TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 1st Day of August 2024

PRESENT:

Thiru M.Chandrasekar .... Chairman

Thiru K.Venkatesan .... Member

and

Thiru B.Mohan .... Member (Legal)

D.R.P. No. 17 of 2020

1. M/s. Walwhan Renewable Energy Ltd.
   7th Floor, Welspun House
   Kamala City
   Senapati Bapat Marg
   Lower Parel
   Mumbai – 400 013, Maharashtra.

2. M/s. Walwhan Solar TN Limited
   7th Floor, Welspun House
   Kamala City
   Senapati Bapat Marg, Lower Parel
   Mumbai – 400 013, Maharashtra.

… Petitioners
Mr.Shri Venkatesh,
Mr.Suhael Buttan &
Advocate from M/s. SKV Law Offices

Vs.

1. Tamil Nadu Generation and Distribution Corporation Ltd.
   Through the Chairman
   144, Anna Salai
   Chennai – 600 002, Tamil Nadu.

2. Tamil Nadu State Load Despatch Centre
Through the Chairperson / Chief Engineer
(TANTRANSCO Ltd.)
144, Anna Salai
Chennai – 600 002
Tamil Nadu.

3. Tamil Nadu Transmission Corporation Ltd.
Through the Chairperson / Chief Engineer
(TANTRANSCO Ltd.)
144, Anna Salai, Chennai – 600 002
Tamil Nadu.

4. Ministry of New and Renewable Energy
Through the Secretary
Block – 14, CGO Complex
Lodhi Road
New Delhi – 110 030.

…Respondents
Thiru N.Kumanan and
Thiru.A.P.Venkatachalapathy,
Standing Counsel for TANGEDCO
and TANTRANSCO

This Dispute Resolution Petition stands preferred by the Petitioner M/s. Walwhan Renewable Energy Ltd.,(Erstwhile M/s.Welspun Renewables Energy Pvt. Ltd.), Mumbai – 400 013 with a prayer to

(a) admit the present petition;

(b) issue directions treating the loss of generation of Rs.78.73 crores as computed till August, 2020 on account of curtailment of power as deemed generation by the petitioners;

(c) direct Respondent No.1 to make payment for the said Deemed Generation Charges;

(d) declare that any curtailment from September 2020 shall also be reimbursed to the petitioner as Deemed Generation Charges;

(e) direct Respondent No.2 and 3 to abide by the mandate of the Electricity Act, 2003 and Regulations and policies framed thereunder to ensure that “Must Run” status is being maintained qua the petitioners in letter and in spirit.

This matter coming up for final hearing before the Commission on 31-08-2023 in the presence of Mr.Shri Venkatesh & Mr.Suhael Buttan, Advocate from M/s. SKV Law Offices and Mr..N.Kumanan and Mr.A.P.Venkatachalapathy, Standing counsel for the Respondent and upon hearing the submission made by the counsel for the petitioner and the respondents, on perusal of the material records and relevant provisions of law and having stood up for consideration till this date, this Commission passes the following

ORDER

1. Contention of the Petitioners:

1.1. The present Petition is being filed by Walwhan Renewable Energy Limited (erstwhile M/s Welspun Renewables Energy Pvt. Ltd.) ("WREL") and Walwhan Solar TN Ltd. (erstwhile M/s Welspun Solar Tech Pvt. Ltd.) ("WSTNL") (collectively referred to as "Petitioners") seeking the indulgence of the Commission and invoking its Regulatory Jurisdiction under Section 86(1)(e) read with Section 86 (1)(f) of the Electricity Act 2003 ("Electricity Act"). By way of the present Petition, Petitioners are praying for appropriate directions and orders to be passed qua the Respondent No.1,

i.e. Tamil Nadu Generation and Distribution Corp. Ltd. ("TANGEDCO") and other contesting Respondents to compensate the Petitioners for the breach of the Energy Purchase Agreement ("EPA") and the regulatory framework in vogue and consequently direct payment of actual loss of the revenue suffered by the Petitioners on account of:-

(a) Frequent and rampant backing down instructions given to the Petitioners on account of the inadequacy of Transmission System and alleged grid safety issues;

(b) Respondent No.2 i.e. Tamil Nadu State Load Despatch Centre ("TNSLDC") and Respondent No.3, i.e. the Tamil Nadu Transmission Corporation Ltd. ("TANTRANSCO") are statutorily mandated to provide an efficient, coordinated and economical system for intra-state transmission lines for smooth flow of electricity under Section 39 of the Electricity Act, 2003. However, in the facts of the present case admittedly the Respondent No.2 and 3 have miserably failed to discharge their statutory function/obligation and for that reason the Petitioners have been made to suffer tremendous financial loss. Therefore, for such loss suffered which is directly attributable to the Respondents the Petitioners are required to be compensated;

(c) Petitioners' tariff, under the respective EPAs is based upon Order dated 12.09.2014 passed in Order No.7 of 2014 and Order dated 28.03.2016 passed in Order No.2 of 2016 ("Tariff Orders") by the Commission. The said Tariff is also in conformity with the TNERC (Power Procurement from New and Renewable Energy Sources) Regulations, 2008 ("RE Regulations"). It is stated that both the Tariff Orders as well as RE Regulations envisage recovery of tariff over the span of 25 years after taking into consideration elements such as Capital Cost, Depreciation, Capacity Utilization Factor

("CUF"), Return on Equity ("RoE") etc. However, owing to the constant impairment caused by the Transmission System connected with Petitioners projects, the overall recovery of Tariff by the Petitioners would be much lower than the Tariff granted to the petitioners under the respective EPAs read with Tariff Orders and RE Regulations. The said under recovery is contrary to Section 86 (1) (e) read with Section 61 of the Electricity Act.

(d) In fact TANGEDCO has breached the specific terms and conditions of the EPAs signed and for such breach compensation is payable under Section 73 of the Indian Contract Act, 1872.

1.2. The Petitioners own and operate the 249 MW Solar Power Plants, situated at Trichy, Tirunelveli and Karur districts in the State of Tamil Nadu. The power from the said Solar Power Plants is being supplied to TANGEDCO under various EPAs.

1.3. However, since the very inception of these power plants, the Petitioners are continuously facing huge losses due to backing down instructions from TNSLDC and forceful disconnection/ curtailment of supply from their solar power plants by TANGEDCO/TANTRANSCO. Moreover, these instructions were mostly issued telephonically for economic considerations without any written confirmation either prior to or after backing down / disconnection. The restriction of load curtailment usually varies from 25% to 100%. The above curtailed operation is leading to massive under recovery for the Petitioners and the premise upon which the Tariff of the instant projects was determined is completely getting dislodged.

1.4. As stated above, Respondent No.2 and 3 are statutorily obligated to ensure smooth transmission of power for all generating companies including the Petitioners under Section 39 of the Electricity Act. However, in the present facts and circumstances, Respondent No.2 and 3 at the economic behest of Respondent No.1 have miserably failed to perform their statutory obligations, which in turn, has resulted into tremendous financial loss for the Petitioners owing to which the Petitioners have knocked the doors of the Commission by way of the present Petition.

1.5. The Petitioners have been repeatedly informing TANGEDCO/ TANTRANSCO as well as TNSLDC that there has been a considerable loss in generation of approximately 114.17 MUs till 11.09.2020. Such generation loss has resulted in a cumulative revenue loss of approximately INR 78.73 Crores till September 2020.

1.6. The Petitioners are constrained to file the present Petition since despite repeated requests and various attempts to amicably resolve the issue of curtailment, which has been primarily caused on account of lack of evacuation facilities with TANTRANSCO. No resolution has been arrived at till date and in turn is detrimental to the interest of the Petitioners. Despite the status of 'Must-Run' accorded to the Petitioners project, and even though the Petitioners have been declaring full availability of its Plant, TANTRANSCO and TNSLDC continue to issue curtailment instructions for clear economic consideration. Hence, the present Petition, praying for compensation on account of generation loss and revenue loss, by treating such generation loss of 114.17 MUs as deemed generated power.

1.7. The Petitioners, i.e. WREL and WSTNL, are companies incorporated under the Companies Act 1956 and are Generating Companies within the meaning of Section 2(28) of the Electricity Act. The Petitioners are wholly owned subsidiaries of the Tata Power Company Limited ("TPCL"). It is to be noted that on 14.07.2017 and 20.09.2017, the name of the Petitioners were changed to WREL and WSTNL respectively.

1.8. The Petitioners owns and operates the following plants:

Sl. No.	Solar Power	Date of EPA	Parties	Commissioning Date
1	Musiri-50 MW	02-03-2015	WSTNL and TANGEDCO	09-10-2015
2	TT Pet-50 MW	03-03-2015	WSTNL and TANGEDCO	27-10-2015
3	Panchapatti 50 MW	30-04-2015	WSTNL and TANGEDCO	21-10-2015
4	Kayathar 34 MW	04-07-2015	VJPUS TANGEDCO	17-11-2016
	Addendum to the Agreement	05-08-2016	WREL and TANGEDCO	
5	Kayathar 15 MW	28-01-2016	BEVPL and TANGEDCO	17-11-2016
	Addendum to the Agreement	28-05-2016	WREL and TANGEDCO	
6	Iyyermalai 50 MW	29-01-2016	WREL and TANGEDCO	08-03-2016

1.9. Respondent No.1, i.e. TANGEDCO is an electrical power generation and distribution public sector undertaking that is owned by the Government of Tamil Nadu. TANGEDCO was formed under Section 131 of the Electricity Act, and is the successor to the erstwhile Tamil Nadu Electricity Board ("TNEB").

1.10. Respondent No.2, i.e. TNSLDC, is an entity constituted under Section 31 of the Electricity Act and is the apex body to ensure integrated operation of the power system in the State of Tamil Nadu. TNSLDC is statutorily obligated to, *inter alia,* monitor the grid and is responsible for ensuring optimum scheduling and despatch of electricity within the State of Tamil Nadu. TNSLDC, further, exercises supervision and control over the intra-state transmission network, owned and operated by TANTRANSCO and other licensees.

1.11. Respondent No.3, i.e. TANTRANSCO, is a company incorporated under the Companies Act, 1956 and is a transmission licensee within Section 2(73) of the Electricity Act. TANTRANSCO is also designated as the State Transmission Utility ("STU") for the State of Tamil Nadu, within the meaning of Section 2 (67) of the Electricity Act.

1.12. Respondent No.4, i.e. Ministry of New and Renewable Energy ("MNRE") is the nodal ministry of the Government of India ("GoI") for all matters relating to Renewable Energy. The broad aim/objective of MNRE is to promote and develop conducive environment for renewable energy in the country.

1.13. The relevant factual background leading to the filing of the present Petition has been detailed as follows:

1.13.1 On 03.08.2005, TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 were notified, inter alia, providing the following;

(a) Regulation 2(q):

"Deemed Generation" means the energy which a generating station was capable of generating but could not generate due to the conditions of grid or power system, etc. beyond the control of generating station.

(b) Regulation 56:

Deemed Generation (1) In case of reduced generation due to the reasons beyond the control of Generating Company or account of non-availability of S'I'U's/transmission licensee's transmission lines or on receipt of backing down instructions from the Sub Load Despatch Centre resulting in spillage of water, the energy equivalent on account of spillage at the same rate of energy charges shall be payable to the Generating Company. Apportionment of energy charges for such spillage among the beneficiaries shall be in proportion of their shares in saleable capacity of the respective Generating Station."

1.13.2 On 08.02.2008, the Commission notified 'The Power Procurement from New and Renewable Sources of Energy Regulations, 2008' ("RE Procurement Regulations"). Regulation 3 of the said Regulations provides for 'promotion of new and renewable sources of energy'.

1.13.3 On 11.01.2010, Government of India issued the Jawaharlal Nehru National Solar Mission ("JNNSM") with an aim to promote solar power generation in the country.

1.13.4 Thereafter, on 28.04.2010, Indian Electricity Grid Code Regulations, 2010 ("IEGC") was notified by the Central Electricity Regulatory

Commission ("CERC") wherein "Must Run" status was accorded to all the Solar Power Plants.

1.13.5 Pursuant to the JNNSM, in 2012, the Government of Tamil Nadu ("GoTN") issued a Solar Energy Policy ("TN Solar Policy") with a vision to lead the country by generating 3000 MW of Solar Power by 2015 through a policy conducive to promoting solar energy in the State.

1.13.6 On 12.09.2014, the Commission issued a Comprehensive Tariff Order on Solar Power being Order No.4 of 2014 ("Solar Tariff Order"). As per the said Order, tariff for Solar PV plants was fixed at Rs.7.01 per unit. Further, in terms of the RE Procurement Regulations, the format for EPA was to be determined by the Commission after discussions with generators and distribution licensees.

1.13.7 Pursuant to the Solar Tariff Order, CMD TANGEDCO issued Proceedings No. 454 prescribing instructions for processing of applications for establishment of solar power plants under Preferential Tariff Scheme.

1.13.8 On 18.09.2014, WSTPL proposed TANGEDCO for the establishment of 50MW solar plant each at Panchapatti Village and Iyermalai Village, Karur District respectively under preferential tariff (Panchapatti-50 MW & Iyermalai-50 MW). Accordingly, on 30.10.2014, WSTPL paid the requisite fee for both the projects.

1.13.9 In pursuance of the proposals, a Load Flow Study was conducted by

TANGEDCO considering the 2015-16 network condition in order to determine the transmission system for the connectivity and evacuation of power from both the 50 MW solar power plants (Panchapatti-50 MW & lyermalai-50 MW) under preferential tariff route for selling the power to TANGEDCO and on 05.02.2015, the transmission scheme was finalised for both the 50 MW solar power plant.

1.13.10 Thereafter, on 28.04.2015 and 13.11.2015 respectively, Panchapatti-50 MW Solar Plant was issued the No Objection Certificate ("NOC") and Grip Tie-up by TANGEDCO on 28.04.2015 and 13.11.2015 respectively. The CEIG safety approval was issued vide letter dated 03.11.2015.

1.13.11 Similarly, a Load Flow Study was conducted by TANGEDCO considering the 2015-16 network condition to determine the transmission system for the connectivity and evacuation of power from both the 50 MW solar power plants (Musiri-50 MW & TT Pet-50 MW) under preferential tariff route for selling the power to TANGEDCO and the transmission scheme was finalised for both the 50 MW solar power plant vide letters dated 09.02.2015.

1.13.12 Thereafter, on 25.02.2015, a letter was issued by TANGEDCO to inform WSTPL about the establishment charges and testing & commissioning charges to be paid to avoid any delay in extension work at Musiri for connecting the proposed 50 MW solar plant at Ponnusangampatti & Mavilaipatti villages, Thuraiyur taluk, Trichy district. On 12.03.2015 a

letter was issued by TANGEDCO to the Superintending Engineer/ GCC Trichy informing that the establishment charges and testing & commissioning charges have been paid by WSTPL and hence the company may be permitted to execute extension work for connecting the proposed Musiri- 50MW and TT Pet-50 MW solar power plants.

1.13.13 Simultaneously, a load flow study had been conducted and the decision of transmission feasibility for power evacuation was conveyed by TANGEDCO to WREPL vide letter dated 29-07-2015 for the solar plant to be located at Kayathar Village, Kovilpatti Taluk, Tuticorin District (Kayathar-49 MW).

1.13.14 On 02.03.2015, TANGEDCO signed an EPA with WSTPL, for solar generated electricity generated at WSTPL's solar plant i.e. Musiri-50 MW having a total capacity of 50 MW. The said solar plant was located at SF Nos. 1, 3 to 5, 7, 10, 26, 27, 32 to 35 of Thulianatham Village, Thuraiyur taluk, Trichy district and SF Nos. 425 to 436, 440, 449 to 451, 453 to 457, 459 to 466, 473 & 474 of Mavilaipatti village, Thuraiyur taluk, Trichy district. The Route Approval and Tower Schedule Approval for the said solar power plant was issued by TANTRANSCO to Superintending Engineer/ GCC Trichy vide letter dated 04.05.2015 and 07.05.2015 respectively.

1.13.15 TANGEDCO signed another EPA with WSTPL on 03.03.2015 for solar generated electricity generated at WSTPL's solar plant having a total

capacity of 50 MW i.e. TT Pet-50 MW and was located at Ponnusangampatti village, Thuraiyur taluk, Trichy district. The Route Approval and Tower Schedule Approval for the said solar power plant was issued by TANTRANSCO to Superintending Engineer/ GCC Trichy vide letter dated 06.05.2015 and 16.05.2015 respectively.

1.13.16 Thereafter, on 30.04.2015 an EPA signed between WSTPL and TANGEDCO, for solar generated electricity generated at WSTPL's solar plant having a total capacity of 50 MW i.e. Panchapatti- 50 MW situated at Veeriyampalayam Village, Krishnarayapuram Taluk, Karur district.

1.13.17 Vaibhav Jyothi Power Utility Services (P) Limited ("VJPUS") wrote a letter to TANGEDCO for the approval of a proposal for establishing a 34 MW Solar Plant in Sivaganga District on 25.02.2015 which was approved by TANGEDCO on 04.07.2015 and a Noted for Record Letter was issued by TANGEDCO to VJPUS for the approval.

1.13.18 On 04.07.2015 an EPA was signed between VJPUS and TANGEDCO for solar generated electricity generated at VJPUS's solar plant having a total capacity of 34 MW i.e. Kayathar- 34 MW.

1.13.19 Similarly, on 08.06.2015, BTC Energy Venture Private Limited ("BEVPL") wrote a letter to TANGEDCO for the approval of a proposal for establishing a 15 MW Solar Plant in Tirichy District which was approved by TANGEDCO on 28.01.2016 and a Noted for Record Letter issued by TANGEDCO to BEVPL for the approval.

