



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4thFloor, Singareni Bhavan, Red Hills, Hyderabad 500004

MONDAY, THE TWELFTH DAY OF APRIL
TWO THOUSAND AND TWENTY ONE

:Present:

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

O.P.No.18 of 2019

Between:

Satya Maharshi Power Corporation Ltd.

Having its regd. Office at Plot No.81,

Phase-1, Kavuri Hills, Madhapur,

Hyderabad, Telangana,

Represented by its Managing Director

Mr. D. Raghava Rao, S/o. Late D.Ch.Subba Rao,

Aged about 59 years, occ: Business,

R/o. Hyderabad

.. Petitioner

And

1. Transmission Corporation of Andhra Pradesh,
Vidyut Soudha, Gunadala, Vijayawada,
Represented by its Chairman and Managing Director
2. The A.P. Southern Power Distribution Company Ltd.,
Tirupathi, Chittoor District, represented by its
Chairman and Managing Director
3. The Chief General Manager, Operation,
APSPDCL, Tirupathi, Chittoor District
4. The Superintending Engineer, Operation Circle,
APSPDCL, Vidyut Bhavan, Ponnur Road, Guntur.

5. The Divisional Engineer,
APSPDDCL, Guntur, Guntur District.
6. The Divisional Engineer, Operation &
Maintenance, A.P. Transco, Ponnur,
Guntur District
7. The Chief Engineer, A.P. State Load
Despatch Centre, Transco, Vijayawda,
Krishna District

.. Respondents

O.P.No.19 of 2019

Between:

SLS Power Ltd.,
Ashok Nagar, Navalak Gardens,
Nellore, A.P., Represented by its Director
M.S. Badri Narayana S/o. M. Srinivasulu Setty,
Aged about 47 years, occ: Business, R/o.Gudur, A.P. .. Petitioner

And

1. Transmission Corporation of Andhra Pradesh,
Vidyut Soudha, Gunadala, Vijayawwada,
Represented by its Chairman and Managing Director
2. The A.P. Southern Power Distribution Company Ltd.,
Tirupathi, Chittoor District, represented by its
Chairman and Managing Director
3. The Chief General Manager, Operation,
APSPDCL, Tirupathi, Chittoor District
4. The Superintending Engineer, Operation Circle,
APSPDCL, Vidyut Bhavan, Ponnur Road, Guntur.
5. The Divisional Engineer,
APSPDCL, Guntur, Guntur District.
6. The Divisional Engineer, Operation &
Maintenance, A.P. Transco, Ponnur,

Guntur District

7. The Chief Engineer, A.P. State Load
Despatch Centre, Transco, Vijayawda,
Krishna District

.. Respondents

O.P.No.20 of 2019

Between:

Sree Venkata Sreedevi Power LLP,
Suryapalem village, Podalakur Mandal,
SPSR Nellore District,
Represented by its Managing Partner,
Mr. T. Srinivas Rao S/o. T.Subramanyam,
Aged about 62 years, occ: Business,
R/o. Nellore

.. Petitioner

And

1. Transmission Corporation of Andhra Pradesh,
Vidyut Soudha, Gunadala, Vijayawada,
Represented by its Chairman and Managing Director
2. The A.P. Southern Power Distribution Company Ltd.,
Tirupathi, Chittoor District, represented by its
Chairman and Managing Director
3. The Chief General Manager, Operation,
APSPDCL, Tirupathi, Chittoor District
4. The Superintending Engineer, Operation Circle,
APSPDCL, Vidyut Bhavan, Ponnur Road, Guntur.
5. The Divisional Engineer,
APSPDCL, Guntur, Guntur District.
6. The Divisional Engineer, Operation &
Maintenance, A.P. Transco, Ponnur,
Guntur District
7. The Chief Engineer, A.P. State Load

Despatch Centre, Transco, Vijayawda,
Krishna District

.. Respondents

These Original Petitions have come up for hearing finally on 24-3-2021 in the presence of Sri O. Manohar Reddy, learned Counsel for the petitioners and Sri P. Shiva Rao, learned Counsel for the respondents and after hearing the arguments of the learned Counsel for both the parties, the Commission passed the following :

COMMON ORDER:

All these three O.Ps. have been filed under Section 86(1)(f) of the Electricity Act 2003 (for short “the Act”) to direct respondent No.2-Discom to pay fixed costs on the respective deemed generation rates from 9-6-2017 to 18-7-2017 at 80% PLF and for damages incurred during the period of stoppage of the petitioners’ companies with interest at 18% p.a.

