2003 and PPA technical limits for optimum scheduling in load crash, high frequency or spill-over conditions.

42. Quoting clause 4.3.6 of the Code of Technical Interface (CTI), the petitioner stated that the Respondents are obliged to comply with the backing down instructions given by the Petitioner. Whereas it is contended by the Respondent that as per Cl.4.3.6 of the Code, as and when there is an instruction from the Petitioner, if the Respondent feels that the same cannot be complied with due to prevailing plant conditions/circumstances and under the influence of the said condition /circumstances if the Respondent No.2 intimates immediately to the Petitioner, the Petitioner is obliged to modify the instruction suitably, failing which, the instruction shall be considered as no instruction and that Respondent No.2 is entitled to continue the generation as per the availability declaration given by it on the previous day. The Petitioner contended that nowhere it is mentioned that the "petitioner is obliged to modify the instructions suitably, failing which the instructions shall be considered as no instruction". It reiterated that as per CTI clause 4.3.8.1, in high voltage management, failure of generator to follow SLDC instructions will constitute a violation of CTI and will entail with consequence of penalties.

43. The Petitioner further stated that the Ramping time was allowed while deciding non-compliance.

44. It can be seen that there is no limitation on the number of dispatch instructions given by the Board (now APSLDC) if they are given in an emergency and in a real time operation of the power system, the APSLDC will be a better judge to decide the nature (whether certain situation was an emergency or not) and there is no reason to believe

that APSLDC may give inappropriate instructions to one particular Generator when it is obligated to operate the power system under strict adherence to well-established and standard practices.

45. It is observed that APSLDC, as the power system operator in the State of Andhra Pradesh, in the process of discharging its duties under the provisions of the Electricity Act, 2003 and the state Grid Code, has given certain backing down instructions to reduce generation to a certain level which was not complied with fully by the Respondent (Generator) referring to certain provisions of the PPA, the Code and the Act.

46. While sub-section (2) (a) of Section 32 of the Electricity Act, 2003 recognises the contracts entered by the Generator with the Licensees in accordance with which the optimum scheduling and despatch of electricity is to be done by the SLDC, sub-section 2(e) speaks about the responsibility of SLDC for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance the Grid Standards and the State Grid Code. And as per subsection (1) of Section 33, SLDC may give such directions and exercise such supervision and control as may be required for ensuring the integrated operations and for achieving the maximum economy and efficiency in the operation of power system in the State, and as per sub-section (2) of Section 33 every generator shall comply with the directions issued by the SLDC under sub-section (1) while sub-section (5) of Section 33 says that if any licensee or generator fails to comply with the directions issued under sub-section(1), he shall be liable to a penalty not exceeding rupees five lacs.

47. The main function of APSLDC is to maintain the Grid Stability. If the frequency goes beyond 50 Hz (i.e., in case where the Supply is more than the Demand), the APSLDC instructs the Generators, as per the merit order, to back down. It is the system requirement and as per Section 33 of the Electricity Act, 2003, every generator shall comply with such instructions and there is no other alternative to the generator but to comply.

Backing down means the instructions of SLDC or RLDC (conveyed through SLDC) for reduction of generation of a generating unit under abnormal conditions such as high frequency, low system demand or system constraints as envisaged by the system operator.

As per the Code of Technical Interface (AP Grid Code), clause 4.3.8., which is extracted below, APSLDC shall monitor the frequency of the transmission system and take action to ensure that they are within the acceptable limits in co-ordination with SRLDC. Corrective action shall be initiated when frequency deviates by 1% from the nominal value.

4.3.8.1 High Frequency Related Emergencies: When the frequency is tending to increase above the statutory upper limit, SLDC shall request the Generators to reduce generation and request SRLDC to take necessary action at Regional level. While reducing generation, merit order despatch procedure shall be followed by SLDC. In order to implement merit order despatch, the relevant cost data shall be furnished by all CDGUs on one-month ahead basis. The instructions to reduce generation will be issued by SLDC by telephone communication. **Failure of a generator to follow the SLDC instructions in this context will constitute a violation of the CTI and will entail penalties.** During periods of high frequency operation, the SLDC telephone instructions to Generators shall supersede other provisions of the CTI, and all Acts, Rules and Regulations of State and Central Governments. Adequate authority shall be delegated to the duty Engineers of SLDC to enable them to take spot decisions for on-line operation of the Grid. On demand by a generator the SLDC shall confirm its verbal instruction by written instructions after the operation is completed. SLDC is responsible for complying all Codes, Acts etc., and must justify its instructions in the light of Code, Acts, etc., or must be ready to justify any deviation in dealing with an unforeseen emergency threatening the security of the Grid.