1.13.20 On 28.01.2016 an EPA signed between BEVPL and TANGEDCO for solar generated electricity generated at BEVPL's solar plant having a total capacity of 15 MW i.e. Kayathar-15 MW.

1.13.21 On 29.01.2016, TANGEDCO signed an EPA with WREPL for solar generated electricity generated at WREPL's solar plant having a total capacity of 50 MW i.e. Iyyermalai- 50 MW located at Vayalur and Karupatthur Village.

1.13.22 Thereafter, on 18.03.2016, BEVPL vide its letter requested TANGEDCO for amending BEVPL to WREPL in Kayathar-15 MW and with respect to the same TANGEDCO on 29.04.2016 issued a Noted for Record Letter noting that BEVPL may be read as WREPL. In pursuance of the same, on 28.05.2016 an Addendum to the Agreement of Kayathar-15 MW was signed for the transfer of the EPA from BEVPL to WREPL.

1.13.23 On 28.03.2016, the Commission issued a Comprehensive Tariff Order on Solar Power being Order No.2 of 2016 ("Solar Tariff Order 2016"). As per the said Order, tariff for Solar PV plants was fixed at Rs.5.10 per unit. Further, in terms of the RE Procurement Regulations, the format for EPA was to be determined by the Commission after discussions with generators and distribution licensees.

1.13.24 Similarly, on 01.07.2016, VJPUS vide its letter requested TANGEDCO for amending VJPUS to WREPL in Kayathar-34 MW and with respect to the same TANGEDCO on 01.08.2016 issued a Noted for Record Letter

noting that VJPUS may be read as WREPL. In pursuance of the same, on 05.08.2016 an Addendum to the Agreement of Kayathar-34 MW was signed for the transfer of the EPA from VIPUS to WREPL.

1.13.25 Since commissioning of the said solar power plants, TNSLDC has been issuing frequent backing down instructions (oral, telephonic or rarely by way of an email) to the Petitioners citing grid security as the reason for backing down of generation. Pertinently, these instructions have been mostly issued verbally and very few written communications in this regard were issued by the Respondents. However, as is evident from the facts of the present case the said backing down is being carried out for economic considerations to financially aid and assist TANGEDCO who is also a State Instrumentality.

1.13.26 Aggrieved by the rampant and arbitrary curtailment of generation of solar power, on 10.08.2016, National Solar Energy Federation of India (I/NSEFI") (Association of similarly placed solar generators) filed Petition being Miscellaneous Petition No. 16 of 2016 before the Commission, *inter alia,* seeking directions to the Respondents to observe the 'Must Run' status of solar power plants and payment of deemed generation charges for the capacity which could not be generated and supplied due to backing down instructions issued by the Respondents.

1.13.27 Similarly, in 2017, WREPL filed a Writ Petition being W.P. (C) No. 25029 of 2017 before the Hon'ble High Court of Judicature at Madras under

Article 226 of the Constitution of India praying issuance of Writ of Mandamus to TANGEDCO and other Respondents to not issue any backdown and evacuate the entire power generated by aforementioned solar power plants. However, on 05.12.20128, the aforesaid Writ Petition was withdrawn and liberty was sought to approach the Commission in terms of the provisions of the Electricity Act.

1.13.28 On 25.03.2019 the Commission passed an order in Petition being MP No. 16 of 2016, filed by NSEFI, enforcing "Must Run" status granted to all Solar Power Plants in the state of Tamil Nadu. The Commission observed as under:

(a) SLDC cannot curtail the renewable power at their convenience;

(b) Backing down of the "Must Run Status" power shall be resorted to only after exhausting all other possible means of achieving and ensuring grid stability and reliable power supply;

(c) SLDC should ensure evacuation of the solar power generations connected to the State grid to the fullest possible extent truly recognizing the Must Run Status assigned to it in full spirit;

(d) SLDC may resort to backing down in rare occasions in order to ensure the grid safety as stipulated in the Grid Code;

(e) Only in unavoidable conditions, the generation from the solar generators needs to be curtailed albeit to a small extent if the grid conditions so warrant;

(f) It is necessary to log each event of backing down whenever such instructions are issued with the reason(s) which lead(s) to that unavoidable decision;

(g) SLDC should not resort to backing down instructions without recording the proper reasons which are liable for scrutiny at any point of time;

(h) A quarterly return of the curtailments with the reasons shall be sent to the Commission;

1.13.29 Pursuant to the above, on 12.04.2019, Petitioners issued letters to TNSLDC referring to this Commission's Order dated 25.03.2019, requesting TANTRANSCO to take note of the same and allow solar plants to be dispatched in the spirit of "Must Run".

1.13.30 Even in the current pandemic situation of COVID-19 when the whole nation was under a lockdown in the months of March-June 2020, on 01.04.2020, an office memorandum was issued by MNRE /Respondent No.4 clarifying that the "Must-Run" status granted to Renewable Energy (RE) Generating Stations remains unchanged during the period of lockdown.

1.13.31 Pursuant to the above, on 04.04.2020, issued by MNRE wherein it has directed State DISCOMs and SLDCs that RE Projects like Petitioner should not be backed down as "Must Run" status has been accorded to

them. The said Office Memorandum also unequivocally states that in case of such backing down, Deemed Generation charges are payable.

1.13.32 Various emails were issued on behalf of the Petitioners by Tata Power (on behalf of the Petitioners) requesting TNEB to help the Petitioners regarding the backing down of Solar Power generation as there was load shedding from April till the date of request even though there was an office memorandum by the MNRE of "must run" status.

1.13.33 Despite the above, the TANTRANSCO/TNSLDC has been imposing illegal and arbitrary curtailment instructions to Petitioners which is resulting into severe losses to the Petitioners.

1.13.34 Aggrieved by the aforesaid, the Petitioners have filed the present Petition before the Commission.

1.14. The present petition has been filed well within the limitation period. In this regard, it is submitted that the cause of action, as can also be inferred from the factual background, is continuous in nature.

1.15. In view of the foregoing factual background, the Petitioners have filed the present Petition before the Commission seeking compensation from the Respondent Nos. 1 to 3 on account of losses faced by the Petitioners (deemed generation charges). The said losses have been incurred on account of the aforesaid illegal and arbitrary curtailment schedule imposed by TNSLDC/TANTRASCO.

1.16. There has been a rampant curtailment in the generation of power from Petitioners Projects which has severely affected the viability of the projects. In this

regard, the Commission may be pleased to direct the Respondents to abstain from such illegal / arbitrary curtailment and further provide the Petitioners with the deemed generation charges on account of the following reasons:-

(a) 'Must Run' status has been granted to Solar Power Generators and any illegal/arbitrary backing down and curtailment is in gross violation of the Electricity Act, policies and notification issued by the Government of India;

(b) There exists no threat to grid security as being alleged by the TANTRANSCO/TNSLDC and such curtailment is being carried out for economic considerations;

(c) The Petitioners have faced huge losses due to the aforesaid curtailment and the same entitles the solar Petitioners for compensation/deemed generation charges under the respective EPAs read with Section 73 of the Indian Contract Act, 1872.

1.17 The extant regulatory framework in the country has been designed in such a manner to promote the generation and use of renewable energy. The said promotion is enshrine under Section 86 (1) (e) of the Electricity Act which is reproduced as follows:-

"[e] promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;"

1.18. From the above quoted extracts of Section 86 (l)(e) the following steps are required to be taken for promotion of RE energy: -

(a) Providing suitable measures for connectivity;

(b) Prescribe Renewable Purchase Obligation.

Therefore, admittedly the rampant curtailment on account of extraneous reasons is in teeth of Section 86 (1) (e) of the Act. Further, Respondent No.2 and 3 as stated above have failed to discharge their statutory function in ensuring smooth transmission of power within the State. Hence, for such admitted statutory violations, the Petitioners ought not to be prejudiced.

1.19. The entire financial planning and projection of the Petitioners with regard to the projects is based on "must-run" status of solar power plants, which is in accordance with the objectives under Section 86 (1) (e) of the Electricity Act, the Central Electricity Regulatory Authority (Indian Electricity Grid Code) Regulations 2010, the Tamil Nadu Electricity Grid Code, the National Electricity Policy, Tariff Policy, as also the objectives enshrined in the International Convention, United Nations Framework Convention on Climate Change. In this regard, it is noteworthy that:

(a) Electricity Act: As per Section 86 (1) (e) of the Electricity Act as elaborated above, State Electricity Regulatory Commissions are mandated to promote generation of electricity from renewable sources of energy in their respective States;

(b) Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations 2010: As per Regulation 5.2 (u) of the IEGC, all SLDC/ Regional

Load Despatch Centres ("RLDC") are required to make all efforts to evacuate the available solar power and treat the same as "Must-Run" stations;

(c) Tamil Nadu Electricity Grid Code: As per Clause 8 (3) (b), SLDC is required to regulate overall state generation in a manner that generation from several types of power stations, including renewable energy sources, shall not be curtailed;

(d) National Electricity Policy, 2005: Clause 5.2.20 and 5.12.1 of the National Electricity Policy provide that renewable energy generation of electricity should be encouraged and its potential should be fully exploited;

(e) Tariff Policy, 2016: As per clause 4, it is the stated objective of the Tariff Policy the promote generation of electricity from renewable sources.

(f) Tariff Order No.7 of 2014 dated 12.09.2014: As observed in Para 12.5.4, SLDC is required to schedule renewable power in accordance with Grid Code;

(g) Jawaharlal Nehru National Solar Mission: The Solar Policy/Mission's immediate aim is to focus on setting up an enabling environment for solar technology penetration in the country both at a centralized and decentralised level.

1.20. Further, even the Hon'ble Supreme Court and the Hon'ble Tribunal, in various cases, have emphasised on the importance of renewable energy and have further mandated its promotion. In this regard, the following are relevant:

(a) The Hon'ble Supreme Court in Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission, [(2015) 12 SCC 611] has held that the import of Section 86 (I)(e) is to sub-serve the mandate of Article 21 of

the Constitution of India read with Article 51 A (g). The relevant extracts are reproduced as follows:

> *"33. Further, the impugned Regulations are framed by RERC in exercise of its power under Section 86(1)(e) read with Section 181 of the 2003 Act, which provides for promotion and cogeneration of electricity from renewable source of energy in the area. It has been rightly contended by the learned Senior Counsel for the respondents that Para 4.2.2 of the National Action Plan on Climate Change and the Preamble to the 2003 Act emphasise upon promotion of efficient and environmentally benign policies to encourage generation and consumption of green energy to subserve the mandate of Article 21 read with Article 48-A of the directive principles of State policy and Article 51-A(g) of the fundamental duties enlisted under Chapter IV-A of the Constitution of India. Further, the said Regulations are consistent with the international obligations of India, as India has ratified to the Kyoto Protocol on 26-8-2002.*
>
> *Further, the impugned Regulations which impose reasonable restrictions upon the captive generating plant owners are permissible under Article 19(6) of the Constitution of India."*

(b) Further, the Hon'ble Tribunal, in a catena of cases, has recognised the importance of the promotion of renewable energy under the scheme of the Electricity Act. In this regard following judgments are noteworthy:

i. Judgment dated 26.04.2010 in Appeal No. 57 of 2010, titled M/s.Century Rayon vs. MERC & Ors.:

> *"20. As a matter of fact, the reading of the section 86 (1)(e) along with the other sections, including the definition Section and the materials placed on record by the Appellant would clearly establish that the intention of the legislature is to promote both co-generation irrespective of the usage of fuel as well as the generation of electricity from renewable source of energy.*
>
> *21. It is no doubt true that the generation of electricity from renewable sources is to be promoted as per section 86(1)(e) of the Act. It is equally true that co-*

generation of electricity is also to be promoted as it gives several benefits to the society at large. Various records produced by the Appellant would also indicate that the co-generation produces both electricity and heat and as such it can achieve the efficiency of up to 90% giving energy saving between 15- 40% when compared with the separate production of electricity from conventional power stations and production of steam from boiler."

ii, Judgment in the case of Rithwik Energy vs. Transmission Corporation of Andhra Pradesh 2008 (ELR) (APTEL) 237

"34. A distinction, however, must be drawn in respect of a case, where the contract is re-opened for the purposes of encouraging and promoting renewable sources of energy projects pursuant to the mandate of Section 86(1)(e) of the Act, which requires the State Commission to promote cogeneration and generation of electricity from renewable sources of energy.

35. The preamble of the Act also recognizes the importance of promotion of efficient and environmentally benign policies. It is not in dispute that non-conventional sources of energy are environmentally benign and do not cause environmental degradation. Even the tariff regulations under Section 61 are to be framed in such a manner that generation of electricity from renewable sources of energy receives a boost. Para 5.12 of the National Electricity Policy pertaining to non- conventional sources of energy provides that adequate promotional measures will have to be taken for development of technologies and a sustained growth of the sources. Therefore, it is the bounden duty of the Commission to incentivize the generation of energy through renewable sources of energy. PPAs can be re-opened only for the purpose of giving thrust to non-conventional energy projects and not for curtailing the incentives. The Commission, therefore, was not right in approving the principle of 30 minutes time block for measuring energy as that was not permitted under original Clause 1.4 of the PPA and other relevant Clauses. The action of the APERC does not promote generation through non-renewable sources of energy but affects the

same adversely. In case the practice of reopening of PPAs continues for curtailing the incentives or altering the conditions to the detriment of the developers of the plants based on non-conventional sources of energy, it will kill the initiative of the developers to set up such plants. The policy to incentivize generation of electricity through renewal sources of energy will be defeated. "

1.21. In addition to the above, the Commission, in context of the curtailment issues faced by similarly placed solar generators, has already decided the matter vide its Order dated 25.03.2019 in Petition M.P. No. 16/2016 and upheld the 'Must Run' status of solar power plants as under:

"10.14. However, it is to be emphasized that the SLDC cannot curtail the renewable power at their convenience. Backing down of the "Must Run Status" power shall be resorted to only after exhausting all other possible means of achieving and ensuring grid stability and reliable power supply. The backing down data furnished by the petitioners has not been disputed by the respondents. However, they were not able to explain the reason prevailing at each time of backing down beyond the general statements as mentioned in earlier paras. It gives rise to a suspicion that the backing down instructions were not solely for the purpose of ensuing grid safety.

10.15. Under these circumstances, it is necessary to direct the SLDC to ensure evacuation of the solar power generations connected to the State grid to the fullest possible extent truly recognising the Must Run Status assigned to it in full spirit"

1.22. From the aforesaid it is clear that the solar generating stations such as Petitioners projects has been granted 'Must Run' status. However, the curtailment procedure being followed by TANTRANSCO/TNSLDC at the behest of TANGEDCO is wholly contrary to the entire purpose of renewable energy generation and its promotion

which is impermissible under the scheme and the settled position of law, Electricity Act and the Regulations framed thereunder.

1.23. MNRE, vide its letter dated 01-08-2019, has emphasized that solar and wind power can only be curtailed for reasons of grid safety and security and that too after communicating reasons of curtailment in writing to generators. Further, it was also directed that if any SLDC curtails wind or solar power for any reason other than grid safety or security, they shall be liable for making good the loss incurred by such Solar or Wind Generator towards Deemed Generation charges. The relevant excerpt of the said letter is extracted below:

> *"3. It is reiterated that the 'Must Run' status of wind and solar projects be honoured in letter and spirit and curtailment of such power be done only for reasons of grid safety and security and that too after communicating instructions detailing reasons of curtailment to the generators in writing.*
>
> *4. If any SLDC curtails wind or solar power for any reason other than grid safety and security or prescribed in respective gird code/regulation, they shall be liable for making good the loss incurred by the wind or solar power generator's) towards deemed generation. The SLDCs may be advised accordingly."*

1.24. Further, in its recent notifications dated 01.04.2020 and 04.04.2020, MNRE has directed State DISCOMs and SLDCs that RE Projects like Petitioners should not be backed down as "Must Run" status has been accorded to them. The said Notifications also unequivocally state that in case of such backing down, Deemed Generation charges are payable. The relevant excerpts of the said notifications are extracted below:

(a) OM dated 01.04.2020:

"3. The matter has been examined in detail and this regard, following clarifications are issued;

(h) Must-Run Status to RE Projects:

Renewable Energy (RE) Generation Stations have been granted 'Must Run' status and this status of 'must run' remains unchanged during the lockdown period."

(b) O.M. dated 04.04.2020:

" .. .2. Since, some of the DISCOMs are still resorting to RE curtailment without any valid reason i.e. grid safety; it is once again reiterated that Renewable Energy (RE) remains "MUST RUN" and any curtailment but for grid safety reason would amount to deemed generation. "

1.25. The backing down/curtailment imposed by the TANTRANSCO/TNSLDC is illegal and arbitrary. There is no element of grid security involved in the present instance and the same has also been recognised by the Commission in its Order dated 25.03.2019 in M.P. No. 16 of 2016. In furtherance to the same, the following submissions are noteworthy:

1.26. The TNSLDC has been imposing curtailment by way of oral instructions (emails have been sent only recently).It is to be noted that in the said emails, solar generators are directed to reduce their generation at a particular start time. However, there is no end time provided in the said instructions, thereby, constraining the generation to the said limit for that entire date. Due to such arbitrary instructions, the Petitioners are effectively prohibited to generate beyond the prescribed limit on an illusionary and formal reason of 'grid security',

1.27 As evident from the above, the curtailment is being carried out purely for commercial reasons. it is submitted that TANTRANSCO/TNSLDC under the guise of 'grid security' is imposing curtailment to purchase cheaper power from alternative sources. The same is not only in gross violation of the prevalent law but is also contrary to contractual obligations under the respective EPAs. In fact, the Commission, in its Order dated 25.03.2019, has itself noted that the backing down/curtailment imposed by the TANTRANSCO/TNSLDC were not solely for the purpose of 'grid safety'. Following are the relevant excerpts from the said Order:

> *"10.14. However, it is to be emphasized that the SLDC cannot curtail the renewable power at their convenience. Backing down of the "Must Run Status" power shall be resorted to only after exhausting all other possible means of achieving and ensuring grid stability and reliable power supply. The backing down data furnished by the petitioners has not been disputed by the respondents. However, they were not able to explain the reason prevailing at each time of backing down beyond the general statements as mentioned in earlier paras. It gives rise to a suspicion that the backing down instructions were not solely for the purpose of ensuing grid safety."*

1.28. The curtailment instructions are being issued by the Respondents solely for commercial and economic reasons and there is no element of grid security involved. The same is substantiated from the fact that TNSLDC has not curtailed the power from short term sources or from power exchange while power was being curtailed from solar generators.