For convenience, the details of the petitioners-companies and their respective claims in the O.Ps. are tabulated hereunder:

O.P. No.	Name of the petitioner company	Nature of power project	Capacity	Location	PPA Date	Fixed Costs claimed on deemed generation basis (Rs.)	Damages and expenses claimed (Rs.)
18/2019	Satya Maharshi Power Corporation Ltd.	Bio Mass	6 M.W.	Krosur Road, Muthiahpalem village, Amaravathi Mndal, Guntur District	10-5-2004	54,25,085 @ Rs.1.37 per Unit @ 80% PLF	Not quantified

19/ 2019	SLS Power Ltd.	Bio Mass	6 M.W.	Ashok Nagar, Navalak Gardens, Nellore, SPSR Nellore District	15-8-2001	71,88,480 @ Rs.1.56 per Unit at 80% PLF	22,00,000
20/ 2019	Sree Venkata Sreedevi Power LLP	Bio Mass	6 M.W.	Suryapalem village, Podalakur Mandal, SPSR Nellore District	18-1-2016	65,89,440 @ Rs.1.43 per Unit at 80% PLF	21,40,000

The petitioners pleaded that they have established the power projects for supplying power generated therefrom to the A.P. Transco under the respective power purchase agreements and the same were approved by the Commission under Section 21 of the A.P. Electricity Reforms Act 1998. It was further pleaded that by order dated 24-3-2003 passed in O.P.Nos.1 of 2003 to 5 of 2003, the Commission directed that the MUST RUN stations like Nuclear Power Stations and run off river generation and supply from non-conventional sources are to be given first preference in despatch and that other stations shall be despatched progressively to meet the real time demand on the basis of the lowest variable costs. That in the Retail Supply Tariff order for the year 2017-18, dated 31-3-2017, it was provided that among the above

stations, the energy generated from the stations having MUST RUN status such as Renewable Energy Projects, Nuclear Power Projects and Hydel Stations have to be despatched first, that the energy from the Thermal and Gas stations have to be despatched in the merit order based on per unit variable costs and that the Thermal and Gas stations are entitled for fixed cost as per the contractual obligations in the event of back down or despatch instructions. That notwithstanding the directions issued by the Commission in the Tariff Order, respondent No.3, on the basis of the letter dated 7-6-2017 addressed by respondent No.7, requested respondent No.2-Discom to backdown Bagasse, Bio Mass, Municipal Waste and Industrial Waste Generation Plants with immediate effect until further instructions in view of the low demand and high frequency in the Grid; that accordingly respondent No.3 directed all the Superintending Engineers to address the developers to back down their generations with immediate effect until further orders; that basing on the letter addressed by the Superintending Engineer, APSPDCL, the concerned Divisional Engineers have directed the petitioners-companies to stop generation of power; and that immediately after receipt of the said letter the petitioners requested the concerned Superintending Engineers to withdraw the back down instructions immediately on the ground that

the said orders were running contrary to the directions of the Commission. That the petitioners and other similarly situated companies were making representations to withdraw the back down instructions and that however respondent No.2-Discom has withdrawn the back down generation order only on 18-7-2017; that by reason of the illegal action of respondent No.2-Discom in issuing the back down orders, the petitioners-companies could not generate power from 9-6-2017 till 18-7-2017 and in the process they suffered huge losses and that therefore respondent No.2-Discom is liable to reimburse the petitioners of the said losses as the back down orders are contrary to the orders of the Commission.

The petitioners further pleaded that the Biomass Energy Developers Association made a representation to the Commission suggesting that compensation may be provided to the producers of energy through Biomass by considering deemed generation and allowing the recovery of fixed and variable costs due to plant tripping on account of Grid operating conditions and evacuation failures; that however the Discoms have taken a stand that the NCE projects are considered as MUST RUN stations and that the concept of deemed generation would be appropriate only where the projects can be subject to despatch instructions; that in

O.P.No.1075/2000 and in R.P.No.84/2003 the Commission examined the issue and by its order dated 12-09-2011 negated the representation of the Biomass Energy Developers Association; that from the above it is clear that the Discoms are obligated to purchase the power generated by the NCE projects; that as per the orders issued by the Superintending Engineers directing the petitioners-companies to stop generation with immediate effect by letter dated 9-6-2017, the petitioners stopped generation of power till 18-7-2017 and sold away the raw material and suffered damages and that therefore respondent No.2-Discom is liable to pay the fixed costs payable for Biomass Power Projects as per the order of the Commission in O.P.No.11/2010 and Batch, dated 19-7-2014 during the period of stoppage of generation.