48. As Grid Operation being a common service, laws governing them need to be followed by all in letter and spirit, as any grid failure would lead to suffering by all the concerned. Also, as envisaged in the Section 33 of the Electricity Act, 2003, the SLDC is also bestowed with the responsibility of ensuring the integrated grid operations and for achieving economy and efficiency in the operation of the power system in the State which apparently would need the SLDC to implement the Merit Order Despatch in its

true sense. This goes to show that the SLDC is also required to maintain the economy of operations when it comes to the question of spillage of either Srisaïlam or Nagarjuna Sagar and operation of Merit Order Despatch (MOD).

Hence the main contention of the Respondents that “the backing down instructions issued by APSLDC were in the process of and for load management but not the system emergencies and hence it is not binding on the generator for following such instructions” does not hold much water and does not qualify to be accepted as achieving economy and efficiency of operation of the power system is also an EQUALLY IMPORTANT function of the State Load Dispatch Centre (APSLDC).

49. If there are any technical constraints to the Generator for backing down as per APSLDC requests, the same needs to be informed to APSLDC immediately to enable them to take further course of action to maintain the system security.

50. In the present case, the other contention of the respondent is that its inability to reduce the generation beyond the Technical Limits specified by the OEM and was conveyed to the APSLDC. On perusal of the letters written by the Generator to the

APSLDC, it shows that the generator has not reduced the generation upto the required level as requested by APSLDC due to various reasons such as:

- (i) The units are under stabilization
- (ii) The duration of the backing down was not indicated and the dispatch instructions were given for very short period.
- (iii) The units are designed to operate on steady state condition only and variation of loads for such short periods will result in cyclic fatigue of Gas Turbines, Steam Turbines and HRSGs.
- (iv) APTRANSCO is not giving Day ahead generation schedule and hence it becomes difficult for Day ahead gas nomination to RIL/RGTIL resulting in positive imbalance in GAIL and RGTIL network.

- (v) We are not able draw the allocated gas capacity for the day which will attract minimum off-take charges of per gas supply agreement with GAIL,
- (vi) The units are already operating at technical minimum limits and any further reduction in generation will lead to unstable operation and may endanger the safety of the equipment and men

51. From the cursory reading of all the correspondence, it is observed that the reasons are mostly relating to the PPA conditions, technical minimum limits of the OEM or other contractual obligations for gas transportation.

52. With regard to the plea of the Respondent that the units are under stabilization period, it is observed that from the perusal of records that as per the definitions in the Amended and Restated PPA, the stabilization period means, in respect of each generating unit, each ninety day period commencing on the COD of the said generating unit and, in respect of the Project, the ninety day period commencing on the Combined Cycle COD. In the instant case, the COD after combined cycle operation was declared as 14-04-2009 and the period of violations (starting from 07-09-2009) is well beyond the ninety days period of stabilization i.e., 13-07-2009 and hence the issues relating to the stabilization period need not be taken into consideration.

53. If there are any PPA conditions not to back down beyond certain hours in a billing month or tariff year, or below certain technical limits as per the OEM recommendations, they are all commercial terms and conditions and need to be addressed accordingly by way of amendments to the PPA but certainly not in the form of non-compliance (either in part or full) of the backing down instructions which may threaten the grid security. Such a provision has been made, though in a different context, in Clause 4.3.6 of CTI to provide a remedy to the Generator, if he is made to keep the generator as a hot standby. 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 u/s 33 (1) of the Electricity Act, 2003, it has to be referred to the Commission which option the Generator has not chosen to exercise whereas it is the APSLDC that has filed a petition before the Commission, apparently out of the responsibility to 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 will not out be of context to mention here that the PPA was signed by both the parties prior to the Grid Code and enactment of the Electricity Act, 2003 and there were certain amendments made to the PPAs by the group company M/s GVK Gowthami Power Ltd. in 1997 and later modified in 1999.

It is also to be significantly noted here that the Commission, while delivering the order dated 15-04-2013 for the appointment of the Adjudicating Officer where the request of the petitioner for appointment of the Adjudicating Officer to enquire into the case and other related prayers were made, has made an observation that though there may be conditions in the PPA, the Act prevails over the PPA but however left it to the Adjudicating Officer to decide whether it can be entertained about backing down instructions only in case of emergency or otherwise(Para 11).