1.29. Further, in the period during which backing down/curtailment was carried out, State of Tamil Nadu has overdrawn cheaper power from the regional grid and has paid to the VI pool account. Therefore, such approach of backing down solar generation in

contravention of the Electricity Act and purchasing cheaper power from the regional grid clearly establishes the ill intent of the Respondents.

1.30. The power plants of the Petitioners have been designed in a manner which is compliant with the grid security standards. In this regard, the following provisions of the EPAs are noteworthy:

(a) Article 3(d) of the EPAs:

"The SPG shall provide suitable safety devices so that the Generator shall automatically be isolated when the grid supply fails."

(b) Article 3(e) of the EPAs:

"The SPG shall maintain the Generator and the equipments including the transformer, interface switch gear of distribution/transmission line and protection equipments and other allied equipments at their/his cost to the satisfaction of the authorised offices of the Distribution Licensee/ST'U. "

(c) Article 3(h) of the EPAs:

"There shall be no fluctuations or disturbances to the grid or other consumers supplied by the grid due to paralleling of the Solar Power Generators. The SPG shall provide at their/his cost adequate protection as required by the Distribution Licensee/S'I'U to facilitate safe parallel operation of the Generators with grid and to prevent disturbances to the grid."

1.31. Therefore, it is submitted that the adequate safety measures have been incorporated at generator's end to ensure grid security. However, due to reasons best known to TANTRANSCO/TNSLDC, the Petitioners are being subjected to illegal and arbitrary backing down/curtailment.

1.32. In view of the above, the TANTRANSCO/TNSLDC shall be directed to abstain from such illegal and arbitrary backing down/curtailment in contravention to the Electricity Act and the prevalent laws.

1.33. The petitioners have been subject to illegal and arbitrary curtailment imposed by TANTRANSCO/TNSLDC. The said curtailment has caused loss of generation and consequent loss of revenue to the Petitioners. The issue of curtailment has been continuous and has severely impacted the viability of the projects of Petitioners. Accordingly, the Petitioners are entitled to compensation in the form of deemed generation charges.

1.34. Tariff, under the respective EPAs, is based upon Order dated 12.09.2014 passed in Order No.7 of 2014 and Order dated 28.03.2016 passed in Order No.2 of 2016. The said Tariff is also in conformity with the TNERC RE Regulations. Both the Tariff order as well as Wind RE Regulations envisage recovery of Tariff over the span of 25 years after taking into consideration elements such as Capital Cost, Depreciation, CUF, RoE etc. However, owing to the constant impairment caused by the frequent backing down/curtailment, the overall recovery of tariff by the Petitioners would be much lower than the Tariff granted under the EPAs read with Tariff Order and RE Regulations. The said under recovery is contrary to Section 86 (l)(e) read with Section 61 of the Electricity Act.

1.35. The tariff for the Petitioner's Projects is premised upon recovery of the entire capital cost within a span of 25 years along with recovery of 20% RoE. However, in order to recover the capital cost and earn a reasonable revenue from the investment, it

is imperative that the Petitioners are able to generate power and sell the same at the above tariff.

1.36. However, it is evident that the fundamental premise (Must Run Status) upon which the Petitioners projects were established stands eroded on account of the rampant curtailment being directed by the Respondent No.1 to 3.

1.37. In the above compelling circumstances, for the Petitioners to recover the entire cost of its investment along with the determined RoE, it is imperative that the Deemed Generation Charges are paid to the Petitioners and such charges are payable on account of actual loss suffered by the Petitioners.

1.38. In view of the illegal and arbitrary backing down/curtailment, there has been a substantial reduction in generation leading to loss of revenue. The impact has resulted into tremendous under recovery by the Petitioner as fundamentals of Petitioners' tariff has been eroded. The financial impact due to such curtailment since the very inception of the projects is as follows:

Particulars		Musiri	TTPet	Panchapati	Iyyermalai	Kayathar	Sum Total
Capacity in MW		50	50	50	50	49	249
Tariff in Rs./kWh		7.01	7.01	7.01	7.01	5.1	-
Service No.		6941 4420 009	6941 4420 010	6941 4430 013	6941 4430 015	7942 4720 006	-
FY16	Actual Billed MU	38.93	23.88	25.98	1.53	-	90.32
	Loss of MUs due to Load Curtailment	0.25	0.24	0.35	0.08	-	0.92
	Revenue loss due to Load Curtailment	0.18	0.17	0.25	0.06	-	0.65

	(Rs.Cr.)						
FY17	Actual Billed MU	83.53	85.05	80.78	76.80	31.45	357.61
	Loss of MUs due to Load Curtailment	8.72	6.58	11.10	10.07	2.57	39.04
	Revenue loss due to Load Curtailment (Rs.Cr.)	6.12	4.61	7.78	7.06	1.31	26.88
FY18	Actual Billed MU	85.78	86.66	87.06	86.66	96.56	442.71
	Loss of MUs due to Load Curtailment	9.86	7.47	10.85	11.14	0.68	40.00
	Revenue loss due to Load Curtailment (Rs.Cr.)	6.91	5.24	7.60	7.81	0.35	27.91
FY19	Actual Billed MU	93.94	93.33	94.99	94.49	92.40	469.15
	Loss of MUs due to Load Curtailment	1.11	1.13	1.92	2.01	0.16	6.34
	Revenue loss due to Load Curtailment (Rs.Cr.)	0.78	0.79	1.34	1.41	0.08	4.41
FY20	Actual Billed MU	94.04	91.89	94.28	94.70	88.89	463.80
	Loss of MUs due to Load Curtailment	1.30	1.23	1.99	1.83	1.09	7.44
	Revenue loss due to Load Curtailment (Rs.Cr.)	0.91	0.86	1.39	1.29	0.55	5.01
FY21	Actual Billed MU	37.58	36.85	36.18	36.62	37.72	184.95
	Loss of MUs due to Load Curtailment	3.82	3.89	5.36	5.09	2.27	20.43
	Revenue loss due	2.68	2.72	3.75	3.57	1.16	13.88

	to Load Curtailment (Rs.Cr.)						

Site wise impact FY 16 to FY 20	Actual Billed MU	433.8	417.66	419.27	390.8	347.02	2008.55
	Loss of MUs due to Load Curtailment	25.07	20.54	31.56	30.22	6.78	114.16
	Revenue loss due to Load Curtailment (Rs.Cr.)	17.57	14.40	22.12	21.19	3.46	78.73

1.39. From the aforesaid, the Petitioners have suffered a loss of Rs.78.73 Crores due to the illegal and arbitrary curtailment of generation. In fact, even after the Commission's Order on 25.03.2019 wherein specific directions were issued to TANTRANSCO/TNSLDC not to curtail power, there has been an impact of Rs.18 Crores (approximately) due to illegal curtailment.

1.40. The renewable energy projects are prescribed a single part tariff, and therefore, no fixed charges are paid in case of backing: down/ curtailment of power. That it is in such context that “Must Run” status of Wind Energy Projects must be ensured. In the absence of enforcement of must-run status, i.e. in the event of curtailment of energy, Solar Energy Projects, such as that of the Petitioners ought to be compensated for the said loss in generation to ensure that the Tariff determined by the Commission is adequately recovered.

1.41. In fact, the payment of Deemed Generation to the Petitioners in no way causes any detriment to the Respondents as the Tariff Order as well as the EPAs envisage a

bare minimum level of generation by the Petitioners. Therefore, no injury whatsoever is caused to the Respondent No.1 if payment of Deemed Generation Charges is directed by the Commission.

1.42. Owing to the curtailed power supply, the Petitioners would not be in the position to recover its entire investment as the fundamental basis of the tariff today stands dislodged. Therefore, clearly when the intent of the Constitution of India and the Electricity Act is to promote renewable energy and protect the environment, such promotion cannot be fully achieved unless the fetters in the applicable Procedure for Implementation is not suitably moderated to achieve the intended purpose.

1.43. The Petitioners have executed EPAs with TANGEDCO for 249 MW of power. However, such capacity has not been evacuated to the maximum extent there being no proven issue of grid stability and despite there being a specific clause in the EPAs at Article 3(a) which provides that 'solar power generated shall be evacuated to the maximum extent ….".

1.44. In this regard, there has been a clear breach of the contracts executed between the parties as the power generated was not allowed to be evacuated for reasons which are not recognised as valid. The same entitles the Petitioners to compensation in the form of deemed generation charges. The said charges are based upon the fundamental legal principle encompassed under Section 73 of the Indian Contract Act, 1872.

1.45. The loss incurred by the Petitioners has been quantified in terms of the generation loss at Rs.78.73 Crores. In these circumstances, it is the duty of the

Commission to adjudicate upon the issue of compensation of the Petitioners due to the losses suffered by it on account of actions of TANGEDCO/TNSLDC/TNTRANSCO breaching the Must Run status accorded to solar power developers like Petitioners. In this regard, Section 73 of Contract Act, 1872 is squarely applicable to the present set of facts and circumstances. The Section 73 of Contract Act, 1872 is extracted hereunder:

> *"73. Compensation of loss or damage caused by breach of contract- When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it"*

1.46. From a plain reading of the aforesaid provision, it emerges that a party is entitled to compensation for any loss or damage caused to him, which naturally arose in the usual course of things from the breach of the contract, or which the parties knew, at the time they made the contract, to be likely to result from the breach. In this regard, the law has been settled by the Hon'ble Supreme Court and Hon'ble Delhi High Court in various cases including the following judgments:

> *(a) Simplex Concrete Piles (India) Ltd. v. Union of India [2010 SCC Online Del 821]*
> *"15.*
> *…….*
> *Provisions pertaining to the effect of breach of contract, two of which provisions are sections 73 and 55, in my opinion, are the very heart, foundation and the basis for existence of the Contract Act. This is because a contract, which can be broken at will, will destroy the very edifice of the Contract Act After all, why enter into a contract in the first place when such contracts can be broken by breaches of the other party without any consequential effect upon the guilty party. It therefore is a matter of public policy that the sanctity of the contracts and the bindingness thereof should be given precedence over the entitlement to breach the same by virtue of contractual clauses with no remedy to the aggrieved party.*

Contracts are entered into because they are sacrosanct. If Sections 73 and 55 are not allowed to prevail, then, in my opinion, parties would in fact not even enter into contracts because commercial contracts are entered into for the purpose of profits and benefits and which elements will be non-existent if deliberate breaches without any consequences on the guilty party are permitted. If there has to be no benefit and commercial gain out of a contract, because, the same can be broken at will without any consequences on the guilty party, the entire sub-stratum of contractual relations will stand imploded and exploded. It is inconceivable that in contracts, performance is at the will of a person without any threat or fear of any consequences of a breach of contract. Putting it differently, the entire commercial world will be in complete turmoil if the effect of Sections 55 and 73 of the Contract Act are taken away.

(b) MTNL v. Tata Communications Ltd. [(2019) 5 see 341]

"9. Indeed, the aforesaid position in law is made clearer by Section 73 of the

Contract Act Section 73 reads as follows:

"73. Compensation for loss or damage caused by breach of contract.- When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract- When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.-In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account"

1.47. From the conspectus of the aforesaid judgments, it is evident that the claims for damages, as raised by the Petitioners in the instant Petition are legally maintainable and liable to be allowed in law. It is, therefore, prayed that deemed generation to the extent of loss of revenue be awarded to the Solar Power Developers like the Petitioner.

1.48. Further, deemed generation charges to be paid to the Petitioners for its solar generation business is imperative for recovery of its investment. The projects are entitled for a revenue only when it generates, unlike a thermal plant where the concept of "Declared Capacity" is prevalent for recovery of the investment. The thermal plant recovers its investment when achieves the normative availability computed on the basis of the declared capacity. However, such mechanism is not available for a Solar Power Project. Further, the Solar Power Projects have been given a "Must Run" status but while "Must Run" status protects the generator from being backdown on the basis of Merit Order, it does not prevent backing down on account of such arbitrary curtailment. The rampant curtailment leads to loss of revenue to the Generators as mentioned earlier thereby affecting the viability of the projects.

1.49. Accordingly, in view of aforesaid, it is incumbent upon TANGEDCO/ TANTRANSCO/TNSLDC to compensate the Petitioners for the loss of generation and loss of revenue as detailed herein above, to the tune of Rs.78.73 Crores.

1.50. The concept of deemed generation is also recognized in the Competitive Bidding guidelines framed way back in 2017 by Ministry of Power, Government of India which provides for payment for Tariff for non- availability which is akin to deemed generation suggested above. The extract of the guidelines is given below:

7.6. Generation Compensation for Off-take Constraints: The Procurer may be constrained not to off-take the power scheduled by WPG on account of Grid unavailability or in the eventuality of a Back-down.

7.6.,1. Generation Compensation in offtake constraints due to Grid Unavailability:

During the operation of the plant, there can be some periods where the plant can generate power but due to temporary transmission unavailability the power is not evacuated, for reasons not attributable the WPG. In such cases the generation compensation shall be addressed by the Procurer in following manner:

Duration of Grid unavailability	*Provision for Generation Compensation*
Grid unavailability in a contract year as beyond 50 hours in a contract year as defined in the PPA:	*Generation Loss = [(Average Generation per hour during the contract year) x (number of hours of grid unavailability during the contract year)]* *Where, Average Generation per hour during the contract year (kWh)=Total generation in the contract year (kWh) – 8766 hours less total hours of grid unavailability in a contract year*

The excess generation by the WPG equal to this generation loss shall be procured by the Procurer at the PPA tariff so as to offset this loss in the succeeding 3 (three) Contract Years. (Contract Year, shall be as defined in PPA.)

As an alternative to the mechanism provided above in Clause 7.6.1, the Procurer may choose to provide Generation Compensation, in terms of PPA tariff, for the Generation loss as defined in Clause 7.6.I.and for Grid unavailability beyond 50 hours in a Contract Year as defined in the PPA.

1.51. Further, as has been elaborated above, the entire projects were based upon the understanding that 'Must Run' status would be adhered to and the Petitioners would be able to generate power to its full capacity. However, in gross violation of such mandate

of law, the TANTRANSCO/TNSLDC has curtailed power on unsubstantiated ground of 'grid safety'. The consequence of failing to comply with the statutory mandate is necessarily the payment of monetary compensation for the loss of generation.

1.52. In fact, after observing the sorry state of affairs in the States, backing RE Generators, on 01.10.2020, Ministry of Power, Government of India (“MoP") has issued Draft Electricity (Change in Law, Must-run status, and other Matters) Rules, 2020 (I/Draft Electricity Rules"). Rule 4 of the Draft Electricity Rules, *inter alia,* recognises the Must-Run status of RE Generators including wind power generators and mandates that such generators shall not be subject to curtailment on account of merit order dispatch or any other commercial consideration. Further, it also provides that in the event of curtailment of such generators, compensation shall be payable by the procurer to the generator at the rate prescribed under the PPA. The relevant extracts of Rule 4 of the Draft Electricity Rules are as follows:

> *4. Must-run -*
> *(1) A wind, solar, wind-solar hybrid or hydro power plant (in case of excess water leading to spillage) or a power plant from any other sources of renewable energy, as may be notified by the Government, having an agreement to sell power to any person (hereinafter called Power Purchase Agreement (PPA)) shall be treated as a must-run power plant, which shall not be subjected to curtailment or regulation of power on account of merit order dispatch or any other commercial consideration:*
>
> *Provided that power generated from a must-run power plant may be curtailed or regulated in the event of any technical constraint in the electricity grid or for reasons of security of the electricity grid;*
>
> *Provided further that on curtailment or regulation of power, the provisions of Indian Electricity Grid Code (IEGC) shall be followed.*

(2) In the event of a curtailment of supply from a Power Plant which comes under the category of "Must Run" compensation shall be payable by the Procurer to the Generator at the rates prescribed in the PPA ……."

1.53 The present Petition has been made bona fide and in the interest of justice, equity and good conscience. Unless the prayers made herein are granted in favour of the Petitioners, the Petitioners would suffer irreparable loss and harm to its business, which will not only affect the viability of the plant but also be detrimental to its consumers, who would be left stranded without adequate clean energy in the state.

1.54. The Solar Power Plant owned by the Petitioners supplies power to TANGEDCO within the State of Tamil Nadu. Further, the Respondents are also situated within the territorial jurisdiction of the State of Tamil Nadu. Accordingly, this Commission has the requisite jurisdiction to decide the present petition under Section 86 (1)(f) of the Electricity Act.

2. Contention of the Respondents:-

2.1. The Commission vide Order No. 7 of 2014, dated 02.09.2014 has fixed solar power tariff of Rs.7.01/unit (Without AD Benefit) unit and in the Order No 2 of 2016 dated 28.03.2016 has fixed solar power tariff of Rs.5.10/unit (Without AD Benefit). The Commission has also approved draft Energy Purchase Agreement to be entered between the developer and TANGEDCO for purchase of Solar Power under preferential tariff order.