On behalf of the respondents, the Executive Director/SLDC, A.P. Transco/Vidyut Soudha, Vijayawada filed counter affidavits by taking identical stand in all the three O.Ps. It was pleaded in the counter affidavits that according to the forecast made by APSLDDC during June 2016 there was surplus generation and the Indian Power System frequency was also high for 23% of time; that the average wind generation in June 2016 was around 11 MU per day; that on 8-6-2017 the wind generation supply was 22 MU; that in the said circumstances as an interim measure, the A.P. State

Load Despatch Centre (SLDC) was forced to back down Biomass generation from 9-6-2017 in compliance of Clause 4.3.8.1 of the Code of Technical Interface (CTI) of APERC, Clauses 5.2(m) and 6.4 of Indian Electricity Grid Code (IEGC) r/w. Clause 7.1 of Deviation Settlement Mechanism (DSM) Regulations of the CERC; that during the said period Wind generation increased day by day upto 58 MU in a day; that in a first of its kind situation to the A.P. Grid, upto 46% of energy in a day was met through RE generation; that accurate forecast of wind generation on hour to hour basis also became critical; and that thermal generation was also backed down upto technical minimum/minimum generation and the same was made hot reserve for making up the variations in RE generation as thermal generation cannot be switched off completely. It was further stated that Biomass generation cannot be increased or decreased in real time whenever required directly from the Load Despatch Centre; that in order to recall Biomass generation, between 9-6-2017 and 18-7-2017, regular reviews were conducted in the power supply position and that in spite of 55 MU of wind power generation on 18-7-2017, it was decided to recall Biomass generation; and that the back down instructions given were legal and mandated by the circumstances prevailing in the Grid.

It is further pleaded that as per the Frequency profile of Indian Power System, 23.20% of time frequency is beyond 50.05 Hz during June 2017 and July 2017; that the demand variation between maximum and minimum was around 3500 MW in a month; that during day the difference was upto 2800 MW; that the maximum demand in a day dropped to as low as 5653 MW and similarly energy consumption also varied to 40 MU; and that before the onset of peak wind season, 3713 MW of Wind and 1988 MW of solar generation was integrated to the A.P. Grid i.e., by June 2017 in various promotional schemes of the State and Central Governments. It is further pleaded that the technology for forecasting of generation is under development; that the generation pattern may not be similar on day to day basis for wind generation and thus the increase in wind and solar electricity generation capacities resulted in larger power input fluctuation on the Grid and as a result it became difficult to operate the Grid system in a secured and safe manner. That the variation in RE generation during June and July 2017 is as under:

	WIND (MW)		SOLAR (MW)
	Max. Generation	Min. Generation	Max Generation
June-17	2456	52	1239
July 2019	2643	434	1370

It is further stated that during the period of back down, industrial consumers bought in the power exchange when power cost at power exchange was cheaper during the surplus period and that in certain instances the power was sold at lower prices in power exchange for maintaining the technical minimum. It is further stated that NTPL Unit-1, Ramagundam Unit-2, NLC-II-Unit 6, MAPS Unit 2, Vallur Unit 2 were permitted overhaul/annual maintenance from central generating stations; VTPS Unit 5, RTPP Units 4 & 5 were released for overhaul/annual maintenance works from A.P. Genco generators; RTPP Unit-2 was kept under reserve shut down; Krishnapatnam Units 1 & 2, Hinduja Units 1 & 2 were deparalleled due to low system demand and high frequency; and that all the above operations were made in a staggered manner to handle high frequency and low system demand in compliance to CTI, IEGC and DSM Regulations. It is also further pleaded that a peculiar problem persisted in the peak wind season even after all the thermal generators were backed down upto technical limit; that if the thermal generators were deparalleled the same results in shortfall for meeting peak loads or to meet sudden fall in wind and solar generation; and that in the said circumstances the only option was to backdown the wind, solar, Bagasse, Biomass, Municipal Solid Waste, Industrial Waste and

MSW projects. That backing down of nuclear power plants depends on all other stakeholders; that in real time operations wind and solar projects can be curtailed in emergencies from load despatch directly by instructing a few substations; that in case of Bagasse, Biomass, Industrial Waste & Municipal Solid Waste Projects in real time emergencies, the load despatch operators cannot monitor and back down each and every small generator of electricity of less than 10 MW; that these generators can be backed down only at 33 kV level from DISCOMs and it will take considerable time to inform and implement the backing down despatch instructions and that therefore it was decided to back down Bagasse, Biomass, Industrial Waste and Municipal Solid Waste Projects for some period.