54. It is interesting to note here that the Respondent has contended that the order of the Sections in the Electricity Act, 2003 determines that the Petitioner should honour first the contractual terms between the parties before issuing any dispatch instructions to the Respondents. Apparently the respondent was referring to Section 32 (2) (a) where the functions of the SLDC are prescribed wherein the SLDC is responsible for optimum scheduling and despatch of electricity within a State, in accordance with the *contracts (emphasis applied)* entered into with the Licensees or the generating companies operating in that State and Section 33 (1) , (2) & (5) of the Act where the SLDC is empowered to issue directions to the generating Company or any other person connected with the operation of the power system and essentiality of compliance of such directions by them and the consequence of non-compliance of such directions are provided. The moot question here is that whether the order of the sections of the Act or the significance of the sections of the Act is important. If the spirit of the sections in the Act is to be rightly interpreted, Section 32 of the Act indicates the responsibility of the SLDC to take into account, such contracts between the generating companies and the Licensees ; Section 33 of the Act prescribes the responsibility of the generating company to comply with the directions of the SLDC (given in exercise of its 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) and consequence of such non-compliance. Undoubtedly the responsibility bestowed on the SLDC under Section 33 is of paramount importance since it involves optimising the power system operations and conservation of scarce resources and thus serving a larger interest of the public in general and electricity consumers in particular as well the responsibility of ensuring discipline among the various participants in the network.

55. However, it is also pertinent to note that the Respondents' inability to reduce the generation beyond the technical limits fearing threat to the safety of the equipment, men and other machinery also cannot be lost sight of in view of the in-built provisions, protections and remedies provided in the PPA and also the Code of Technical Interface (CTI) apart from some compelling obligations on the part of SLDC as provided in the Electricity Act, 2003 as mentioned in Para 46 supra as well as the advisory remarks of the OEM that running the units below the Technical Limits may lead to flame instability and may cause damage to the turbine components.

56. Keeping this in view, the Adjudicating Officer, for arriving at the likely number of backing down instructions which were not complied with and qualify for imposing any penalty, sought to obtain the details of the backing down instructions taking into account

- (i) the number of non-compliance instructions considering the limitation of two instructions per day even in emergency and
- (ii) 70% technical limit as per the recommendations of the Original Equipment Manufacturer (OEM) even though as per Art 2.1 (b) (i) of the PPA, the backing down is permitted upto 60% of the Declared Capacity in an Emergency and as provided in Art.3.4 (ii)(a) Schedule – D of the PPA.

57. Accordingly, the petitioner has submitted that out of the 128 total number of non-compliances, considering the limitation of two instructions only during one day, the number of non-compliances will remain as 128 only and if the limitation of backing down upto technical limit is also accepted, the number of non-compliances will further come down to only 9.

58. After taking the above aspects into consideration, and in view of the foregoing discussion, the undersigned is of the opinion that making the above assumptions is reasonable and can be taken into consideration to finalise the total number of non-compliances. Thus the total number of non-compliances for which the generator shall become liable to penalty will be 9 and the same has also been impliedly admitted by the Respondents in their submissions made on 6th Jan, 2016. Here it is to be considered that during the real time operation of the power system, the SLDC will be considering the actual power flows that exist at that particular moment of time and assess the situation at that particular moment of time but not the installed or declared capacities of the generators to decide the requirement of any backing down or pressing into operation of any generator or curtailing any load. Therefore the output of the machine at the instant of issuing backing down instructions will be more appropriate and relevant than the Declared Capacity of the project, however, subject to the technical limits of the generating machines based on the OEM recommendations. In view of this, the number of non-compliances for which the Respondents will become liable for imposing penalty can be taken as 9.

And as the said 9 non-compliances were repetitive in nature, though warranting the maximum penalty to be levied, the undersigned, keeping in view all the aspects, and also observing that it is for the first time that such a situation has arisen after the major private participation in the power generation in the State of Andhra Pradesh which obviously necessitates for taking a considerate stand and also from the stand point of view that all the players in the network operation have to be placed on the same level-playing field while dealing with such complex technical issues, feels that a penalty of Rupees One Lakh per each violation is justifiable. But, at the same it also has to be understood that the violators of grid discipline cannot always get away with meagre penalties and any such violations which threaten the grid security and economy and efficiency of power system operation will be dealt with sternly in future.

59. Now coming into the issue of loss sustained by the Licensees, as alleged by the Petitioner, due to backing down of low cost generation as a result of non-compliance of the backing down instructions by the Respondent (Generator), it is a fact that APSLDC, as a power system operator had to resort to backing down of certain low cost generation so as to maintain the security of the grid and economic operation of the

State grid in accordance with the Grid Standards and the State Grid Code as envisaged in the Electricity Act, 2003. The loss sustained by the Licensees due to backing down of low cost generation instead of the marginally costly generator, i.e., the Respondent Generating Company in the instant case at the time of issuing the backing down instructions as per the mandatory Merit Order Dispatch Stack comprising of all the generators is nothing but the consequence of non-compliance of the backing down instructions given by the SLDC which liability is to be borne by the non-complying generator. There appears to be no reason not to accept the correctness of the details of day-wise backing down instructions (given by SLDC) which were not complied with by the generator and the low cost generation details, the backing down of which was resorted to by the SLDC as a part its statutory duty as the system operator to back down the next low cost generator in the Merit Order Stack. (The details are shown in the **Annexure-I.**)

60. Even though, prima facie, there does not seem to be any direct amount of disproportionate gain or unfair advantage, as mentioned in Section 144 of the Electricity Act, 2003 made by the Respondent by way of resorting to the above said violations, since the Respondent did generate power and pumped it into the Grid and received the energy charges from the Licensees to that effect; the losses sustained by the Licensees, as rightly argued by Petitioner, as a result of the acts of the Respondents would need to be treated as the indirect gain to the Respondents as such losses would not have occurred, had the Respondent complied with the backing down instructions issued by the Petitioner.

61. Thus it will be in the fitness of the things that the loss sustained by the Licensees due to backing down of the low cost generation as a result of non-compliance of the above 9 (Nine) backing down instructions by the Respondents, is made good by the Respondent to the Licensees.

62. The initiative and efforts of APSLDC, the petitioner, in initiating the litigation against non-compliance of its instructions issued as a part of its duty as the system operator, though not the direct beneficiary of the litigation, speaks about the responsibility it has assumed in maintaining the discipline among the various participants in the network.

CONCLUSION

63. In the light of the above discussion, the undersigned is of the opinion that the respondents can be held guilty of contravention of and non-compliance with the provisions of Section 33(1) of the Act thereby becoming liable for penalty as per section 33(5) of the Electricity Act, 2003 apart from the responsibility of making good the loss sustained by the Licensees in the action of SLDC having backed down the low cost generation to meet the power system requirements as per the merit order stack at the moment of such non-compliance.

64. Thus the undersigned is fully satisfied that the circumstances warrant imposing a penalty on the Respondent (Generator) to the extent of Rupees One Lakh for each non-compliance apart from making good the loss of Rs.60,264/- (Rupees Sixty Thousand Two Hundred and Sixty Four Only) sustained by the Licensees due to backing down of Low cost generation associated with the said 9 non-compliances. Thus, against 9 contraventions, the respondents shall pay a penalty of Rupees 9 Lacs plus Rs.60264/-, totalling to Rs.9,60,264/-(Rupees Nine Lakh Sixty Thousand Two Hundred Sixty Four Only). Both the parties will bear their own costs.

65. I order accordingly,

Sd/-
(P. Rama Mohan)
Member and Adjudicating Officer
A.P.E.R.C.

ANNEXURE-I

OP No. 14 of 2010

S/NO	Name	date	time	date	time	duration	Non-com	No. D.I.	FREQUENCY NCY AT THE TIME OF RD	AVG FQ DURING RD	MAX FQ DURING E.	MOD INSTRUCCTI ON
118	GVK2	18-aug-10	00:00	18-aug-10	03:40	3:40:00	0.088	1	50.14	50.02	50.68	MOD
119	GVK2	19-aug-10	01:30	19-aug-10	02:50	1:20:00	0.032	1	49.90	49.94	50.48	MOD
120	GVK2	14-aug-10	17:45	14-aug-10	18:55	1:10:00	0.028	1	49.92	49.85	50.27	MOD
121	GVK2	15-aug-10	17:45	15-aug-10	18:55	1:10:00	0.047	1	49.81	49.74	50.06	MOD
122	GVK2	16-aug-10	17:30	16-aug-10	19:00	1:30:00	0.056	1	49.58	49.57	50.18	MOD
123	GVK2	31-aug-10	17:30	31-aug-10	18:50	1:20:00	0.050	1	49.88	49.9	50.31	MOD
124	GVK2	14-aug-10	17:00	14-aug-10	18:40	1:40:00	0.055	1	50.04	49.8	50.1	MOD
125	GVK2	19-aug-10	17:25	19-aug-10	18:45	1:20:00	0.055	1	50.05	49.85	50.28	MOD
126	GVK2	30-aug-10	17:00	30-aug-10	18:45	1:45:00	0.033	1				

variable cost [Rs./MWH]	Gen. Cost Rs.	Low cost gen. b/d at that moment variable cost	Differential cost	Amount (loss to gain) economy
178,000	156640	RTPP-2	174,000	4,000
178,000	56960	GVK2	178,000	0,000
185,980	52077	VTS	157,000	28,980
185,980	86795	VTS	157,000	28,980
185,980	66956	VTS	157,000	28,980
185,980	92995	RTPP-2	174,000	11,980
179,000	116350	VTS	157,000	22,000
179,000	97853	RTPP-2	174,000	5,000
179,000	58473	RTPP-2	174,000	5,000
TOTAL COST	785101		DIF. COST.	60264