2.2. Based on the proposal of the petitioner company for establishing 4X50 MW and 1X49 MW totally 249 MW solar PV power plant at various Villages in Trichy, Karur and Tirunelveli Districts and for sale of power to Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), the details of solar power plants commissioned in respect of M/s.Welspun Renewable Energy Private Limited and M/s. Welspun Solar Tech Private Limited are furnished below,

Sl. No	Name of the developer	Location	Capacity in MW	Date of EPA	Tariff rate	Date of commissioning	HT.Sc
1	M/s.Welspun Solar Tech Private Limited	Ponnusangampatti, MavilapattyVillages, ThuraiyurTaluk, Trichy Districts	50	03.03.2015	Rs.7.01	27.10.2015 & 18.03.2016	069414420009
2	M/s.Welspun Solar Tech Private Limited	Thulianatham& Mavilapatti Villages,ThuraiyurTaluk,Trichy Districts	50	02.03.2015	Rs.7.01	09.10.2015	069414420010
3	M/s.Welspun Renewable Energy Private Limited	Veeriyampalayam Village, Krishnarayapuram Taluk, Karur District	50	30.04.2015	Rs.7.01/unit	21.11.2015	069414430013
4	M/s.Welspun Renewable Energy Private	Vayalur&Karupathur Villages Karur District	50	29.01.2016	Rs.7.01/unit	08.03.2016	069414430015

	Limited						
5	M/s.Welspun Renewable Energy Private Limited	Pranchery Village, KayatharTaluk,Tirunelveli District	34	04.07.2015 & Addendum to the Agreement Executed on 05.08.2016	Rs.5.10/unit	17.11.2016	079424720006
	M/S.Welspun Renewable Energy Private Limited	Pranchery Village, KayatharTaluk,Tirunelveli District	15	28.01.2016 & Addendum to the Agreement Executed on 28.05.2016		17.11.2016	

2.3. The Energy Purchase Agreement has been entered by TANGEDCO with the above developer in the agreement format duly approved by the Commission.

2.4. The clauses relevant to backing down of power generation in the EPA executed are as follows:

Interfacing and Evacuation Facilities*:*

Clause 2(b) . The Solar Power Generator (SPG) and the Distribution Licensee/STU shall comply with the provisions contained in Commission's Intra State Open Access Regulations 2014 and Central Electricity Authority (CEA) (Technical Standards for connectivity to the Grid) Regulations, 2007 for grid connectivity which includes the following namely;

(i) Site Responsibility Schedule;
(ii) Access at Connection Site;
(iii) Site Common Drawings;
(iv) Safety;
(v) Protection System and Co-ordination;
(vi) Inspection, Test, Calibration and Maintenance prior to Connection.

Clause 2(c) The SPG shall comply with the safety measures contained in Central Electricity Authority Regulations 2010 and as amended from time to time.

Clause 2(d) Both parties shall comply with the relevant provisions contained in the Indian Electricity Grid Code, Tamil Nadu Electricity Grid Code, the Electricity Act, 2003, other Codes and Regulations issued by the Tamil Nadu Electricity Regulatory Commission/ Central Electricity Authority (CEA) as amended from time to time;

Clause 3(a) The solar power generated shall be evacuated to the maximum extent subject to Grid stability and shall not be subjected to merit order dispatch principles.

Clause 3(l) Grid availability shall be subject to the restriction and control as per the orders of the State Load Dispatch Centre (SLDC) consistent with the provisions of the Electricity Act and regulations made thereon.

2.5. As per clause 3(a) of the EPA, the solar power generated shall be evacuated to the maximum extent subject to grid stability. In this connection, the SLDC has requested the petitioner to back down their generation only on the ground of maintaining safe, secure and stable operation of grid.

2.6. The grid gets more polluted due to injection of wind and solar power which are largely variant and infirm in nature. In order to maintain grid discipline, it becomes necessary for the grid operators to back down the power generation including renewable energy sources. Paying charges on the ground of Deviation Settlement Mechanism due to injection of wind and solar power, causes additional financial burden to Tamil Nadu Transmission Corporation Limited which, in turn, is passed on to the general public by the way of tariff hike.

2.7. In the case of bagasse based co-generation plants coming under renewable energy category, the following restrictions are insisted in considering the quantum of

energy considered for payment at preferential tariff. The power generated up to 55% annual plant load factor, is entitled for payment at preferential tariff. The power generated over and above 55% annual plant load factor is entitled for 90% of UI tariff which is less than the preferential tariff.

2.8. In the case of bio mass power plants which also come under renewable energy category, the following are the restrictions on annual usage of coal:

i) If the coal usage on annual usage of fuel is up to 15%, the entire energy is entitled for preferential tariff.

ii) If the quantum of coal usage exceeds 15% on annual usage of fuel, then the entire energy is entitled for UI tariff which is lower than the preferential tariff. Whereas in the cases of wind and solar, entire power is entitled for payment at preferential tariff without any restrictions as followed in the cases of bagasse and bio mass plants. The unscheduled power which is actually entitled for UI tariff, is now considered for payment at a higher tariff of preferential tariff. Thus, the wind and solar generating companies are enjoying the benefit of availing higher tariff at a loss of respondent (1) TANGEDCO.

2.9. The purchase of unscheduled wind and solar power at preferential tariff (which is actually entitled for lower tariff of UI tariff) causes severe financial burden to respondent (1) TANGEDCO.

2.10. The Tamil Nadu State is having highest infirm Renewable Energy installed capacity than the rest of the country, in spite of technical constraints and huge financial loss by way of paying penalty, compensation charges, the TNSLDC is taking all

measures to accommodate maximum level of renewable resources consciously managing the Grid reliability parameters on a secured manner to maintain 24x7 continuous supply to the common public/consumers as per the Tamil Nadu Government Policy without any major disturbance within the State as well as to avoid any cascading effects on neighboring States and not to breach the grid discipline/grid security.

2.11. Further, the deemed generation and compensation are with respect to the TNERC's Tariff Order and to the PPA/EPA signed by the members of the petitioner with the first Respondent, TANGEDCO.

2.12. Now in the Energy Purchase Agreement format approved by the TNERC, provision is made for claim of compensation for loss of generation caused due to backing down.

2.13. As per Section 32 & 33 of Electricity Act, 2003 and as per clause 2.7 of Indian Electricity Grid Code (IEGC), Clause 4.2(e), 8.4 (iii) and (v) of Tamil Nadu Electricity Grid code (TNEGC), SLDC is maintaining the TN Grid to provide continuous quality power to the common public throughout the State by maintaining Grid discipline and thus providing the public secure power supply without any major disturbance. Hence, SLDC is a position to restrict any surplus power injected into the grid more than the requirement for reliable grid operation. The relevant clauses that are germane for proper adjudication of the present case is quoted as hereunder:

Section 32 of the Electricity Act, 2003

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

(2) The State Load Despatch Centre 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".

Section 33 of the Electricity Act, 2003

"(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, substation 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 subsection (1).

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

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

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

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

Clause 2.7 of the Indian Electricity Grid Code

"2.7.1 In accordance with section 32 of Electricity Act, 2003, the State Load Despatch Centre (SLDC) shall have following functions:

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

(2) The State Load Despatch Centre 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.

2.7.2 In accordance with section 33 of the Electricity Act, 2003. 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. 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 State Load Depatch Centre under subsection (1) of Section 33 of the Electricity Act,2003.

The State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre".

Clause 4.2.(e) of the Tamil Nadu Electricity Grid Code

" ... The SLDC shall be responsible for carrying out real time operations for Grid control and dispatch the electricity within the State through secure and economic operation of the state grid in accordance with the grid standards and grid code…."

Clause 8.4 (iii) and (v) of the Tamil Nadu Electricity Grid code

8.4 (iii) *"…the SLDC may direct the generating stations / beneficiaries to increase or decrease their generation/drawal in case of contingencies e.g. overloading of lines /transformers, abnormal voltages, threat to system security. Such directions shall immediately be acted upon "*

8.4 (v) "All entities shall abide by the concept of frequency linked load despatch and pricing of deviations from schedule i.e. unscheduled interchanges. All generating units of the entities and the licensees shall normally be operated according to the standing frequency linked load despatch guidelines issued by the SLDC to the extent possible, unless otherwise advised by the SLDC".

2.14. The Hon'ble Central Electricity Regulatory Commission's (CERC) Deviation Settlement Mechanism does not permit under drawl of not more than 250 MW and the grid operating frequency is in the range of 49.90-50.05 Hz from 30.05.2016 onwards. Tamil Nadu which is a renewable rich state finds the DSM regulation challenging to maintain Grid Discipline and it becomes very challenging and also proves to be very difficult to maintain discipline and operate the grid during less demand period, night hours, rainy season with higher % mix of infirm power and firm power.

2.15. As stipulated in the IEGC (4th amendment), 2014, the grid operating frequency is 49.90-50.05 Hz. For frequency above 50.05 Hz, no under-drawal is permitted and each unit of under-drawal at frequency above 50.10 Hz had attracted penalty at the rate of Rs.1.78/Kwhr upto 31.12.2018 and from 01.01.2019 onwards, the penalty is

around Rs.2.50/- to Rs.3.50/- (Area Clearing Price) which is a variable based on the open market price.

> The 'Area Clearing Price (ACP) means "*the price of a time block electricity contract established on the Power Exchange after considering all valid purchase and sale bids in particular area(s) aftermarket splitting, i.e. dividing the market across constrained transmission corridor(s)*".

2.16. Failure or any in-action to contain the frequency 49.90-50.05 Hz and restriction in under-drawal is viewed as grid indiscipline and attracts penal action by the Southern Regional Load Dispatch Centre. Hence, the legal provisions do not permit injection of surplus power into the system.

2.17. Regulation 5.2 (u) of IEGC, 2010 reads as follows: -

> *"(u) Special requirement for Solar and Wind generators: System operator (SLDC/RLDC) shall make all efforts to evacuate the available wind power and treat as a must-run station. However, System operator may instruct the solar / wind generator to back down generation on consideration of grid security or safety of any equipment or personnel is endangered and solar / wind generator shall comply with the same".*

2.18. As stipulated in the clause 5.2 (u) of IEGC 2010, the system operator makes all efforts in accommodating maximum power and initiate curtailment action under circumstances of grid security and in consideration of safety of equipment within the grid operating frequency range of 49.90-50.05 Hz specified by the CERC vide the notification dated 06.01.14. Hence, it is a regulatory mandate to curtail injection of power whenever the grid conditions warrant.

2.19. The Clause 3(4) of Tamil Nadu Electricity Grid Code reads as follows:-

> *"3(4) ….. It is nevertheless necessary to recognize that the Grid Code cannot predict and address all possible operational situations. Users must therefore understand and accept that, in such unforeseen circumstances, the State Transmission Utility (STU) who has to play a key role in the implementation of the Grid Code may be required to act decisively for maintaining the Grid regimes for discharging its obligations. Users shall provide such reasonable co-operation and assistance as the STU may request in such circumstances".*

Indian Electricity Grid Code (IEGC) - 2nd Amendment with effect from 17.02.2014.

> *Clause 5.2(m) - All Users, SEB, SLDCs, RLDCs, and NLDC shall take all possible measures to ensure that the grid frequency always remains within the 49.90 –50.05 Hertz band.*
>
> *Clause5.4.2(a) - SLDC/ SEB/distribution licensee and bulk consumer shall initiate action to restrict the drawal of its control area, from the grid, within the net drawal schedule.*
>
> *Clause 6.4.6 - …….. Maximum inadvertent deviation allowed during a time block shall not exceed the limits specified in the Deviation Settlement Mechanism Regulations. Such deviations should not cause system parameters to deteriorate beyond permissible limits and should not lead to unacceptable line loadings. Inadvertent deviations, if any, from net drawal schedule shall be priced through the Deviation Settlement mechanism as specified by the Central Commission from time to time.*
>
> *Clause6.4.7 - The SLDC, SEB/distribution licensee shall always restrict the net drawal of the state from the grid within the drawal schedules keeping the deviations from the schedule within the limits specified in the Deviation Settlement Mechanism Regulations.*

CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014, dated 06.01.2014 (with effect from 17.02.2014)

- Clause 3. Objective

The objective of these regulations is to maintain grid discipline and grid security as envisaged under the Grid Code through the commercial mechanism for Deviation Settlement through drawal and injection of electricity by the users of the grid.

- CERC(Deviation Settlement Mechanism and related matters)(Third Amendment) Regulations, 2016 (with effect from 30.05.2016)

Deviation Limits for Renewable Rich States

S. No.	States having combined installed capacity of Wind and Solar projects	Deviation Limits (MW)- "L"
1	1000– 3000 MW	200
2.	> 3000 MW	250

As Tamil Nadu having more than 3000 MW of RE power, Deviation Limits for Tamil Nadu is (+/-) 250 MW.

2.20. Under the above regulatory commitments and due to increase in grid frequency above the operating level of 49.90 Hertz to 50.05 Hertz notified by the Central Electricity Regulatory Commission during load crash/off peak period etc., the SLDC is mandated under the Grid Code to issue back down instructions to all the TN grid connected generators including wind and solar generators.

2.21. In order to maintain the grid discipline and grid security after taking all possible steps to reduce generation of conventional power and surrendering of CGS Power etc., the infirm solar and wind generation are curtailed. The last resort of curtailment is only because of the must run status of these infirm generations.

2.22. To avoid any untoward incidents of blackout, the grid security is managed by instant oral instructions to Sub LD centers at Chennai, Madurai and Erode. These Sub LD centers in turn issue back-down instructions to the concerned substations to which the respective solar generators are connected.

2.23. It is essential to have information about how much RE power is expected to be injected into the grid. Such information is lacking for infirm sources such as Wind and Solar. Accurate Forecasting and scheduling of generation along with commercial mechanism from these sources is very important for balancing and to procure requisite reserves to maintain load-generation balance for grid reliability.

2.24. The statement of the petitioners that “backing down instructions given to the petitioners on account of the inadequacy of Transmission System” is denied and wrong since backing down instructions is being issued for the grid safety and security purposes only based on the statutory provisions in the Electricity Act, 2003, IEGC, TNEGC, CERC/TNERC Regulations.

2.25. The issue backing down instructions in writing in advance to the solar generators including the petitioners is practically not feasible in the real time grid operation to maintain grid safety and grid security. Hence, immediately after giving oral instructions for back down of generation, an email instruction is being sent to the petitioners through Sub LDC in recent days detailing the reasons for curtailment.

2.26. SLDC is maintaining the TN Grid for smooth transmission of power 24*7 round the clock without any grid collapse and it is the statuary obligation of SLDC to ensure

continuous power supply to the consumers of the State of Tamil Nadu in accordance with the Grid Code.

2.27. The contention of the petitioners is totally unacceptable inasmuch as the Grid Security is paramount. The Clause 3(l) of the Energy Purchase Agreement (EPA) executed by the petitioners with the first Respondent provides as follows:-

> *"Grid availability shall be subject to the restriction and control as per the orders of the State Load Despatch Centre (SLDC) consistent with the provisions of the Electricity Act and regulations made thereon."*

2.28. The petitioners have dealt their grid connectivity approvals and execution of Energy Purchase Agreements with the first Respondent, TANGEDCO.

2.29. Further, the petitioners have relied on Regulation 2 (q) and Regulation 56 of the TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 to contend that solar generators should also be granted the benefit of deemed generation as in the case of hydro generators which is not sustainable since the Regulation 1(6) of the said regulation stipulates that the Regulation shall not be applicable to the generation of electricity from Renewable Sources of Energy. The said Regulation 1(6) stipulates as follows.

> ***"****1(6) <u>They shall not be applicable to co-generation, captive power plants and generation of electricity from renewable sources of energy</u> including mini hydro projects (covered under Non-Conventional Energy Sources), which will be covered by a separate regulation to be specified by the Commission under clause (e) of sub-section (1) of Section 86 of the Electricity Act, 2003 for promotion of such generation".*

2.30. The very same contention which was raised by M/s. Adani Green Energy Limited before the Commission during the determination of tariff for the solar generators in T.O. No. 2/2017 dated 28.03.2017 - Solar Tariff Order is extracted as under:

> *Deemed Generation.*
>
> *"M/s. Adani Green Energy Limited*
> *Existing developers are facing issues of delayed payments and backing down. MNRE has issued a letter on 2.8.2016 to CERC with copy to the Principal Secretary of all states stating that solar power plants should not be given instructions to back down. In view of various statutory provisions and regulations to promote renewable energy, generation loss due to unavailability of grid or issue of backing down instructions may be considered as deemed generation and payments made at the tariff rates of signed PPAs".*

The above demand for grant of deemed generation was not accepted. No appeal was filed against the non-grant of deemed generation to solar developers.

2.31. Subsequently in the T.O.No. 5/2018 dated 28.03.2018 - Solar Tariff Order the issue of deemed generation was again raised by M/s Swelect Energy Systems, which is as follows.

> *Deemed generation*
> *Existing solar power developers are facing challenges in terms of delayed payments and backing down of solar power. Any loss of generation owing to unavailability of grid or resulting from backing down of operation shall be allowed for claim of energy charges in full under deemed generation concept and payment made at the tariff rate as per PPA.*

2.32. Subsequently in T. O. No. 5/2019 dated 29.03.2019 - Solar Tariff Order the issue of deemed generation was again raised by the M/s National Solar Energy

Federation of India. The specific contention made before the Regulatory Commission is extracted as under:

> *National Solar Energy Federation of India, Swelect Energy Systems Limited*
>
> *State shall consider 'MUST RUN' status for solar PV power plants and the power plants shall not be backed down. Any loss of generation owing to unavailability of grid or resulting from backing down should be compensated in full under deemed generation concept. Delivery point may be fixed at Solar generating station end".*

2.33. The demand for grant of deemed generation was not accepted. No appeal was filed against the non-grant of deemed generation to solar developers. The above order is binding on the petitioners and has become final. The petitioners cannot raise this issue in the present petition on the above grounds.