It is further stated in the counter affidavits that there is no specific clause for 'deemed generation' in the PPAs entered with the energy developers of Biomass, Industrial Waste and Municipal Solid Waste and A.P. Discoms. It is further stated that in its order dated 19-7-2014, the Commission did not allow the request of the developer for providing deemed generation status and therefore the developers are not entitled for payment of tariff during the back down period. It is further stated that the order dated 24-3-2003 in O.P.Nos.1/2003 to 5/2003 and relied upon

by the petitioners for canvassing the merit order despatch procedure is irrelevant for backing down or for compliance of merit order. With regard to the Tariff Order for the year 2017-18, dated 31-3-2017, it is stated that while planning month-wise generation despatch, RE generation was despatched first and that in the real-time merit order, no RE generators were considered and that the SLDC has fully complied with the directions of the Commission in this regard. It is further stated that the claim of the petitioners that they are entitled for fixed charges as fixed by the Commission during the period of stoppage of generation is not tenable as there is no specific stipulation in the PPAs for Biomass and Municipal Solid Waste projects. It is further stated that the order dated 19-7-2014 of the Commission denied the proposal of certain Biomass Developers for claiming deemed generation after ten years and that there is no statutory provision to enable the petitioners to claim deemed generation charges in the event of backing down of their projects.

The petitioners have filed rejoinders denying the averments in the counter affidavits.

We have heard Sri O. Manohar Reddy, learned Counsel for the petitioners and Sri P. Shiva Rao, learned Standing Counsel for the respondent Nos.1 to 7.

Having regard to the respective pleadings, the point for consideration is whether the petitioners are entitled to any relief ?

The learned Counsel for the petitioners laid heavy emphasis on the Merit Order dated 24-03-2003 in O.P.No.1/2003 to O.P.Nos.5/2003 passed by this Commission and also Tariff Order dated 31-03-2017 for the year 2017-18 and submitted that as per the said orders, Renewable Energy projects among others have been conferred MUST RUN status and that as per the said order it is obligatory on the part of respondent No.2-Discom to first despatch the power from the projects having MUST RUN status as per the priority mentioned in the Merit Order. The learned Counsel submitted that notwithstanding the said orders of this Commission, based on letter dated 7-6-2017 addressed by the Chief Engineer, APSPDCL, A.P. Transco, Vijayawada, respondent No.2 has requested the petitioners to backdown Bagasse, Biomass, Municipal Solid Waste and Industrial Waste generation Plants with immediate effect until further instructions in view of low demand and high frequency in the Grid and that accordingly the petitioners have backed down their plants till 18-7-2017 when the backdown instructions were withdrawn. He therefore submitted that the petitioners are entitled to recover fixed costs

on deemed generation from 9-6-2017 to 18-7-2017 on 80% PLF and also the damages incurred by the petitioners during the period of stoppage with interest @ 18%.

Sri P.Shiva Rao, while pointing out that the PPAs do not contain the deemed generation clause, however submitted that due to system constraints, respondent No.7 has directed respondent No.2 and its officials to backdown Bagasse, Biomass, Municipal Solid Waste and Industrial Waste generation Plants and that they are bound to follow the said direction.

We have carefully considered the respective submissions of the learned Counsel for the parties with reference to the material on record.

The State Load Despatch Centre is constituted under Section 31 of the Act for the purposes of exercising powers and discharging functions enumerated under Part-V of the Act. Section 32 of the Act has laid down the functions of the SLDC which inter alia include the responsibility for carrying out the 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. Under Section 33, the SLDC is conferred with the power to give

such directions and exercise such supervision and control as may be required for ensuring the integrated Grid operations and for achieving the maximum economy and efficiency in the operation of Power System in the State. Sub-section (2), which is pivotal for this case reads as under :

“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).

As evident from the above reproduced provision, every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the SLDC under sub-section (1).

It is not in dispute that the direction to the petitioners to stop power generation was issued by respondent No.4 based on the letter dated 7-6-2017 addressed by respondent No.7 for backing down Bagasse, Biomass, Municipal Solid Waste and Industrial Waste Generation Plants with immediate effect and that the said instructions were withdrawn only w.e.f., 18-7-2017. As noted above, under Section 33(2) of the Act, respondent No.2 being a licensee shall comply with the directions issued by the SLDC. Hence, respondent No.2 had no option other than

religiously and scrupulously complying with the said directions of respondent No.7. In this admitted fact-situation, the Commission is of the considered view that the petitioners cannot claim fixed charges/compensation for the losses if any suffered on account of stoppage of generation against respondent No.2.

For the aforementioned reasons, the Original Petitions fail and they are accordingly dismissed. No costs.

**Sd/-
Thakur Rama Singh
Member**

**Sd/-
Justice C.V. Nagarjuna Reddy
Chairman**

**Sd/-
P. Rajagopal Reddy
Member**