2.34. The Commission issued an order on 25.03.19 in M.P.No.16 of 2016 filed by M/s National Solar Energy Federation of India in respect of "MUST RUN" Status to the Solar power plants. The same is reproduced as follows:

> *"(a) in the present circumstances it is unavoidable that the generation from the solar generators need to be curtailed albeit to a small extent if the grid conditions so warrant,*
> *(b) We have given direction to the SLDC not to resort backing down instructions without recording the proper reason which is liable for scrutiny at any point of time and*
>
> *(c) that there is no provision in the agreement signed with the Utility for payment of deemed generation charges, we find it not possible to accede to the prayer of the petitioner".*

2.35. As directed by the Commission, the quarterly report in respect of back down instructions issued to solar power plants was submitted along with the reasons.

2.36. With reference to the MNRE letter, dated, 04.04.2020, it has been stated that

> *"Since, some of the DISCOMs are still resorting to RE curtailment without any valid reason. i.e. grid safety; it is once again reiterated that Renewable Energy (RE) remains "MUST RUN" and any curtailment but for grid safety reason would amount to deemed generation".*

2.37. The losses due to curtailment of RE (solar and wind) generators shall be made good only if the curtailment is due to any other reasons other than grid security. But, in our case, the curtailment is being done only because of the Grid safety and security according to the CERC's Deviation Settlement Mechanism and Indian Electricity Grid Code, Clause 5.2(u). Hence, making good the losses incurred by wind and solar generators does not arise for the reasons stated above.

2.38. The petitioners have entered into Energy Purchase Agreement (EPA) with the first Respondent in which the Clause 2(d) of EPA which provides as follows:-

> *"Both the parties shall comply with the provisions contained in the Indian Electricity Grid Code, Tamil Nadu Electricity Grid Code, the Electricity Act, 2003, other Codes and Regulations issued by the Tamil Nadu Electricity Regulatory Commission/Central Electricity Authority(CEA) as amendments from time to time".*

2.39. In view of the said clause in the EPA entered into between the parties, as and when necessity arose, the solar generators are asked to back down generation to safeguard the grid based on safety measures as per regulations, 5.2 (u) of IEGC and sections 8 (3) (b), 8(4) (iii), 8(4)(v) and 4(2)(e) of the Tamil Nadu Electricity Grid Code.

As in the present case, the backing down of solar power was done only in the interests of grid security to maintain grid discipline.

2.40. The Clause 3(a) & 3(l) of the Energy Purchase Agreement provides are as follows:-

> *3(a) "The Solar power generated shall be evacuated to the maximum extent subject to Grid stability and shall not be subjected to merit order dispatch principles"*
>
> *3(l) "Grid availability shall be subject to the restriction and control as per the orders of the State Load Despatch Centre (SLDC) consistent with the provisions of the Electricity Act and regulations made thereon."*

2.41. From above clauses, it is clear that the injection/despatch of solar power is subject to maintenance of the safety and security of Grid and to this extent the present ground seeking compensation from Respondents No. 1 to 3 on account of losses faced by the Petitioners, due to alleged arbitrary curtailment of RE is not tenable.

2.42. The transaction, being contractual, shall be governed by the terms and conditions of the contract between the parties. The petitioners have, consciously, entered into the agreements/contracts with the first Respondent agreeing to supply power at a particular rate and consented themselves to various conditions including conditions stipulated in respect of grid security.

2.43. Even in the grid connectivity approval with the first Respondent, the petitioners have agreed to adhere to the terms and conditions of relevant regulations of the Regulatory Commission issued from time to time, as far as grid security is concerned.

2.44. The petitioners entered into a long term PPA with the first Respondent, for 25 years at a tariff fixed by the Commission. It is the financial decision taken by the petitioners to establish the power plant at a place of its choice and opt for supplying the entire generation to the distribution licensee or to opt for open access for using the transmission lines on payment of statutory charges and further agreeing to the mandatory terms and conditions relating to grid security.

2.45. The section 86 (1) (e) of Electricity Act, 2003 provides that State Commission shall promote the renewable sources by providing suitable measures for connectivity within the grid. The said provisions of Electricity Act and the National Electricity Policy are the policy directions and guidelines for encouraging the capacity addition of the Non-conventional energy sources and as such the petitioner cannot seek omnibus relief unmindful of the Grid security.

2.46. It is contended by the petitioner that the solar power cannot be curtailed by the Respondents by relying upon the IEGC, TN Grid Code. The same is denied for the following reason :

i. Tamil Nadu is a pioneer in promoting Green Energy.
ii. The IEGC Clause 5.2(u) provides 'Must Run Status' to the solar/wind generators *subject to grid security* only. The combined reading of the above Clause 5.2(u) stipulates that 'Must Run Status' is subject to grid security only and cannot be read in isolation.
iii. Further, Tamil Nadu Electricity Grid Code provides the following with respect to SLDC Operations:

Clause 8.4 (iii) "…the SLDC may direct the generating stations/ beneficiaries to increase or decrease their generation/drawal in case of contingencies e.g. overloading of lines /transformers, abnormal voltages, threat to system security. Such directions shall immediately be acted upon"

2.47. The ground raised by the Petitioners that they have faced losses due to the alleged curtailment and the same entitles the Petitioners herein for alleged compensation/deemed generation charges runs contrary to truth, and stands devoid of any merits. Per contra, the respondents are only complying with the mandatory provisions of the Grid Code and such compliance with the provisions of law is no wrong, and cannot be used to the advantage of the Petitioners. Such allegations leveled by the Petitioners are nothing but abuse of process of law. Moreover, the citation relied upon by the Petitioners in the above said paras have no bearing to the facts of this present case and is misplaced.

2.48. The petitioners have referred to the judgments passed by the Hon'ble Supreme Court of India and the Appellate Tribunal for Electricity in which the importance of the Renewable Energy was emphasized. There is no doubt that the TN Government Solar Policy directions and guidelines are towards encouraging and promoting the Solar Energy in the State. The Government of Tamil Nadu, TANGEDCO and TANTRANSCO are working to promote RE generation in the State of Tamil Nadu. Tamil Nadu is a one

of pioneer state towards promoting RE generation. The year wise solar generation for the past five years is tabulated as below:

Period of FY	Solar Generation in Million Units
2014-15	159
2015-16	507
2016-17	1478
2017-18	2799
2018-19	3556
2019-20	4947

2.49. However, the real time grid operation is a tough one and dynamic with varying grid parameters and infirm RE power injection. The back down instructions issued to maintain grid security and grid discipline are inevitable. Hence, maintaining grid security as per the various Electricity Laws in force is not against any promotional policy of Renewable Energy.

2.50. Regarding the Ministry of New and Renewable Energy (MNRE), letter dated, 01.08.2019, 01.04.2020 and 04.04.2020, it is submitted that

(a) TN SLDC is taking all measures to accommodate maximum level of renewable resources with a view to manage the Grid reliability parameters in a secured manner and to maintain continuous supply to the common public without any major disturbance within the State as well as to avoid such cascading effects on the neighboring States and not to breach the grid discipline/security and according to CERC's Deviation Settlement Mechanism and Indian Electricity Grid Code, Clause 5.2(u).

(b) In the real time operation, during less demand period and high infirm Renewable Power injection into grid, in order to maintain grid security/discipline, after backing down the conventional generation to the technical minimum, surrendering of CGS share of power, only as a last resort, backing down of renewable energy becomes inevitable in view of grid security. The last resort of curtailment is only because of the Must Run status of infirm generation.

(c) As per the above referred MNRE letter, the losses due to curtailment of wind and solar generators shall be made good only if the curtailment is due to any other reasons other than grid security. But, in this case, the curtailment is being done only because of the Grid safety and security as per the Grid Code. Hence, making good the losses incurred by wind and solar generators does not arise.

(d) As per the following Central Electricity Authority (CEA) study report, the State Utility is losing Rs.1.57/Kwhr for facilitating the evacuation of highly infirm wind and solar power injection into the grid. It is important to mention that the State Utility has facilitated to evacuate 16,157 Million Units, thereby causing a loss of Rs.2536 Crores to the State Utility for the Financial Year 2018-19. The same report has been published by the Central Electricity Authority (CEA), GoI during December 2017 on "The technical committee on study of optimal location of various types of balancing energy sources/energy storage devices to facilitate grid integration of renewable energy sources and associated issues" the impact details about the financial implications to the States in integration of Renewable Energy are given below.

There are financial implications on the States where this variable generation is being set up, namely, the requirement of keeping standby capacity when the wind and solar power goes down, the necessity of having flexible generation which can ramp up and down in consonance with ramping down and up by the variable

generation, the impact on the States Deviation Settlement Mechanism (DSM) charges for inter-State flow of power, the impact on coal-based generation, in terms of reduction of efficiency and operation at lower Plant Load Factor, as well as higher transmission charges on account of lower capacity utilization factor of wind and solar power. There have been various figures floating around, as to estimation of this financial implication".

Item No.	***Impact on account of Wind and Solar Generation Tamil Nadu Summary***	
1.	*Total balancing charge for CGS Coal and gas based station (fixed +fuel charge)(Rs/Kwh)-Spread over renewable generation*	*0.20*
2.	*Total balancing charge for Tamil Nadu Coal based station (fixed +fuel charge)(Rs/Kwh)-Spread over renewable generation*	*0.03*
3.	*Impact of DSM per unit- Spread over renewable generation*	*0.35*
4.	*Impact on tariff PER UNIT for Tamil nadu discom for backing down Coal generation assuming solar and wind at Rs. 4/kwh and coal fuel charge at Rs.2.0/KWH- Spread over renewable generation (Considering 25% on account of renewables)*	*0.50*
5.	*Stand by charge (Rs/Kwh)- Spread over renewable generation*	*0.23*
6.	*Extra transmission charge (Rs/Kwh)- Spread over renewable generation*	*0.26*
	Total Impact- Spread over renewable generation (Rs/Kwh)	***1.577***

2.51. The allegation that the *"Illegal and arbitrary curtailment of solar power by the Respondents is a contrary to the contractual obligations under the respective EPAs"* is denied since Must Run status for solar generation is subject to the grid discipline, grid safety and security according to CERC's Deviation Settlement Mechanism and Indian

Electricity Grid Code, Clause 5.2(u) as mentioned above. The same is inbuilt in Clauses 2(d), 3(a) & 3(l) of the EPA entered by the petitioners. Further, SLDC is always taking efforts to accommodate RE power to the maximum extent possible.

2.52. The issue of backing down instructions to the solar generators by way of writing in advance is practically not feasible in the real time grid operation to maintain grid safety and grid security. Hence, immediately after giving oral instructions for back down of generation, an email instruction is being sent to the petitioners through Sub LDC detailing the reasons for curtailment. In the real time grid operation, the real time grid operators decide the quantum of curtailment, but, on the other hand the period of curtailment cannot be defined and decided at the time of curtailment since the Grid and Demand is dynamic in nature.

2.53. The averment "*in the period during with backing down/curtailment was carried out, State of Tamil Nadu has overdrawn cheaper power from regional grid*"' is nothing but figment of imagination of the Petitioners and hence denied. SLDC is maintaining the grid security as per the mandate as follows:

(a) As per the CERC Regulations, real time grid operations to be carried out within the bandwidth of 49.90 to 50.05 Hz to maintain grid discipline.

(b) In order to maintain grid security CERC is permitting RE Rich States to maintain the deviation within (plus or minus) 250 MW from the CGS schedules to Tamil Nadu.

(c) For non-maintenance of frequency between 49.90 Hz and 50.05 Hz or over/under-drawal from schedule meant for Tamil Nadu deviation of 250 MW may pose threat to grid security as it is PAN INDIA (One Grid One Frequency One Nation).

(d) If the Load - Generation balance has to be within the permissible limit in real-time to avoid grid collapse by every State/Utility as it is PAN INDIA. Or otherwise, islanding/blackout may happen and can be extended to the other parts of the Nation. In that case, the restoration of the grid may take few hours/days and the consumers shall be affected without power supply for hours/days together. In the occurrences which took place during the Year 2012 in Northern, Eastern & Central part of India except Southern Grid, 620 million peoples were without power supply for 3 consecutive days. There were two consequent occasions during July, 2012.

(e) RLDC & NLDC are the governing bodies to regulate power supply if SLDC fails to do so. They are empowered to take physical regulatory measures apart from penalizing commercially the default in maintaining grid discipline by SLDC. Penalty will be severe for huge underdrawl in high frequency. The huge penalty as per CERC regulations may be passed to the consumers in the worst case.

2.54. Clauses 3(d), 3(e) and 3(h) of the EPA referred to by the petitioners are the mandated requirements for parallel operation of the plant. The grid security throughout the State is maintained based on the provisions of the IEGC and TNEGC and CERC/TNERC Regulations and hence the curtailment instructions issued in view of grid safety and security are not in any contravention to the Electricity Act and prevailing Laws including the provisions of the EPA.

2.55. The deemed generation cannot be allowed in the absence of forecasting & scheduling along with commercial due to the infirm, volatile nature of RE sources. Due to the huge variation in the RE power, the under drawal exceeds the permissible limit fetches huge penalty apart from generation cost, over drawal from central grid leads to paying DSM charges. Also, during sudden withdrawal of infirm RE power, load restrictions were imposed to the consumers. In addition to the above technical reasons, the Tariff Order for Solar Generators does not provide for such deemed generation to solar generators.

2.56. The Hon'ble Appellate Tribunal for Electricity in the order dated 16.05.2011 in Appeal No. 123 of 2010 has held as follows:

> *"In our opinion the Section 70 and 72 of the Indian Contracts Act, 1872 will not be applicable in the present case. The present case is governed by the Electricity Act, 2003 which is a complete code in itself. In the electricity grid, the SLDC, in accordance with Section 32 of the Act is responsible for scheduling and dispatch of electricity within the state, to monitor the grid operations, to exercise supervision and control over the intra-state transmission system and to carry out grid control and dispatch of electricity through secure and economic operation of the State Grid. All the generators have to generate power as per the schedule given by the SLDC and the grid code in the interest of secure and economic operation of the grid. Unwanted generation can jeopardize the security of the grid"*

2.57. The Grid Code is a statutory requirement and under the EPA, the petitioners have agreed to abide by the same. The PPA is governed by regulations framed under the Electricity Act. The averments made by the petitioners that the terms of the PPA has been breached is denied since the back down instructions are issued

to maintain grid discipline and grid security according to the Electricity Laws in force to maintain the electricity grid in a safe and secured manner which is inbuilt in Clause 2(d), 3(a) & 3(l) of the EPA. Hence, the terms and conditions of the contract (EPA) has not been breached and the petitioners have only breached the contract and claiming the deemed generation charges much against the judicial decisions which is not tenable. It is the duty of every generators to operate in parallel with the Electricity Grid and further obey the SLDC instructions to maintain grid discipline and security.

2.58. The "Merit Order Despatch is followed by SLDC for giving back down instructions to conventional generators from high cost to low cost power (variable cost). In this case, curtailment of RE power is being carried out as a last option after backing down the cheapest power in the system to maintain grid discipline and grid security in the interest of Public. The Merit Order Despatch is not applicable to RE generators. Hence, claiming of compensation for deemed generation by the petitioners cannot be accepted.

2.59. The Draft Electricity (Rules), 2020, dated 01.10.2020 issued by the Ministry of Power, Government of India is in draft stage only. Hence, the draft rules can only carry persuasive value and *per se* not binding on the facts of the present case.

2.60. All RE curtailments are carefully done and no intentional backing down is carried out. In the absence of proper and accurate forecasting and scheduling mechanism for the renewable power, SLDC is unable to ascertain the exact quantum

of RE injection and 100% Must Run Status is not possible without compromising grid discipline and grid safety for the PUBLIC INTEREST and to avoid large scale black out on account of non-adherence to grid discipline by TNSLDC.

2.61. The Tamil Nadu State is having highest infirm Renewable Energy installed capacity than the rest of the country and in spite of technical constraints and huge financial loss by way of paying penalty, compensation charges, the TN SLDC is taking all measures to accommodate maximum level of renewable resources and consciously managing the Grid reliability parameters in a secured manner to maintain 24x7 continuous supply to the common public/consumers as per the Tamil Nadu Government Policy without any major disturbance within the State as well as to avoid any cascading effects on the neighboring States and not to breach the grid discipline/grid security.

2.62. Further, the deemed generation and compensation are with respect to the TNERC's Tariff Order and to the PPA/EPA signed by the members of the petitioner with the first Respondent, TANGEDCO wherein there is no specific provision for the same.

2.63. As directed by the Commission vide its Order dated 25.03.2019 in M.P. No. 16 of 2016 filed by M/s National Solar Energy Federation of India, the solar generators are curtailed for grid safety purposes with the furnishing the quarterly report with the details of curtailment. In the said Order, the Commission has observed as follows:-

(c) that there is no provision in the agreement signed with the Utility for payment of deemed generation charges, we find it not possible to accede to the prayer of the petitioner".

2.64. The petitioner has raised a claim of Rs.73 Crores without any base or calculation.

2.65. The petitioner's claim, for compensation for loss of generation due to backing down (which actually occurred on the ground of maintaining grid discipline) is against the agreed terms of the Energy Purchase Agreement and is incorrect and baseless.

2.66. The Respondents are not in violation of any provisions of the Indian Electricity Grid Code, Tamil Nadu Electricity Grid Code, the Electricity Act, 2003, other Codes and Regulations issued by the Tamil Nadu Electricity Regulatory Commission/Central Electricity Authority(CEA) and the EPAs.

3. Affidavit dated 18-01-2021 filed on behalf of the Respondents 2 and 3:-

The Respondents have made the same averments as was made in the counter affidavit in the present Affidavit dated 18-01-2021 also and hence it is not necessary to reproduce them.

4. Rejoinder on behalf of the Petitioners to the Counter Affidavit dated 12-04-2021 filed by the Respondent No. 1 in reply to the accompanying petition:-

4.1. In their Reply, Respondent No. 2 and 3 have made several bald averments, which do little to address the specifics of the matter and the claims raised by the Petitioner. Broadly stated, the Reply contends that:

(a) Upon a combined reading of Section 32 and 33 of the Act, Clause 2.7 of the CERC (Indian Electricity Grid Code) Regulation, 2010 ("IEGC") and Clause 4.2 (e), 8.4 (iii) and (v) of the Tamil Nadu Electricity Grid Code ("TNEGC"), it is evident that the State Load Despatch Centre ("SLDC") is the authority responsible for maintaining Grid discipline and supply of power in the State of Tamil Nadu.

(b) A combined reading of clause 5.2 (u) of the IEGC and 8.4 (iii) of the TNEGC shows that the "Must-Run Status" granted to Solar Power Generators is subject to Grid Security, which is to be determined by the SLDC.

(c) To maintain such Grid Security, back-down instructions are given to infirm solar and wind generators after resorting to all possible steps to curtail injection of conventional power and surrender of CGS Power etc. The real-time situation demands that these instructions be first issued orally to the Sub Load Despatch Centre, followed by written instructions at a later point.

(d) The instructions for back-down are issued in order to comply with the CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 ("CERC DSM Regulations"), which provide for a deviation limit of (+/-) 250 MW of supply and withdrawal of power from

the Grid for States having a combined installed capacity of more than 3000 MW of Wind and Solar Power (such as Tamil Nadu).

(e) Such curtailment is also due to the lack of accurate forecasting and generation schedule with commercial mechanism for infirm sources of power such as wind and solar. These are required for balancing load-generation and ensuring Grid Reliability.

(f) On account of paragraph (e) and the high variation in Renewable Energy, deemed generation charges are not payable. The Tariff Orders passed in respect of the Petitioners' projects do not contemplate the payment of such charges. Reliance has also been placed on certain orders passed by the Commission (T.O. No. 02/2017, 05/2018 and 05/2019) to contend that the claim for deemed generation charges should not be entertained.

(g) Section 73 of the Contract Act would not be applicable in view of the matter being covered by a special legislation, i.e., the Electricity Act, which is a complete Code in itself. In any case, there has been no breach of any of the EPAs since the back-down instructions have been issued to maintain Grid Security.

4.2. A perusal of the Reply shows that mere broad claims of the SLDC being required to maintain grid security has been made. There is not a single whisper of the circumstances and reasons warranting the issuance of the back-down instructions in

order to maintain the purported "Grid Security". No data whatsoever has been furnished by SLDC to demonstrate existence of any imminent or looming threat to the alleged Grid Security. The reply is entirely based on conjectures and surmises. The Petitioner in the present Petition had provided and relied upon time block-wise data to demonstrate the arbitrary curtailment perpetuated by the Respondents. However, the SLDC in filing its Reply has glossed over the entire data submitted by the Petitioner. Hence, the bald averments made by the Respondent SLDC ought to be rejected. In fact, nothing has been placed on record by Respondent SLDC to establish a case of State wise threat to Grid Safety and Security.

4.3. It is not in dispute that under the law in vogue, the SLDC is responsible for maintaining Grid Security. However, a statutory obligation accompanies this responsibility in the form of regulating overall generation in a manner such that renewable sources of energy are promoted in preference to conventional sources of energy.

4.4. A blanket use of the term "Grid Security" without a justifiable underlying basis would not lend credence to instructions of back-down issued to the Petitioners. In fact, such a course of conduct has been cautioned by the Commission at countless intervals, one of which was while passing the following judgement in M.P. No. 16 of 2016:

> *"10.14. However, it is to be emphasized that the SLDC cannot curtail the renewable power at their convenience. Backing down of the "Must Run Status" power shall be resorted to only after exhausting all other possible*

means of achieving and ensuring grid stability and reliable power supply. The backing down data furnished by the petitioners has not been disputed by the respondents. However, they were not able to explain the reason prevailing at each time of backing down beyond the general statements as mentioned in earlier paras. It gives rise to a suspicion that the backing down instructions were not solely for the purpose of ensuing grid safety.

10.15. Under these circumstances, it is necessary to direct the SLDC to ensure evacuation of the solar power generations connected to the State grid to the fullest possible extent truly recognising the Must Run Status assigned to it in full spirit."

4.5. Therefore, a mere reference to the CERC DSM Regulations , which provide for a deviation limit of (+/-) 250 MW or alleged threat to Grid Safety and Security, in the absence of cogent reasons and accompanying particulars for issuing instructions of back-down, does little to further the case of the Respondents. This gains importance in view of the "Must-Run" status afforded to Solar Power projects. The actions and omissions of the Respondents nullify the entire financial planning of the Petitioners' project that came about as a result of the "Must-Run" status.

4.6. Moreover, Respondent SLDC has vehemently relied upon the CERC DSM Regulations to contend that the Curtailment to RE Generation is to avoid payment of DSM Charges. The argument itself demonstrates the fact that Curtailment is for economic reasons. Again, no document whatsoever has been placed on record to demonstrate:

(a) The Actual demand/ drawl within the State in respective Time-blocks;

(b) The operation level of Conventional Generation in such time blocks and whether such conventional generation would first reduce to Technical Minimum or not in such time blocks; and

(c) Corresponding generation by RE Sources in such time blocks.

4.7. Hence, in the absence of any data whatsoever to demonstrate presence of any threat to Grid Security and Safety, the bald averment of Respondent SLDC cannot be relied upon. Merely because the law in vogue entrusts the Respondents with the power to regulate overall generation while ensuring Grid Security, it does not mean that such power can be misused for considerations extraneous to the intended use and without following the due procedure. This has been aptly captured by the Hon'ble Supreme Court in *Express Newspapers (P) Ltd. v. Union of India*, (1986) 1 SCC 133 inasmuch as:

> *"119. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in S. Pratap Singh v. State of Punjab [AIR 1964 SC 72 : (1964) 4 SCR 733] . A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an "alien" purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord*

Lindley in General Assembly of Free Church of Scotland v. Overtown [LR 1904 AC 515] "that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred"

4.8. This was reiterated by the Hon'ble Supreme Court in *V.C., Banaras Hindu University v. Shrikant,* (2006) 11 SCC 42, albeit slightly differently, insofar as:

> *"41. Although, laying down a provision providing for deemed abandonment from service may be permissible in law, it is not disputed that an action taken thereunder must be fair and reasonable so as to satisfy the requirements of Article 14 of the Constitution of India. If the action taken by the authority is found to be illogical in nature and, therefore, violative of Article 14 of the Constitution, the same cannot be sustained. Statutory authority may pass an order which may otherwise be bona fide, but the same cannot be exercised in an unfair or unreasonable manner. The respondent has shown before us that his leave had been sanctioned by the Director being the Head of the Department in terms of the Leave Rules. It was the Director/Head of the Department who could sanction the leave. Even the matter relating to grant of permission for his going abroad had been recommended by the Director. The respondent states, and it had not been controverted, that some other doctor was given the charge of his duties. We have indicated sufficiently that the Vice-Chancellor posed unto himself a wrong question. A wrong question leads to a wrong answer. When the statutory authority exercises its statutory powers either in ignorance of the procedure prescribed in law or while deciding the matter takes into consideration irrelevant or extraneous matters not germane therefor, he misdirects himself in law. In such an event, an order of the statutory authority must he held to be vitiated in law. It suffers from an error of law.*

4.9. Being a creation of the Act, Respondent No. 2 and 3 are statutorily bound to conduct themselves in accordance with law. They cannot, at their whims and fancy curtail the generation of renewable power by the Petitioners, much less in the absence of cogent reason(s). They were duty-bound to record all necessary particulars underlying an instruction for back-down for each time block. The instructions could not have been issued as a matter of routine without any application of mind.

4.10. To that end, any post-facto supplementation of reasons for back-down is also impermissible in law, as held by the Hon'ble Supreme Court in *Mohinder Singh Gill v. Chief Election Commr*., (1978) 1 SCC 405. Speaking for the Constitution Bench, V.R. Krishna Iyer J. eloquently stated as under:

> "*8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16] :*
>
> > *"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*

4.11. In this background, the Commission may also consider the Report filed by the Power System Operation Corporation Limited ("POSOCO") before the Hon'ble Appellate Tribunal for Electricity ("Tribunal") pursuant to the Order dated 26.04.2020 passed in Appeal No. 197 of 2019. The Report was the result of a direction issued to POSOCO to conduct an independent detailed verification on whether the Respondents / SLDC had indulged in intentional curtailment of scheduling of power or was such on account of grid safety measures. The relevant extracts of the Order dated 26.08.2020 is reproduced as follows:

"We direct POSOCO to make detailed verification of the data after considering the contentions raised by the parties and submit report to the Tribunal within four weeks and indicate whether there was intentional curtailment of scheduling of power by the Respondents/SLDC or whether it was on account of grid safety measure taken by SLDC as contended by the Respondents. We also direct a clear statement "Was there any fair and justifiable curtailment of power from all generators, both renewable and non-renewable, the actual generation and injection of energy"?"

4.12. The analysis was in respect of power generated from both renewable and non-renewable sources of energy in the State of Tamil Nadu for the period of 01.03.2017 to 30.06.2017. Some of the instructions for back-down issued to the Petitioners fall within this period.

4.13. Answering the above question of curtailment, the Report states as under:

"4.2 It is noted that TN SLC has indicated 'Deviation & Frequency' as the only reason for curtailment. All generators have indicated 'Grid Security' as the only reason for curtailment. Both parties have indicated that all instructions were oral in nature…

The following points are noteworthy from the Grid Code provisions and grid conditions:

i. Grid frequency is collectively controlled by all entities connected in the grid and not by any individual state or entity. The operative frequency band of 49.90-50.05 Hz indicated above in no way implied that frequency cannot go outside this band. It can go below 49.90 Hz in case any generator trip but actions by other entities should bring the frequency back to within the band. Adequate generation reserves for UP regulation is to be maintained at both the interstate and intra-state level to minimize the operation below 49.90 Hz. Similar, adequate reduction or DOWN capability of generation would help avert operation above 50.05 Hz which signifies generation is greater than load.

ii. There was no abnormal voltage condition at 400 kV level of the grid which required backing down / curtailment during the said period. Further, no specific constraint is expressed by TNSLDC at State level during the period under consideration.

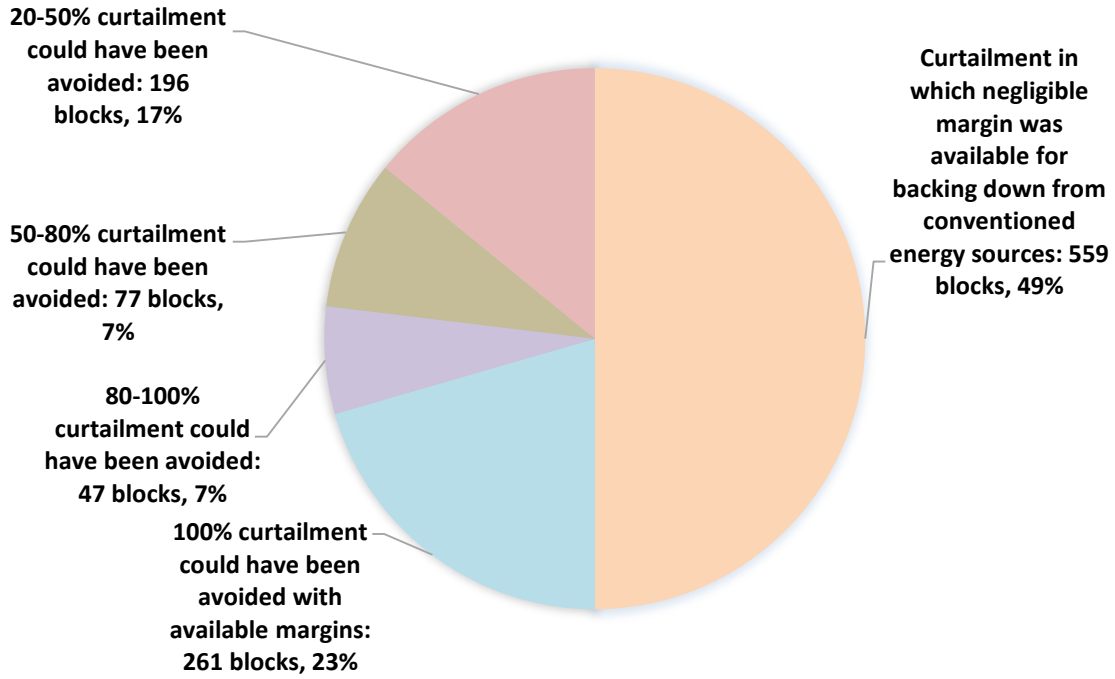
iii. *There was no network loading issue observed at 400 kV level which required backing down / curtailment during the said period. Further, no specific constrained is expressed by TNSLDC at State level during the period under consideration.*

iv. *Voltage and transmission constraints tend to be localised. There was no constraints / violations which necessitated the state wide curtailment.*

v. *The area control error / deviation from the grid is to be controlled by the State using proper load forecasting and renewable forecasting in line with clause 5.3 and 6.5.23 of the Indian Electricity Grid Code, 2010.*"

4.14. A data-wise summary of curtailment amongst 1,140 time-blocks of 15 minutes each out of a total 11,712 blocks was then provided as under:

[**Intentionally left blank**]



4.15. The conclusion of such a summary was stated as under:

"*4.2.1. (v) … Note: The above analysis does not consider the frequency profile which is integral to grid security. As stated in paragraph 4.2, frequency band prescribed in IEGC is 49.90 to 50.05 Hz.*

An analysis of the frequency and RE curtailment instructions shows the following:

i. During 55 blocks (4.82%) out of 1140 blocs (total curtailed blocks) frequency is above 50.05 Hz (> 50.05 Hz)

ii. During 427 blocks (37.45%) out of 1140 blocks (total curtailed blocks) frequency is above 50.05 HZ (> 50.00 Hz). Out of these 427 blocks, TN was under drawing in 350 blocks. Out of these 350 blocks, there was no margin for backing down in thermal and hydro generation in 60 blocks so as to absorb the renewable energy.

Considering grid frequency and under drawal of TN from the grid, only 5.26% (60 out of 1140 blocks) appears to be justified from grid security perspective."

4.16. This was followed by a comparison of curtailment among the various Solar power generators, which was summarized as follows:

"4.3.1. … Summary of findings:

It appears from the above three indicators that most of the solar generators with per unit cost of Rs.7.01 is curtailed more both in terms of instances of curtailment as well as in terms of percentage generation as compared to other solar generators."

4.17. In view of the above, it is clear that Respondent No. 2 issued unjustified instructions for back-down on multiple intervals during the period in question in the Report. Such conduct has continued even thereafter. In fact, recently on 06.04.2021, load curtailment was of 0.68 Mus, which has resulted in an approximate loss of Rs.45 Lacs.

4.18. Given that no credible issue of Grid Security arises in the present case, the Petitioners are entitled to be compensated for breach of the EPAs in terms of Section 73 of the Contract Act.

4.19. The limited objection raised by the Respondents is with respect to the Act being a complete Code and thereby, excluding the applicability of the Contract Act. This proceeds on an erroneous understanding of the Act as well as settled law.

4.20. Ordinarily, a special legislation applies to matters exclusively covered by it in preference to a general legislation. However, where a special legislation is silent in respect of any matter, it does not preclude the application of a general legislation barring any inconsistency therein.

4.21. In *Board of Trustees of the Port of Bombay v. Sriyanesh Knitters*, (1999) 7 SCC 359, the issue arose whether a party could resort to Section 171 of the Contract Act to claim a right of general lien as a wharfinger in the presence of the Major Port Trusts Act, 1963, which although a complete Code in itself, did not provide for "general lien" as covered by Section 171. In this context, the Hon'ble Supreme Court was pleased to hold as under:

> *"11. The MPT Act is not, in our opinion, an exhaustive and comprehensive code and the said Act has to be read together with other Acts wherever the MPT Act is silent in respect of any matter. The MPT Act itself refers to other enactments which would clearly indicate that the MPT Act is not a complete code in itself which ousts the applicability of other Acts. The preamble of the Act does not show that it is a codifying Act so as to exclude the applicability of other laws of the land. Even if it is a codifying Act unless a contrary intention appears it is presumed not to*

be intended to change the law. (See Bennion's Statutory Interpretation, 2nd Edn., p. 444.) Furthermore where codifying statute is silent on a point then it is permissible to look at other laws. In this connection it will be useful to refer to the following observation of the House of Lords in Pioneer Aggregates (UK) Ltd. v. Secy. of State for the Environment [(1984) 2 All ER 358, 363 (HL)] (All ER at p. 363):

> *"Planning law, though a comprehensive code imposed in the public interest, is, of course, based on land law. Where the code is silent or ambiguous, resort to the principles of private law (especially property and contract law) may be necessary so that the courts may resolve difficulties by application of common law or equitable principles. But such cases will be exceptional. And, if the statute law covers the situation, it will be an impermissible exercise of the judicial function to go beyond the statutory provision by applying such principles merely because they may appear to achieve a fairer solution to the problem being considered. As ever in the field of statute law it is the duty of the courts to give effect to the intention of Parliament as evinced by the statute, or statutory code, considered as a whole.*

4.22. Taking cue from this, the Commission has been conferred with the powers of a Civil Court under the Code of Civil Procedure, 1908 under Section 94 of the Act in respect of matters specified therein. However, the Act is silent on the power to grant compensation that ordinarily vests in a Civil Court in view of Section 73 of the Contract Act. Since the Act confers the Commission with the jurisdiction to regulate the various contractual commitments entered into in the larger scheme of generation and consumption of electricity, it is imperative that powers under Section 73 of the Contract Act be exercised when warranted.

4.23. In this regard, Section 175 of the Act also comes to aid. It provides that the Act is "*in addition to and not in derogation of any other law for the time being in force*". Therefore, Section 73 of the Contract Act would not be precluded from application,

even by Section 174 of the Act, which states that "*save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act*".

4.24. This may be understood from the lens of *KSL and Industries Ltd. v. Arihant Threads Ltd.*, (2015) 1 SCC 166. There, the Hon'ble Supreme Court had the occasion to consider the scope of Clause (1) and (2) of Section 34 of the Recovery of Debt Due to Banks ("RDDB") Act, 1993, which are similar to Section 174 and 175 of the Act respectively. Thus, it was held:

> "*36. Sub-section (2) was added to Section 34 of the RDDB Act w.e.f. 17-1-2000 by Act 1 of 2000. There is no doubt that when an Act provides, as here, that its provisions shall be in addition to and not in derogation of another law or laws, it means that the legislature intends that such an enactment shall coexist along with the other Acts. It is clearly not the intention of the legislature, in such a case, to annul or detract from the provisions of other laws. The term "in derogation of" means "in abrogation or repeal of". The Black's Law Dictionary sets forth the following meaning for "derogation":*
>
> *"derogation.—The partial repeal or abrogation of a law by a later Act that limits its scope or impairs its utility and force."*
>
> *It is clear that sub-section (1) contains a non obstante clause, which gives the overriding effect to the RDDB Act. Sub-section (2) acts in the nature of an exception to such an overriding effect. It states that this overriding effect is in relation to certain laws and that the RDDB Act shall be in addition to and not in abrogation of, such laws. SICA is undoubtedly one such law.*
>
> *37. The effect of sub-section (2) must necessarily be to preserve the powers of the authorities under SICA and save the proceedings from being overridden by the later Act i.e., the RDDB Act."*
>
> *[…]*

"48. In view of the observations of this Court in the decisions referred to and relied on by the learned counsel for the parties we find that, the purpose of the two enactments is entirely different. As observed earlier, the purpose of one is to provide ameliorative measures for reconstruction of sick companies, and the purpose of the other is to provide for speedy recovery of debts of banks and financial institutions. Both the Acts are "special" in this sense. However, with reference to the specific purpose of reconstruction of sick companies, SICA must be held to be a special law, though it may be considered to be a general law in relation to the recovery of debts. Whereas, the RDDB Act may be considered to be a special law in relation to the recovery of debts and SICA may be considered to be a general law in this regard. For this purpose we rely on the decision in LIC v. Vijay Bahadur. Normally the latter of the two would prevail on the principle that the legislature was aware that it had enacted the earlier Act and yet chose to enact the subsequent Act with a non obstante clause. In this case, however, the express intendment of Parliament in the non obstante clause of the RDDB Act does not permit us to take that view. Though the RDDB Act is the later enactment, sub-section (2) of Section 34 thereof specifically provides that the provisions of the Act or the Rules made thereunder shall be in addition to, and not in derogation of, the other laws mentioned therein including SICA.

49. The term "not in derogation" clearly expresses the intention of Parliament not to detract from or abrogate the provisions of SICA in any way. This, in effect must mean that Parliament intended the proceedings under SICA for reconstruction of a sick company to go on and for that purpose further intended that all the other proceedings against the company and its properties should be stayed pending the process of reconstruction. While the term "proceedings" under Section 22 of SICA did not originally include the RDDB Act, which was not there in existence. Section 22 covers proceedings under the RDDB Act.

50. The purpose of the two Acts is entirely different and where actions under the two laws may seem to be in conflict, Parliament has wisely preserved the proceedings under SICA, by specifically providing for sub-section (2), which lays down that the later Act, RDDB shall be in addition to and not in derogation of SICA."

4.25. The judgment being squarely applicable to the present case, it cannot be said that the Act excludes the applicability of the Contract Act.

4.26. It is the position of the Respondents that Tariff Order No. 07 of 2014 dated 12.09.2014 and Order No. 2 of 2016 dated 28.03.2016 do not contemplate payment of deemed generation charges to the Petitioners. This could not be farther from the truth.

4.27. The Tariff Orders envisage the recovery of tariff over a span of 25 years after taking into consideration elements such as capital cost, depreciation, CUF, RoE etc. In order to recover the capital cost and a reasonable revenue from its investment, it is imperative that the Petitioners generate the required power and sell it at the specified tariff. The recovery of this tariff is essential, as is visible from the efforts being made to promote renewable energy.

4.28. Thus, in a manner of speaking, the Tariff Orders further the objective of the Solar Energy Policy notified by the Government of Tamil Nadu whereby the State set an ambitious target to generate 3000 MW of Solar Power by 2015. The policy intends to encourage and support solar manufacturing facilities. One of the ways of doing so was to accord a “Must-Run” status to Solar plants, which was envisioned under the IEGC Regulations promulgated in 2010. This is evident from the Order dated 25.03.2019 passed by the Commission in M.P. No. 16 of 2016.

4.29. It follows that but for legitimate Grid Security concerns, Solar Plants must be allowed to run at all times in preference to plants operating on conventional sources of energy. Any impediment must invite proceedings for recovery of the loss so that the recovery of tariff across a period of 25 years is not adversely impacted. This must be done through payment of Deemed Generation Charges. The Tariff Orders relied upon

by Respondent No. 2 and 3 to contend otherwise is not applicable to the Petitioners, having been rendered *inter-se* the parties therein.

4.30. In any case, the Office Memorandums ("O.M.") issued by the MoP, in particular the one dated 04.04.2020, contemplate the payment of deemed generation charges in cases such as the present. In case the Commission is of the view that the Tariff Orders do not contemplate payment of deemed generation charges, resort may be had to these O.M.s which cover the field.

4.31. In *Union of India v. Somasundaram Viswanath*, (1989) 1 SCC 175, the Hon'ble Supreme Court was faced with a similar situation where a question arose whether administrative instructions in the form of O.M.s could override Rules framed under Article 309 of the Constitution of India. It was contended that the O.M. provided for the procedure and quorum of the Departmental Promotion Committee; a subject not dealt with by the Rules. In this context, the Court was pleased to hold as under:

> *"5. According to para VII of the Office Memorandum, extracted above, it is clear that the absence of any of the members of a Departmental Promotion Committee, other than the Chairman, would not vitiate the proceedings of the Departmental Promotion Committee provided that the member absent has been duly invited but he absented himself for some reason and that there was no deliberate attempt to exclude him from the deliberation of the Departmental Promotion Committee and that the majority of the members constituting the Departmental Promotion Committee are present in the meeting. In the instant case the only person who was absent at the meeting of the Departmental Promotion Committee was the Secretary to the Government of India, Ministry of Defence who could not attend the meeting because he had to be present in Parliament at the same time at which the Departmental Promotion Committee had to meet. The Chairman of the Departmental Promotion*

Committee was present and the Chairman and the other members who were present constituted the majority of the Departmental Promotion Committee. It was urged on behalf of Respondent 1 that the Office Memorandum dated 30-12-1976 which contained the various administrative instructions regarding the procedure for making promotions and the functions of the Departmental Promotion Committees being merely in the nature of administrative instructions could not override the Rules which had been promulgated under the proviso to Article 309 of the Constitution of India.

6. It is well-settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail, and if there is a conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate legislature the law made by the appropriate legislature prevails. The question for consideration is whether in the instant case there is any conflict between the Rules and the Office Memorandum dated 30-12-1976, referred to above. We have already noticed that there are different rules framed under the proviso to Article 309 of the Constitution of India for making recruitments to services in the different departments and provisions have been made in them for the constitution of Departmental Promotion Committees for purposes of making recommendations with regard to promotions of officers from a lower cadre to a higher cadre. But these rules are to some extent skeletal in character. No provision has been made in any of them with regard to the procedure to be followed by the Departmental Promotion Committees and their various functions and also to the quorum of the Departmental Promotion Committees. These details which were necessary for the proper functioning of the Departmental Promotion Committees, as a matter of practice, were laid down prior to 30-12-1976 by the Government of India in the form of Office Memoranda issued from time to time and that on 30-12-1976 a consolidated Office Memorandum was issued containing instructions with regard to such details which were applicable to all Departmental Promotion Committees of the various Ministries/Departments in the Government of India. The said Office

Memorandum deals with several topics, such as, functions of the Departmental Promotion Committees, frequency at which Departmental Promotion Committees should meet, matters to be put up for consideration by the Departmental Promotion Committees, the procedure to be observed by the Departmental Promotion Committees, the procedure to be followed in the case of an officer under suspension whose conduct is under investigation or against whom disciplinary proceedings are initiated or about to be initiated, validity of the proceedings of the Departmental Promotion Committees when a member is absent, the need for consultation with the Union Public Service Commission, the procedure to be followed when the appointing authority does not agree with the recommendations of a Departmental Promotion Committee, implementation of the recommendations of the Departmental Promotion Committees, ad hoc promotions, period of validity of panels etc. etc. The Office Memorandum dated 30-12-1976, therefore, is in the nature of a complete code with regard to the topics dealt with by it, unless there is anything in the Rules made under the proviso to Article 309 of the Constitution of India, which is repugnant to the instructions contained in the Office Memorandum, the Office Memorandum which is apparently issued under Article 73 of the Constitution of India is entitled to be treated as valid and binding on all concerned. In the instant case the Rules do not contain any of these details except indicating who are all the persons who constitute the Departmental Promotion Committee. We do not, therefore, find any repugnancy between the Rules and the Office Memorandum. In the circumstances we feel that the plea raised by Respondent 1 in his additional affidavit dated 13-5-1988 (p. 132 of the paper book) that the Office Memorandum is ineffective cannot be upheld. We do not agree with the decision of the Central Administrative Tribunal that in the instant case the proceedings of the Departmental Promotion Committee on 7-8-1986 have been vitiated "solely on account of this reason viz. that Secretary, Ministry of Defence, one of its members was not present". We hold that the proceedings of the Departmental Promotion Committee at its meeting held on 7-8-1986 are not invalid for the above reason.

4.32. Thus, if the stand taken by Respondent No. 2 and 3 were to be accepted, an analogous situation would arise where despite being responsible for evacuating the complete renewable power generated by the Petitioners, Respondents would be benefiting from their own wrong by failing in this task. They cannot be permitted to

subvert their responsibility to ensure a coordinated economic development of the Grid under the garb of "imbalance of Grid Security" in the absence of cogent reasons or any data.

4.33. The actions and omissions on part of the Respondents have caused a loss of Rs.78.73 Crores (excluding interest) to the Petitioners. This must be considered while determining the deemed generation charges payable to the Petitioners. This is because RE projects are prescribed a single part tariff and therefore, no fixed charges are paid in the case of a back-down / curtailment of power. Hence, the "Must-Run" status is to be ensured and enforced.

4.34. In fact, the payment of deemed generation charges causes no detriment to the Respondents because the Tariff Orders as well as the EPAs envisage a bare minimum level of generation by the Petitioners. On the contrary, the conduct of the Respondents infringes upon the legitimate expectation of Petitioners to obtain a lawful and reasonable return on their investment. In this regard, the following observation of the Hon'ble Supreme Court in *State of West Bengal Vs. Shivananda Pathak*, (1998) 5 SCC 513 is relevant:

> "*The doctrine of "legitimate expectation" has developed as a principle of reasonableness and fairness and is used against statutory bodies and government authorities on whose representations or promises, parties or citizens act and some detrimental consequences ensue because of refusal of authorities who fulfil their promises or honour their commitments. It is settle law that relief to parties aggrieved by action or promises of public authorities can well be granted on the doctrine of "legitimate expectation*".

5. Additional Affidavit to place on record additional facts on behalf of the Petitioners:-

5.1 The present Petition has been filed by the Petitioners seeking the indulgence of the Commission, in exercise of its jurisdiction under Section 86 (1) (e) and (f) of the Electricity Act, 2003 ("Act"), to issue appropriate directions to Respondents No. , i.e., the Tamil Nadu Generation and Distribution Corp. Ltd. ("TANGEDCO") and the other contesting Respondents to compensate the Petitioners for breach of the Energy Purchase Agreements ("EPA") entered into with the Petitioners as well as the regulatory framework in vogue.

5.2. In this regard, in the rejoinder filed by the Petitioners in I.A. No. 01/2021 pending in the present Petition, Petitioners have placed on record the judgment dated 02.08.2021 of the Hon'ble Appellate Tribunal ("Tribunal") for Electricity passed in Appeal No. 197 / 2019 whereby the Hon'ble Tribunal has been pleased to hold that the Respondents herein had issued instructions of back-down to the members of the National Solar Energy Federation of India ("NSEFI") for reasons other than maintenance of grid security and thereby, engaged in unlawful curtailment of renewable energy for the period 01.03.2017 to 30.06.2017. As such on the basis of the Report of the Power System Operation Corporation Ltd. ("POSOCO"), the Hon'ble Tribunal was pleased to direct the Respondents in Appeal No. 197 / 2019, who are also the Respondents herein, to pay compensation for 1080 blocks considered by POSOCO at the rate of 75% of the Power Purchase Agreement tariff per unit within 60 days of the date of the Judgment.

5.3. Since the Petitioners herein are members of NSEFI and data from three of their Solar Power Plants, namely Panchapatti (50MW), Iyyermalai (50MW) and Kayathar (49MW), was considered by POSOCO for the purposes of Appeal No. 197 / 2019 for the period in question in the said Appeal, which is also part of the period in question in the following information is submitted for determination of the compensation payable by the Respondents for the period 01.03.2017 to 30.06.2017 as per Paragraph 134(i) of Judgment dated 02.08.2021:

Project	Tariff **(A)**	Total Curtailment (MUs) **(B)**	Curtailment in 60 Blocks which cannot be avoided (MUs) **(C)**	Unauthorized Curtailment (MUs) **(D= B-C)**	Claim @75% of Tariff x Unauthorized Curtailment MUs / 10 (Cr.)
Iyyermalai (50MW)	7.01	3.02	0.17624	2.84376	1.50
Panchapatti (50MW)	7.01	2.656	0.15268	2.50332	1.32
Kayathar (49MW)	5.1	0.86	0.07725	0.78275	0.30
Principal Amount					3.11
9% Interest as per Paragraph 134(iv) of Judgment					0.27
Total					3.38

5.4. The above liability is crystallized in terms of the Judgment dated 02.08.2021 passed by the Hon'ble Tribunal and therefore, Petitioners place on record the above determination of the compensation payable by the Respondents for the period 01.03.2017 to 30.06.2017, at the least, for appropriate directions. The present affidavit is, therefore, made *bona fide* and in the interest of justice.

6. Findings of the Commission:-

6.1. Heard the arguments at length and perused the data and documents submitted by both parties.

6.2. The petitioner M/s Walwhan Renewable Energy Ltd (erstwhile M/s Welspun Renewable Energy Pvt Ltd) and M/s Walwhan Solar TN Limited (erstwhile M/s Welspun solar Tech Pvt Ltd) have prayed:

(a) To direct TANGEDCO to make payment of Rs.78.73 Crores by treating the loss of generation from their Petitioner's plants as claimed and computed by them. The petitioners claim the loss of generation based on the alleged curtailment of power imposed by the respondents and deemed generation during such period of curtailment.

(b) To declare that any curtailment from September 2020 shall also be reimbursed to the petitioner as deemed generation charges.

(c) Direct the respondents to abide by the mandate of the Electricity Act 2003, Regulations and policies to maintain the 'must run' status qua the petitioner in letter and spirit.

6.3. The petitioner claims that since the very inception of their power plants, they are facing huge losses due to backing down instructions from Respondent State load Despatch Centre. The petitioners have estimated on their own the loss of generation as approximately 114.17 MUs till September 2020 from their plants and claimed a

cumulative revenue loss of approximately Rs. 78.73 Crores, due to the said forced curtailment of generation as follows:

List of plants:

(i) Musiri – 50MW- commissioned on 19.10.2015
(ii) TT Pet – 50MW- commissioned on 27.10.2015
(iii) Panchapathi – 50MW- commissioned on 21.10.2015
(iv) Iyyermalai – 50MW- commissioned on 17.11.2016
(v) Kayathar – 49MW- commissioned on 17.11.2016

Details submitted by the petitioner on the projected loss of generation by them:

Particulars		**Musiri**	**TTPet**	**Panchapatti**	**Iyyermalai**	**Kayathar**	**Sum Total**
capacity in MW		**50**	**50**	**50**	**50**	**49**	**249**
Tariff in Rs / kWh		**7.01**	**7.01**	**7.01**	**7.01**	**5.1**	
Service No.		**6941 4420 009**	**6941 4420 010**	**6941 4430 013**	**6941 4430 015**	**7942 4720 006**	
FY16	Actual Billed MU	38.93	23.88	25.98	1.53		90.32
	Loss of MUs due to Load Curtailment	0.25	0.24	0.35	0.08		0.92
	Revenue loss due to Load Curtailment (Rs Cr)	0.18	0.17	0.25	0.006		0.65
FY17	Actual Billed MU	83.53	85.05	80.78	76.8	31.45	357.61
	Loss of MUs due to Load Curtailment	8.72	6.58	11.1	10.07	2.57	39.04
	Revenue loss due to Load Curtailment (Rs Cr)	6.12	4.61	7.78	7.06	1.31	26.88
FY18	Actual Billed MU	85.78	86.66	87.06	86.66	96.56	442.71
	Loss of MUs due to Load Curtailment	9.86	7.47	10.85	11.14	0.68	40
	Revenue loss due to Load Curtailment (Rs Cr)	6.91	5.24	7.6	7.81	0.35	27.91
FY19	Actual Billed MU	93.94	93.33	94.99	94.49	92.4	469.15
	Loss of MUs due to Load Curtailment	1.11	1.13	1.92	2.01	0.16	6.34
	Revenue loss due to Load Curtailment (Rs Cr)	0.78	0.79	1.34	1.41	0.08	4.41
FY20	Actual Billed MU	94.04	91.89	94.28	94.7	88.89	463.8

	Loss of MUs due to Load Curtailment	1.3	1.23	1.99	1.83	1.09	7.44
	Revenue loss due to Load Curtailment (Rs Cr)	0.91	0.86	1.39	1.29	0.55	5.01
YTD Aug - FY21	Actual Billed MU	37.58	36.85	36.18	36.62	37.72	184.95
	Loss of MUs due to Load Curtailment	3.82	3.89	5.36	5.09	2.27	20.43
	Revenue loss due to Load Curtailment (Rs Cr)	2.68	2.72	3.75	3.57	1.16	13.88

Site Wise impact FY16 to FY20	Actual Billed MU	433.8	417.66	419.27	390.8	347.02	2008.55
	Loss of MUs due to Load Curtailment	25.07	20.54	31.56	30.22	6.78	114.16
	Revenue loss due to Load Curtailment (Rs Cr)	17.57	14.4	22.12	21.19	3.46	78.73

6.4. The petitioner has placed reliance on this Commission's order dated 25.03.2019 in M.P.16 of 2016 in which Commission has held that the curtailment of power generation on RE plants shall not be resorted on commercial considerations and the must run status granted to RE power plants shall be complied with unless warranted by compelling circumstances of grid security.

6.5. Per contra, the respondents contend that the disputed curtailments were imposed to safeguard the grid security only but not on commercial considerations as alleged by the petitioner. Petitioner has contended that as stipulated in the IEGC Regulations, under-drawl of more than 250MW and deviation of frequency from the mandated band of 49.90-50.05Hz is not permissible in order to maintain grid discipline and each unit of under drawl at frequency above the stipulated limit would attract

penalty on the ground of endangering grid safety. The respondent would contend that as the curtailment had to be done qua grid security, making good the losses incurred by the petitioner does not arise.

6.6. Interestingly both parties place reliance on the same Regulation 5.2(u) of IEGC 2010 and legal provisions governing the above issue , picking the selective portions of the provisions to their favor with an exception of a key difference in interpreting the considerations of grid security. Their essence of averment is split in the crucial part of their whole submission in which the petitioner claims that the Respondents utilities had forced the curtailment on commercial consideration whereas the respondents retort by contending that curtailment had to be resorted only to safeguard the grid stability.

6.7. As all such statutory provisions and empowerment of curtailment were already elaborately dealt and concluded in the M.P 16 of 2016, we do not intend to discuss on similar lines encompassing the same issues at the cost of repetition. As it is already a settled issue that the curtailment could be exercised on the power plants granted with must run status only in terms of grid stability, the key issue to be decided now is confined to a narrow compass as to whether

(1) the curtailments were imposed as claimed by the petitioner ?.

(2) and if it is decided to have been imposed, whether such imposition of curtailment was resorted on commercial considerations of revenue or technical consideration of grid safety ?.

Needless to say, the third question of quantification of loss of generation inflicted by the aforesaid curtailment props up in consequence of the outcome of status of these questions being answered without ambiguity.

6.8. Unlike the cases in the nature of dispute resolutions where the issue generally revolves around regulatory and legal provisions and the manner of their enforcement, some kind of cases, such as the case on hand, are characterized by scrutiny and extensive analysis. Such exercise do primarily require several volumes of data to be referred, analyzed, corroborated, validated and ultimately evolved to reach the intent of the exercise and arrive at the right conclusion to ultimately render justice with equity of interest of both parties. Indulgence of Commission as prayed by the petitioner and countered by the respondents could be exercised only with the input of such extensive and exhaustive data, more so when the period of dispute is widely spanned for a significant duration from 2016 to 2020. Prejudice will be caused if due process of verification is not clear and complete. The basic requirement to provide the supportive data and documents for such verification forms the very limb of claim of submission and to substantiate the veracity of arithmetic numbers furnished in the submission so claimed.

6.9. RE power plants are set up and connected with the grid of supplier Licensee in terms of agreement executed between concerned parties covering technical and commercial terms and conditions. The day to day routine grid operation involving the core activities of generation, curtailment etc of all generators of entire State in

accordance with the varying demand of the State is being planned, monitored and controlled by the State Load despatch Centre. The volatile demand keeps changing every second and so is the frequency. It needs a nonstop micro level power management involving a block wise real time monitoring and control. Every fifteen minutes duration constitute a block, meaning that every day consist of 96 blocks. The implementation of such monitoring and control therefore requires a set of real time data of generation and demand corresponding to each block to dynamically match with the plethora of instantaneous grid parameters, to practically enable the Load Despatch Centre for safe and secure grid management.

6.10. Having stated that the issue to be decided begins with the analytical investigation of the factual status of curtailment and then the factual reason behind such curtailment, block wise curtailment analysis is the pre requisite for the whole exercise.

6.11 Following data inter-alia are essential for the aforesaid block wise curtailment analysis:

(i) Block wise curtailment with quantum of curtailed demand as claimed by petitioner. (to be furnished by petitioner station wise, as the originating data)

(ii) Working sheet for the quantum of duration of curtailment , loss of generation in units, year wise, station wise (to be furnished by petitioner to verify the source data of blocks and total duration of curtailment , basis of computation to validate the quantum of loss of generation as projected)

(iii) Corroborative data by SLDC for the block wise curtailment as claimed by the petitioner (to be furnished by SLDC, to match the block wise data furnished by the petitioner in order to validate the claim of the petitioner for mutual reconciliation , block wise and station wise)

(iv) Curtailment of conventional generation, margin available, quantum of under drawl and frequency etc., corresponding to the above blocks. (to be furnished by SLDC to verify the justification of curtailment on grid security)

However the aimed analysis is impeded from take-off in this case for reasons more than one.

6.12. The respective voluminous documents containing the rival submissions of parties involved contain predominantly the records of legal and regulatory provisions on a settled chapter of the issue as discussed supra. What is required to settle the core issue is the connected evidential data coupled with key parameters governing the whole issue as listed hereinabove that needs to be equitably provided by both parties to demonstrate, justify and prove their respective claims. However the documents furnished by both the parties is far from this absolute requirement even to begin the scrutiny towards attempting the next stage of analysis.

6.13. The petitioner who claims the forced curtailment is essentially obligated to provide the blocks indicating that curtailment did occur in those blocks. However, the block wise curtailment as claimed by petitioner to have been forced by the SLDC for the period in dispute have not been provided nor the basis of calculation and formulae

applied by the petitioner nor the working sheet of such calculation. In the absolute absence of these base data and working sheet of calculation of the petitioner, the claimed quantum of deemed generation of 114.17MU and compensation of Rs.78.73 Crore cannot be held to have been substantiated per se. It is trite law that any claim of one party under the garb of forced circumstance of the other party would need a clear demonstration on the nexus of relevant data to evaluate and test the quantum of such claim.

6.14. The curtailment block details provided by the respondents for 7 days for the year of 2016, 147 days for 2017, 34 days for 2018, 45 days for 2019, 129 days for 2020 are accompanied with the corresponding grid parameter of quantum of under drawl and grid frequency. We hasten to add that the curtailment to be provided by the respondent in response to the curtailment actually claimed to have been imposed on the petitioner need to be matched with each other as the first step to begin an analysis, leave alone, the factual reasons of each curtailment. Given the onus of showing the block wise forced curtailment falling on the claimant petitioner, we do not find substance in their vague and unscientific approach to quantify the loss. In the absence of the block wise data claimed as forced curtailment by the petitioner, we are unable to validate the veracity of quantum of curtailment so claimed, by carrying out the basic exercise of matching the same with the data provided by the respondent.

6.15. The adequacy of data provided by the respondents could only be most termed as better than that of petitioner's. In the curtailment data made available in the written statement by the respondents, only the quantum of under drawl with corresponding

frequency in each curtailment blocks are furnished. Respondents have not provided the first hand curtailment made on the conventional of ISGS and State-owned thermal generation sources and margin available in those plants (before resorting to curtail the must run status-RE plants) in the respective blocks of RE curtailment. These data are pre-requisite rider of the block wise analysis for the curtailed blocks, to strike a decision whether or not the curtailment was done for grid security. Though it is stated by the respondent that the infirm solar and wind generations are curtailed to maintain grid discipline as last resort only after taking all possible steps to reduce generation of conventional power and surrendering of CGS power, we are least convinced with mere statements. Such statement shall stand proved only on the strength of supporting documents showing the instantaneous parameters causing threat to grid security at the time of decision making. It should further be supplemented with allied details essentially required to demonstrate the compliance of merit order despatch principles.

6.16. The report of POSOCO for the period 01.03.2017 to 30.06.2017 as ordered by the Hon'ble APTEL in appeal no.197 / 2019 and annexed as part of rejoinder of the respondents has been scrutinized by us.

6.17. It is seen from the 85 page report that after gathering several volumes of data from both parties, POSOCO after extensive scrutiny and analysis, has evolved the report incorporated with several charts, tables and graph. This revelation makes it understandably clear that when such intensive scrutiny is required even for a small period of 4 months (01.03.2017 to 30.06.2017), the data and analysis required for a long duration of five years must be proportionally larger and voluminous, more so when

the amount claimed under dispute is in terms of crores. With the backdrop of study undertaken by the POSOCO participated by both parties, we are at a loss to understand and appreciate the conduct of both parties failing to provide the similar requisite data during the prolonged period of hearing of this case , given their past exposure of identical exercise undergone with POSOCO.

6.18. Under the circumstances narrated supra, though we are constrained to hold that the data and connected documents made available to us by the petitioner are far from requirement to be corroborated by other party to constitute a requisite set of materials to enable due verification and analysis in order to reach a clear conclusion to settle the issue, we have strived hard to explore possibilities to carve out a methodology out of such limited data made available to us in order to render justice to a fair extent in an equitable manner not causing undue enrichment for either parties in the bargain in the following manner:

6.19. The block wise curtailment data provided by the respondents were analyzed block by block. The safe blocks where the under drawl is less than the permissible limit of 250MW allied with upper frequency limit of below 50.05Hz were filtered out. These are considered as blocks where the curtailment could have been avoided. Since the voltage profile during these blocks were not provided by the respondent, we are inclined to take it granted that the voltage limits are not breached during these blocks where the curtailment could have been avoided. The summation of the duration of these blocks for individual plant locations were accounted to evaluate the cumulative duration of curtailment of respective plants. Having computed the duration of forced

curtailment not owing to grid security, the next parameter to be evaluated is the loss of generation during this curtailment so computed. For this evaluation, it is appropriate and realistic to account the average of annual generation of plants provided by the petitioner for FY 1919 and FY 1920, during which the curtailments were not admittedly enforced and these data provided by petitioner were not disputed by the respondents as well.

6.20. The working sheet of loss of generation and allied computation of compensation is as below:

EVALUATION OF DURATION OF FORCED CURTAILMENT FOR REASONS OTHER THAN GRID SECURITY

Date	Curtailment			Grid Parameter		Plant wise Duration in minutes				
	Hours		Duration in Mts.	Freq-uency	Devia-tion	Musuri	TT.Pet	Panchampatty	Iyyermalai	Kayathar
	From	To								
05.03.2017	15.30	18.00	150	50.04	-194	150				
	15.28	18.00	152				152			
	15.40	18.00	140					140		
	15.10	18.00	170						170	
	15.10	18.00	170							170
06.03.2017	12.00	14.25	145	50.03	-179	145				
	12.00	14.25	145				145			
	11.54	14.25	151					151		
	11.55	14.25	150						150	
	11.50	14.25	155							155
29.03.2017	12.00	17.45	345	50.02	-223	345				
	12.00	17.45	345				345			
	12.12	17.45	333					333		
	12.10	17.45	335						335	
30.03.2017	11.55	14.40	165	50.01	-50	165				
	11.55	14.40	165				165			
	12.10	14.40	150					150		
	12.08	14.40	152						152	

02.04.2017	12.15	18.00	345	50.03	-185	345				
	12.10	18.00	350				350			
	12.15	18.00	345					345		
	12.24	18.00	336						336	
03.04.2017	12.40	18.00	320	50.03	-192	320				
	12.15	18.00	345				345			
	12.24	18.00	336					336		
	12.18	18.00	342						342	
	13.50	18.00	250							250
05.04.2017	11.50	18.00	370	50.03	-158	370				
	11.50	18.00	370				370			
	12.00	18.00	360					360		
	12.00	18.00	360						360	
03.06.2017	13.30	18.00	270	50.02	-212	270				
	13.20	18.00	280				280			
	13.30	18.00	270					270		
	13.23	18.00	277						277	
07.06.2017	12.50	16.15	205	50.02	-172	205				
	12.50	16.15	205				205			
	12.55	16.15	200					200		
	13.00	16.15	195						195	
18.06.2017	9.50	18.00	490	50.03	-215	490				
	10.05	18.00	475				475			
	10.10	18.00	470					470		
	10.04	18.00	476						476	
	11.20	18.00	400							400
27.08.2017	9.03	18.00	537	50.03	-246	537				
	9.05	18.00	535				535			
	9.05	18.00	535					535		
	9.02	18.00	538						538	
20.05.2020	12.10	13.45	95	50.04	-200	95				
	12.10	13.45	95				95			
	12.18	13.45	87					87		
	12.10	13.45	95						--	95
12.09.2020	11.20	16.45	325	50.04	-204	325				
	11.20	16.45	325				325			
	11.20	16.45	325					325		
	11.20	16.45	325						325	
	11.20	16.45	325							325
17.09.2020	12.15	16.35	260	49.98	-96	260				
	12.15	16.35	260				260			

	12.15	16.35	260					260		
	12.32	16.35	243						243	
	12.10	16.35	265							265
Total Duration of curtailment in minutes			**17590**			**4022**	**4047**	**3962**	**3899**	**1660**

CALCULATION OF COMPENSATION TOWARDS COMPUTED LOSS OF GENERATION

Sl. No	**PLANT**	**Musuri**	**TT.Pet**	**Pancham-patty**	**Iyyermalai**	**Kayathar**	**Total**
1	Capacity in MW	50	50	50	50	49	
2	PPA Tariff per unit	7.01	7.01	7.01	7.01	5.1	
3	Duration of curtailment in minutes	4022	4047	3962	3899	1660	
4	Actual billed MU- FY 2018-19	93.94	93.33	94.99	94.49	92.4	
5	Actual billed MU- FY 2019-20	94.04	91.89	94.28	94.7	88.89	
6	Average billed MU per year (Sl.No. 4 + Sl. No. 5) / 2	93.99	92.61	94.635	94.595	90.645	
7	Deemed generation per day in units (Sl. No. 6 x 1000000 / 365 days)	257507	253726	259274	259164	248342	
8	Deemed generation per minute in units (Sl. No. 7 / (24 hrs. x 60 mts.))	178.82	176.20	180.05	179.98	172.46	
9	Applicable Tariff for compensation as per APTEL Order in Rs. (75% of Sl. No. 2)	5.258	5.258	5.258	5.258	3.825	
10	Compensation towards computed loss of generation (Sl.No.3 x Sl.No.8 x Sl.No.9)	**Rs. 37,81,357**	**Rs. 37,48,996**	**Rs. 37,50,509**	**Rs. 36,89,312**	**Rs. 10,95,035**	**Rs. 1,60,65,208**

6.21. We hasten to add that the intent of the Commission in exploring the possibilities to discover a way out of available material without prejudice from the vices of being shorn of reasons, arbitrary, unjust and inequitable is to serve the interest of justice confined with the status, constraints and circumstances to this particular case and therefore the principle and methodology so adopted to evaluate the loss of generation shall not be pursued or cited either as precedence or example.

6.22. In fine, since the working sheet set out in para 14.20 disclose that in regard to a portion of the curtailment period set out in the petition, curtailment orders are proved to have been issued by respondents for reasons other than grid security, this Commission decides that the petitioner is entitled to a sum of **Rs.1,60,65,208/- (Rupees One Crore Sixty Lakhs Sixty Five Thousands and two Hundred and Eighty Only)** towards compensation for loss of generation on account of arbitrary and unsustainable curtailment orders issued by the respondents.

Accordingly the issues formulated are answered.

6.23. In the result the petition is party allowed on the following terms:

(a) The respondents are directed to pay a sum of **Rs.1,60,65,208/-** as compensation to petitioner towards loss of generation on account of forced curtailment for reasons other than grid security during the period from FY 2016 to FY2020.

(b) Regarding the prayer to declare that any curtailment from September 2020 shall also be reimbursed to the petitioner as deemed generation chargers

and direct the respondents to abide by the mandate of the Electricity Act 2003, Regulations and policies to maintain the 'must run' status qua the petitioner, we have no hesitation in reiterating the direction of the Commission already contemplated in M.P.16.No. of 2016 that the must run status of RE plants shall be maintained in letter and spirit in compliance of statutory provisions.

(c) Parties shall bear their respective cost.

Petition is ordered accordingly

(Sd.....)	(Sd.....)	(Sd.....)
Member (Legal)	Member	Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission