TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 13th Day of August 2024

PRESENT:

Thiru M. Chandrasekar ….. Chairman

Thiru K. Venkatesan ….. Member

and

Thiru B. Mohan ….. Member (Legal)

D.R.P. No. 5 of 2023

M/s. Solitaire BTN Solar Private Limited
Through its Director,
Registered Office at 239,
Okhla Industrial Estate Phase III,
New Delhi – 110 020. ....Petitioner

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

Versus

1. Tamil Nadu Generation and Distribution Corporation Ltd.
Through its Chairman and Managing Director,
6th Floor, TANTRANSCO Building,
No.144, Anna Salai,
Chennai – 600 002.

2. Tamil Nadu State Load Despatch Centre,
Through its Authorized Representative,
No.144, Anna Salai,
Chennai- 600 002.

3. Tamil Nadu Transmission Corporation Limited
Through its Chairman,
No.144, Anna Salai,
Chennai- 600 002. ....Respondents

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

This Dispute Resolution Petition stands preferred by the Petitioner M/s. Solitaire BTN Solar Private Limited, with a prayer to-

(a) Allow the present petition and;

(b) Issue directions treating the loss of generation of 1985.52 Mus as computed from April 2020 till January 2022 on account of curtailment of power as deemed generation by the Petitioner; and

(c) Direct Respondents to abide by the mandate of the Electricity Act, 2003, the Regulations and the policies framed thereunder to ensure that 'Must Run' Status is being mandated qua the Petitioner in letter and in spirit; and

(d) Direct TANGEDCO to make payments for the said Deemed Generation Charges at EPA tariff of Rs 3.47/kWh amounting to Rs. 2,46,44,455/- (Two Crores Forty Six Lakhs Forty Four Thousand Four Hundred and Fifty Five)

(e) Direct TANGECO to make payments for the carrying cost amounting to Rs. 82,38,300/- (Rupees Eighty two lakh Thirty Eight ThousandThree Hundred) And/or

(f) Pass such other order(s)/direction(s) which this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case.

This Dispute Resolution Petition coming up for final hearing on 18.07.2024 in the presence of Mr.Shri Venkatesh, Mr.Suhael Buttan & SKV Law Offices, Advocates for the Petitioner and Thiru.N.Kumanan and Thiru.A.P.Venkatachalapathy, Standing Counsel for TANGEDCO upon hearing the arguments on both sides and on perusal of relevant material records and the matter having stood over for consideration till this date this Commission passes the following.

1. Contention of the petitioner :-

1.1. The Petitioner owns and operates the following Solar Power Plant having a total capacity of 100 MW within the State of Tamil Nadu:

S. No.	Solar Power Plant	Date of PPA	Capacity
1.	*Thulukkankulam Village, Kariapatti Taluk, Virudhunagar District* and *Melakumilankulam Village, Kariapatti Taluk, Virudhunagar District* (*later changed to Ganguvarpatti Village, Periyakulam Taluk, Theni District vide Addendum dated 29.06.2019*)	28.09.2017	100

1.2. The Petitioner is seeking appropriate directions and orders to be passed *qua* Respondent No. 1, i.e. Tamil Nadu Generation and Distribution Corporation Limited ("**TANGEDCO**") and other contesting Respondents to compensate the Petitioner for the actual loss the revenue suffered by the Petitioner on account of:-

(a) Frequent and rampant backing down instructions issued to the Petitioner on account of alleged grid security/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 Act. However, in the facts of the present case, TNSLDC and TANTRANSCO have miserably failed to discharge their statutory function/obligation and for that reason the Petitioner have been made to suffer tremendous financial loss. Therefore, for such loss suffered which is directly attributable to the Respondents the Petitioner is required to be compensated.

1.3. As a result of such rampant and arbitrary backing down from April 2020 to January 2022 by TANTRANSCO and TNSLDC at the behest of TANGEDCO, the Petitioner has suffered a loss of 7102 MWh amounting to **Rs. 2,46,44,455/- (Two Crores Forty Six Lakhs Forty Four Thousand Four Hundred and Fifty Five)** along with the carrying cost amounting to **Rs. 82,38,300/- (Rupees Eighty two lakh Thirty Eight Thousand Three Hundred)** for the said period.

1.4. Despite the status of 'Must-Run' being accorded to the Petitioner's project, and even though the Petitioner has been declaring full availability of its Plant, TANTRANSCO and

TNSLDC continue to issue curtailment instructions for clear economic consideration at the behest of TANGEDCO. Hence, the present Petition, praying for compensation on account of generation loss and revenue loss, by treating such generation loss of 7102 (MWh) as deemed generated power.

1.5. The Petitioner is a company incorporated under the Companies Act, 1956 and a generating company within the meaning of Section 2(28) of the Act and a Solar Power Developer. The Petitioner has entered into a long term Power Purchase Agreement ("**PPA**") dated 28.09.2017 with TANGEDCO for a period of 25 years from the date of Commercial Operation Date ("**CoD**"). By virtue of the said PPA, the Petitioner has set up and commissioned its solar power project within the State of Tamil Nadu. The PPA was subsequently amended via addendum dated 29.06.2019 whereby the location of the Project was changed to *Ganguvarpatti Village, Periyakulam Taluk, Theni District* from *Genguvarpatti village, Periakulam taluk, Theni district*.

1.6. 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 Act and is the successor to the erstwhile Tamil Nadu Electricity Board ("**TNEB**").

1.7. Respondent No. 2, i.e., TNSLDC, is an entity constituted under Section 31 of the 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.

1.8. Respondent No. 3, i.e. TANTRANSCO, is a company incorporated under the Companies Act 1956 and is a transmission licensee within the meaning of Section 2(73) of the 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 Act.

1.9. On 12.02.2005, Ministry of Power ("**MoP**"), Government of India ("**GoI**") notified the National Electricity Policy, 2005 ("**NEP, 2005**"). Clauses 5.2.20 and 5.12.1 of the NEP, 2005 provide that Renewable Energy Generation of Electricity should be encouraged and its potential should be fully exploited.

1.10. On 03.08.2005, the Commission notified the TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, *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 STU'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."

1.11. On 19.10.2005, the Commission notified the Tamil Nadu Electricity Grid Code, 2005 ("**TNEGC**"). In terms of Clause 8 (3) (b) of the TNEGC, energy generated from Wind Power Stations and Renewable Energy Sources shall not be curtailed. A true copy of the TNEGC is annexed hereto and marked as **ANNEXURE P/1**.

1.12. 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 RE Regulations provides for 'promotion of new and renewable sources of energy'.

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

1.14. 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. A true copy of the IEGC, 2010 is annexed hereto and marked as **ANNEXURE P/2.**

1.15. Pursuant to the JNNSM, in 2012, the Government of Tamil Nadu ("**GoTN**") issued the 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 environment to promoting

solar energy in the State.

1.15. On 28.01.2016, MoP notified the Tariff Policy, 2016. As per Clause 4, it is the objective to promote generation of electricity from renewable sources. A true copy of the relevant extracts of the Tariff Policy, 2016 is annexed hereto and marked as **ANNEXURE P/3**.

1.16. Around FY 2015-16, the Respondents started issuing rampant backing down instructions to Renewable Energy Generators across the State of Tamil Nadu.

1.17. Aggrieved by the rampant and arbitrary curtailment of generation of solar power, on 10.08.2016, National Solar Energy Federation of India ("**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.

1.18. In the meanwhile, on 15.05.2017, TANGEDCO issued proposals/ bids against the Request for Submission ("**R*f*S**") through reverse e-bidding process for procurement of Solar Power from developers establishing solar power plants in the State of Tamil Nadu wherein the upper limit was fixed at Rs. 4.00 per unit. A true copy of the R*f*S dated 15.05.2017 issued by TANGEDCO is annexed hereto and marked as **ANNEXURE P/4.**

1.19. Accordingly, on 29.08.2017, a Letter of Intent ("**LoI**") was issued by TANGEDCO to

the Petitioner upon being declared as the successful bidder in the e-reverse auction. Further, by way of the LoI, the tariff *qua* the Project was determined at Rs. 3.47 per unit to be generated from the solar power plant of capacity of 50 MW each from *Thulukkankulam Village, Kariapatti Taluk, Virudhunagar District* and *Melakumilankulam Village, Kariapatti Taluk, Virudhunagar District* respectively, totaling 100 MW. A true copy of the LoI dated 29.08.2017 issued by TANGEDCO is annexed hereto and marked as **ANNEXURE P/5.**

1.20. On 28.09.2017, TANGEDCO executed a PPA with the Petitioner, for a collective sale of 100 MW of solar power generated electricity at Petitioner's solar plant in *Thulukkankulam and Melakumilankulam, Kariapatti Taluk Ramnad District*. In terms of Article 2(3), both the parties are obligated to comply with the relevant provisions as contained in the IEGC, 2010, TNEGC, the Act as well as the Regulations framed by this Hon'ble Commission. A true copy of the PPA dated 28.09.2017 signed between TANGEDCO and the Petitioner is annexed hereto and marked as **ANNEXURE P/6.**

1.21. On 24.10.2017, *vide* letter, the Petitioner requested TANGEDCO for change of location of the project from village *Thulukkankulam and Melakumilankulam, Kariapatti Taluk, Ramnad District* to *Ganguvarpatti village, Periyakulam Taluk, Theni District*.

1.22. On 25.03.2019 the Commission passed an order in Petition being MP No. 16 of 2016, enforcing "Must Run" status granted to all Solar Power Plants in the state of Tamil Nadu. For the purpose of the present Petition, the following observations of the Hon'ble Commission in terms of the Order dated 25.03.2019 are relevant for consideration:

(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 this Hon’ble Commission;

1.23. Subsequently, on 29.06.2019, TANGEDCO and the Petitioner, executed an addendum to the PPA dated 28.09.2017, thereby substituting/changing the location of the project from village *Thulukkankulam and Melakumilankulam, Kariapatti Taluk, Ramnad*

District to *Ganguvarpatti village, Periyakulam Taluk, Theni District*. A true copy of the addendum to the PPA dated 28.09.2017 signed between TANGEDCO and the Petitioner is annexed.

1.24. Out of the Petitioner's 100 MW Project, 50 MW was commissioned on 20.02.2020 and accordingly a commissioning certificate was issued on 25.02.2020 by TANGEDCO. Similarly, the balance 50MW capacity was commissioned on 08.02.2021 subsequent to which Commissioning Certificate was issued by TANGEDCO on 22.02.2021. A true copy of the Commissioning Certificates dated 25.02.2020 and 22.02.2021.

1.25. Soon after the commissioning of the Project, TNSLDC has been issuing frequent backing down instructions (oral, telephonic, or by way of an email) to the Petitioner on account of alleged 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. A true copy of the Curtailment Notices/emails issued by the Respondents from April 2020 to January 2022.

1.26. In light of the fact that curtailment continued across the Country qua Renewable Energy Generators, on 01.04.2020, an Office Memorandum ("**OM**") was issued by the Ministry of New and Renewable Energy ("**MNRE**") clarifying that the "Must-Run" status granted to Renewable Energy (RE) Generating Stations remains unchanged during the period of lockdown. The relevant experts of the said notification is extracted below:

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

(a) ***<u>Must Run Status to RE Projects</u>***

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

1.27. Pursuant to the above, on 04.04.2020, another OM was issued by MNRE wherein it was directed to State DISCOMs and SLDCs that RE Projects like the Petitioner should not be backed down as "Must Run" status has been accorded to them. The said OM also unequivocally states that in case of such backing down, Deemed Generation charges are payable. The relevant experts of the said notification is extracted below:

> *"…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.**"*

1.28. Observing the sorry state of affairs across the country, on 22.10.2021, the Central Government notified the Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021 ("**Must Run Rules, 2021**") wherein Rule 3, recognises the must-run status of RE Generators including solar 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. For ease of reference, the aforesaid Rule 3 of the Must Run Rules, 2021 are as follows:

“3. Must-run power plant.—(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, as may be notified by the Appropriate Government, which has entered into an agreement to sell the electricity to any person, shall be treated as a must-run power plant.

(2) A must-run power plant shall not be subjected to curtailment or regulation of generation or supply of electricity on account of merit order dispatch or any other commercial consideration:

Provided that electricity 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 for curtailment or regulation of power, the provisions of the Indian Electricity Grid Code shall be followed.

(3) In the event of a curtailment of supply from a must-run power plant, compensation shall be payable by the procurer to the must-run power plant at the rates specified in the agreement for purchase or supply of electricity.

(4) Where, in the event of any technical constraint in the electricity grid or for reasons of security of the electricity grid, procurer gives the notice for curtailment to the must-run power plant in advance, prior to the start of the day ahead market or real time market or any other product introduced from time to time in the power exchange, the must run power plant shall sell the electricity not scheduled by the procurer in the power exchange.

(5) The amount realised by such must-run power plant from such sale of electricity in a power exchange, after deducting actual expenses paid for the sale in the power exchange, if any, shall be adjusted against the compensation payable by the procurer under sub-rule (3).

(6) Any deficit in realisation of amount, with respect to the compensation shall be paid by the procurer on monthly basis.

(7) Any excess realisation of amount during a month from sale of electricity in a power exchange, if any, shall be carried forward and adjusted in the next month or months.

(8) The final adjustment of excess realisation of amount, if any, shall be paid by the must-run power plant to the procurer within one month of the close of the financial year."

1.29. Despite the above, the TANTRANSCO/TNSLDC/ TANGEDCO has imposed illegal and arbitrary curtailment instructions to Petitioner which has resulted into severe losses to the Petitioner. In fact, aggrieved by the rampant curtailment, the Petitioner was constrained to issue a letter on 16.11.2020 to TANTRANSCO with a copy marked to TANGEDCO and TNSLDC highlighting the rampant curtailment being imposed upon the Petitioner's Project, which is not only contrary to the provisions of the PPA as well as the TNEGC/IEGC but also in violation to the Must Run status accorded to the Petitioner.

1.30. The present matter 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.

1.31. The TANGEDCO and 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 Act as well as the Regulations/policies framed thereunder. In fact, TANTRANSCO/TNSLDC are a creation of the Act and are statutorily obligated to ensure optimum scheduling and despatch of electricity in the State of Tamil Nadu. The same is enshrined/envisaged under Section 32 and 34 of the Act. The relevant extracts are being reproduced as follows: -

"Section 32. (Functions of State Load Despatch Centres):---

(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 34. (Grid Standards):*** *Every transmission licensee shall comply with such technical standards, of operation and maintenance of transmission lines, in accordance with the Grid Standards, as may be specified by the Authority."*

1.32. However, TANTRANSCO/TNSLDC in the instant case are acting in grave violation of the overall scheme of the Act and the Policies/Regulations framed thereunder. The MoP at numerous occasions has repeatedly emphasized that RE Power is "Must Run" and ought not to be curtailed for any economic reasons. However, the State of Tamil Nadu and

especially TANTRANSCO/TNSLDC have not paid any heed to such dictates issued by the MoP. In this regard, the following is relevant:

(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/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) **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.

1.33. As elaborated above, MNRE by way of its letters/notifications dated 01.08.2019, 01.04.2020 and 04.04.2020, has emphasized that the 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 as Must Run status has been accorded to RE Generators such as the Petitioner.

1.34. In fact, Rule 3 of the Must Run Rules, 2021 also recognises the must-run status of RE Generators including solar 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.

1.35. Therefore, the issue of power curtailment faced by the RE Generators such as the Petitioner has been recognised at the highest level and TANGEDCO/TNSLDC/ TANTRANSCO in blatant disregard to the same have subjected the Petitioner to

unwarranted curtailment solely for commercial consideration.

1.36. In the instant case, upon a bare perusal of the aforesaid curtailment notices issued by TNSLDC, it is evident that the backing down instructions communicated therein are cryptic, unilateral, arbitrary and not backed/supported by any reasoning at all. Hence, the said notices were issued in clear violation of the provisions of the Act and the Regulations framed thereunder.

1.37. The TNSLDC/TANTRANSCO 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 PPA. This further frustrates the rationale and objective of the National Electricity Policy 2005 and Tariff Policy, 2006 read together with the TNEGC, IEGC, TN Solar Policy, and RE Procurement Regulations which aim for the promotion of new and renewable sources of energy, and more particularly solar energy.

1.38. Even the Hon'ble High Court of Andhra Pradesh in W.A. No. 383 of 2019: *Walwhan Renewable Energy Limited vs. State of Andhra Pradesh & Ors.* and batch matters vide its Judgment dated 15.03.2022 has held that TNSLDC LDC/RLDC shall make all efforts to evacuate the available solar and wind power and treat as a must-run station. The relevant extract of the said Judgment is reproduced hereunder:

> *"90. The issue of curtailment is a part of Grid Code and the Regulations made thereunder. The Central Electricity Regulatory Commission has notified, by way of Gazette Notification dated 28.04.2020, the Regulations namely Central Electricity Regulatory Commission (Indian Electricity Grid Code)*

Regulations, 2010 (in short, "the Regulations, 2010). The preamble to the Regulation states that the Indian Electricity Grid Code (IEGC) is a regulation made by the Central Commission in exercise of powers under clause (h) of sub-section (1) of Section 79 read with clause (g) of subsection (2) of Section 178 of the 2003 Act. It further says, IEGC also lays down the rules, guidelines and standards to be followed by various persons and participants in the system to plan, develop, maintain and operate the power system, in the most secure, reliable and economic and efficient manner, while facilitating healthy competition in the generation and supply of electricity.

…

92. Part-VI of the Regulations, 2010 makes provision regarding Scheduling and Despatch Code. Clauses 6.5.7 to 11 specifically deal with Despatch Schedule and the priority for evacuation to the power plants which are treated as Must Run Stations, i.e. Renewable Power Plants except for biomass power plants and non-fossil fuel based cogeneration plants. Clauses 6.5.7 to 11 read as under…

93. A conjoint reading of two provisions quoted above would manifest that SLDC/RLDC is enjoined to make all efforts to evacuate the available solar and wind power and treat as a must-run station. It is also implicit that must-run power plants like solar and wind power plants shall not be subjected to Merit Order Despatch principles. There is no material placed before us by SLDC substantiating that there was any threat to the grid security or safety of any equipment or persons on the occasions when curtailment was ordered to solar and wind power plants. As a matter of fact, there was no such threat in existence, for the simple reason that amount of power curtailed from solar and wind power generators was purchased from thermal power stations, as alleged by solar and wind power generators and not refuted by the DISCOMs.

…

98. In view of the above, we are of the considered opinion that since Merit Order Despatch does not apply to renewable energy, which runs on Must Run Basis, the learned single Judge has not committed any illegality in directing that the respondents shall not take any coercive steps of any nature including

curtailing production, stop evacuation or the like except after due notice to the generators."

1.39. Therefore, there is a clear mandate in the law in vogue, in particular the Act and various Policies framed, to promote renewable energy generation. The "Must Run" status conferred to renewable energy is meant for its promotion. If this status is not adhered to, the RE Generators will be deprived of recovery of legitimate tariff. Since Solar power tariff is a single part tariff and is predominantly in the nature of fixed cost; any unauthorized curtailment will result in solar generators failing to repay their loans. In this regard, it is noteworthy that the Respondents cannot be allowed to adopt a methodology to procure alternate power in blatant disregard of the mandate that these renewable generating stations must maintain 'Must Run' status. The Hon'ble Tribunal vide its judgment dated 12.08.2021 in *Tata Power Renewable Energy Limited vs. Andhra Pradesh Electricity Regulatory Commission and Ors.* has held the following:

"62.

…

Therefore, totally disregarding the mandate that these renewable generating stations must maintain 'Must Run' status, if Respondents adopt a methodology to promote their state Therefore, totally disregarding the mandate that these renewable generating stations must maintain 'Must Run' status, if Respondents adopt a methodology to promote their state owned generation for economic consideration, and if such methodology conflicts with the provisions of the Act, IEGC and AP Grid Code, the same cannot be allowed to continue. It is also noticed that there is no provision in the PPA to compensate RE projects whenever there is backing down. Therefore, the

enthusiasm of the Respondents to procure least expensive power should not be at the cost of curtailing RE power whenever they find energy charge of thermal power plants is much cheaper than the total cost of RE energy We are of the opinion that in view of the 'Must Run' status granted to RE projects including the Applicant's Wind Power Project, it cannot be precluded from Merit Order Despatch. The Rules brought in by MoP on 01.02.2020, after recognising the 'Must Run' status of RE generators, mandates that such generators should not be subjected to curtailment on account of Merit Order Despatch or for any other commercial consideration. It even says that in the event of curtailment of such generations, compensation has to be paid by the procurer to the generator as per the rate prescribed under the PPA."

1.40. 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 even the Commission in its Order dated 25.03.2019 in M.P. No. 16 of 2016 while disallowing the claim of NSEFI for Deemed Generation Charges was pleased to hold that curtailment is being carried out purely for commercial reasons. The TANTRANSCO/TNSLDC under the guise of 'grid security' is imposing curtailment to purchase cheaper power from alternative sources. 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.***"

1.41. Pertinently, being aggrieved by the said Order passed by the TNERC, NSEFI approached the Hon'ble Tribunal in Appeal No. 197 of 2019.

1.42. During the proceedings, the Hon'ble Tribunal by way of an Order dated 26.08.2020 appointed Power System Operation Corporation Ltd. ("**POSOCO**") to undertake an independent examination of the curtailment of generation alleged by NSEFI basis the documents and information produced by the parties which POSOCO duly filed before the Hon'ble Tribunal certifying that there was arbitrary curtailment of solar generators.

1.43. The analysis by POSOCO 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 RE Generators. POSOCO came to conclude that "*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*". This was because:

> *"4.2 … 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.*"**

1.44. Accordingly, the Hon'ble Tribunal while noting the Must Run Status accorded to Renewable Energy Generators passed its Judgment on 02.08.2021 thereby allowed NSEFI's appeal and set aside the Order dated 25.03.2019 to the extent of denial of deemed generation charges/compensation for the instructions of back-down issued to the members of NSEFI for reasons other than Grid security. In doing so, the following directions were issued:

> *"(i) For the period 01.03.2017 to 30.06.2017, Respondents shall pay compensation for 1080 blocks considered by POSOCO, during which curtailment instructions were issued for reasons other than grid security, at the rate of 75% of PPA tariff per unit within 60 days from the date of this order. (ii) POSOCO shall carry out a similar exercise for the period up to 31.10.2020 on the same lines and submit a report to Respondent Commission within 3 months. Tamil Nadu SLDC and Appellant are directed to submit details to POSOCO. Based on POSOCO report, State Commission shall allow compensation for the backed down energy at the rate of 75% of the PPA tariff per unit. (iii) Curtailment quantum shall be considered as per POSOCO's report. (iv) The Respondents shall pay compensation along with interest at 9% for the entire period.*

1.45. Further, the Hon'ble Tribunal by way of the NSEFI Judgment also issued a slew of directions to all State Commissions, Distribution Companies and SLDCs for future course of action *qua* issues of curtailment of renewable energy and held that any curtailment of Renewable Energy for reasons other than grid security shall be compensated at the Tariff as envisaged under the Power Purchase Agreements ("**PPAs**") in future. For ease of

reference, the relevant extract of the said Judgment is as follows:

> *133. The investments made in establishing solar projects, and the solar tariffs so determined, was premised on Must Run status as contemplated in the regulations framed under Act and the provisions in energy purchase agreement. If must run status is not adhered to by the Respondent TANGEDCO and SLDC in violation of law, the members of the Appellant association would be deprived of recovery of legitimate tariff. As solar power tariff is single part and it is predominantly fixed cost in nature, unauthorised curtailment will ultimately result in solar generators failing to repay their loans.* ***If such actions are not penalised, the unauthorised curtailment will go unabated jeopardising the whole objective and intent of the Act. This conduct on the part of the State Load Despatch Centre which is public office cannot be said to be bona-fide and genuine. Therefore, we are of the view that since misfeasance has been established against TANGEDCO and TNSLDC, a statutory body under the Act, the Appellant is entitled to claim for compensation from TNSLDC and TANGEDCO. Both these entities shall jointly pay the compensation to the members of the Appellant Association.***
>
> *134. In the light of above discussions, we issue following directions:* ***(i) For the period 01.03.2017 to 30.06.2017, the Respondents shall pay compensation for 1080 blocks considered by POSOCO, during which curtailment instructions were issued for reasons other than grid security, at the rate of 75% of PPA tariff per unit within 60 days from the date of this order****……*
>
> *135. ……. Accordingly, the following directions are issued to all the State Commissions, Discoms and SLDCs with regards to curtailment of power generated from Renewable Energy sources.*
>
> *(i) For Future, any curtailment of Renewable Energy shall not be considered as meant for grid security if the backing down instruction were given under following conditions:*
>
> *a) System Frequency is in the band of 49.90Hz-50.05Hz*
>
> *b) Voltages level is between: 380kV to 420kV for 400kV systems &*

198kV to 245kV for 220kV systems

c) No network over loading issues or transmission constraints

d) Margins are available for backing down from conventional energy sources e) State is overdrawing from the grid or State is drawing from grid on short-term basis from Power Exchange or other sources simultaneously backing down power from intrastate conventional or non-conventional sources.

(ii) As a deterrent, the curtailment of Renewable Energy for the reasons other than grid security shall be compensated at PPA tariff in future. The compensation shall be based on the methodology adopted in the POSOCO report. POSOCO is directed to keep the report on its website.

(iii) The State Load Dispatch Centre (SLDC) shall submit a monthly report to the State Commission with detailed reasons for any backing down instructions issued to solar power plants.

(iv) The above guiding factors stipulated by us would apply till such time the Forum of Regulators or the Central Government formulates guidelines in relation to curtailment of renewable energy.

1.46. Therefore, since, the Questions of Law involved in the NSEFI Appeal are similar to the issues raised in the instant Petition against the very same Respondents coupled with the fact that historically the Respondents have been curtailing RE Power, the said Judgment, and its facts are being placed on record. A true copy of the Judgment dated 02.08.2021 passed by the Hon'ble Tribunal in Appeal No.197 of 2019 is annexed.

1.47. 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.

1.48. It is apposite to mention herein that power plants of the Petitioner has 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/STU. "*

(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/STU to facilitate safe parallel operation of the Generators with grid and to prevent disturbances to the grid."*

1.49. 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 Petitioner is being subjected to illegal and arbitrary backing down/curtailment.

1.50. In view of the above, it is submitted that the Commission may direct the TANTRANSCO/TNSLDC to abstain from such illegal and arbitrary backing down/curtailment in contravention to the Electricity Act and the prevalent laws.

1.51. The concept of deemed generation is 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 to the WPG. In such cases the generation compensation shall be addressed by the Procurer in the following manner:*

Duration of Grid unavailability	***Provision of 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 the 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 7.6.1, and for Grid unavailability beyond 50 years in a Contract Year as defined in the PPA."

1.52. The Petitioner has been subjected to illegal and arbitrary curtailment imposed by TNSLDC/TANTRANSCO. The said curtailment has caused loss of generation and consequent loss of revenue to the Petitioner. As stated above, the issue of curtailment has been continuous and has severely impacted the viability of the projects of the Petitioner. Accordingly, the Petitioner is entitled to compensation in the form of deemed generation charges.

1.53. Due to the illegal and arbitrary backing down/curtailment there has been a substantial reduction in generation leading to loss of revenue. From April 2020 to January 2022, the total loss of revenue *qua* the 100 MW project set up by the Petitioner is to the tune of **2,46,44,455/- (Two Crores Forty Six Lakhs Forty Four Thousand Four Hundred and Fifty Five)** Crores.

1.54. In the instant case, there has been a clear breach of the contracts executed between the parties as the power generated was not allowed to evacuated for reasons which

are not recognised as valid. The same entitles the Petitioner 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. Therefore, Section 73 of Contract Act, 1872 is squarely applicable to the present set of facts and circumstances. For the kind convenience of the Hon'ble Commission, 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"*

1.55. 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 SCC 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."

1.56. From the conspectus of the aforesaid judgments, it is evident that the claims for damages, as raised by the Petitioner 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.

1.57. Further, deemed generation charges to be paid to the Petitioner 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 it 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 not only the viability of the projects but also dents the objective of the JNNSM. i.e. National Solar Mission to establish India as a global leader in solar energy.

1.58. Moreover, it is relevant to mention herein that the Hon'ble Tribunal, while noting the Must Run Status accorded to Renewable Energy Generators passed a Judgment on 02.08.2021 in Appeal No. 197 of 2019, thereby allowing the Appeal filed by National Solar Energy Federation of India ("**NSEFI**") and set aside the Order dated 25.03.2019 to the extent of denial of deemed generation charges/compensation for the instructions of back-down issued to the members of NSEFI for reasons other than Grid security. In doing so, the following directions were issued:

> *"(i) For the period 01.03.2017 to 30.06.2017, Respondents shall pay compensation for 1080 blocks considered by POSOCO, during which curtailment instructions were issued for reasons other than grid security, at the rate of 75% of PPA tariff per unit within 60 days from the date of this order.*
>
> *(ii) POSOCO shall carry out a similar exercise for the period up to 31.10.2020 on the same lines and submit a report to Respondent Commission within 3 months. Tamil Nadu SLDC and Appellant are directed to submit details to POSOCO. Based on POSOCO report, State Commission shall allow compensation for the backed down energy at the rate of 75% of the PPA tariff per unit.*
>
> *(iii) Curtailment quantum shall be considered as per POSOCO's report.*
>
> *(iv) The Respondents shall pay compensation along with interest at 9% for the entire period.*

1.59. Further, the issue of Deemed Charges being in the nature of compensation has also been decided by the Hon'ble Tribunal in another Judgment passed on 19.07.2021 in Appeal No. 220 of 2019 and 317 of 2019 titled as *Talwandi Saboo vs.* PSERC & *Anr*. The Hon'ble Tribunal while taking note of the obligations of the Distribution Company in that case *qua*

arranging adequate quantity and quality of coal not being fulfilled held that the Generator in that case is liable for deemed capacity charges. For ease of reference, the relevant extract of the said Judgment is as follows:

> *"178..... **As envisaged in the PPA and coupled with the Judgment dated 07.04.2016, the Respondent-PSPCL was obliged to arrange adequate quantity and quality of coal to the Appellant's plant.** Apparently, the said obligation was not kept up by the Respondent PSPCL. Added to this, the inaction of the PSPCL to give approval for procuring coal from other CIL mines and so also coal offered by CIL through RCR mode has resulted in continuous shortage of coal for running the plant of the Appellant. Ultimately, this has compelled the Appellant to declare lower operational availability of its plant though it was technically available to generate and supply much higher quantum of electricity to Respondent No.2-PSPCL**. We see the force in the contention of the Appellant that the obligation of the Appellant to operate the Plant at its full capacity is interdependent and linked to the obligation of PSPCL to supply adequate quantity and quality of coal.***
>
> ***The terms of agreement between the parties, discussed above, goes to show the fulfilment of obligation depends upon the mutual compliance of reciprocal commitments. Therefore, the failure of PSPCL to discharge its obligation, definitely, affects TSPL adversely. Hence, we are of the opinion that the Appellant is justified in claiming deemed capacity charges between September 2016 to May 2017 and October 2017 till 2018 for the reasons stated above.***

1.60. In the instant case, the Petitioner has already incurred huge costs in establishing the projects. It would not be out of place to mention herein that the Act mandates promoting generation and use of renewable energy and the arbitrary curtailment/backing down is repugnant to the overall interest of the RE generators which resultantly defeats the purpose and mandate of Section 86(1)(e) of the Act.

1.61. The arbitrary rampant curtailment is contrary to the express mandate of the Constitution of India and various judgments passed by the Hon'ble Supreme Court and the Hon'ble Tribunal for the following reasons:

(a) The Tamil Nadu Solar Power Policy, 2012 emphasizes to encourage, develop and promote solar power generation, to attract investment in state for establishment of solar power plants, to contribute to overall economic development, employment generation etc.

(b) The Constitution of India, by way of Article 48A and 51A (g), has casted a Fundamental Duty upon the State as well as the citizens of India to protect, improve and preserve the environment. A critical aspect towards such preservation of environment is to generate energy from renewable sources, which has a much smaller environmental footprint than energy generated from fossil fuel and other resources. In view thereof the Hon'ble Supreme Court, in the matter of *Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission*, (2015) 12 SCC 611, has held as under:

> *"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."*

1.62. Thus, it is imperative and essential for the Commission to take such measures, which shall promote generation and viability of renewable energy generators such as the Petitioner which has time and again been held by the Hon'ble Tribunal.

1.63. The Hon'ble Tribunal's Judgment dated 26.04.2010 in Appeal No. 57 of 2009 titled as *Century Rayon vs. MERC & Ors* categorically holds that generation of power from renewable energy sources need to be promoted under Section 86(1)(e) of the Act.

> *"20.* ***As a matter of fact, the reading of the section 86 (l)(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 1540% when compared with the separate production of electricity from conventional power stations and production of steam from boiler."***

1.64. However, TANGEDCO/TNSLDC/TANTRANSCO in the instant case have time and again acted hand in glove with the sole motive of crippling the Petitioner's project by one way or the other which is unbecoming of a state instrumentality and ultimately defeat the mandate of Section 86(1)(e) of the Act which provides for promotion of generation of energy

from renewable sources.

1.65. The TANGEDCO/TNSLDC/TANTRANSCO being a State within meaning and ambit of Article 12 of the Constitution of India has an obligation under law to act fairly, justly and reasonably as held in a catena of the Apex Court judgments. The Hon'ble Supreme Court in *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.*, (2004) 3 SCC 553, has held that even within the contractual sphere, the requirement of Article 14 to act fairly, justly and reasonably by persons who are "state" authorities or instrumentalities continues. The relevant extract of the judgment is reproduced herein below:

> *"23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India.*
>
> *….*
>
> *53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution…"*

1.66. It is quite evident that such illegal and arbitrary curtailment would ultimately defeat the mandate of Section 86(1)(e) of the Act which provides for promotion of generation of energy from renewable sources. Thus, the Commission being the ultimate regulatory functionary under Section 86 of Act is obligated to pass necessary directions in this regard so as to subserve the ultimate aim and objective of the Act.

1.67. The present petition is being filed bona fide and in the interest of justice. It is respectfully submitted that unless the prayer made herein are granted in favour of the Petitioner, the Petitioner would suffer irreparable loss and harm to its business, which ultimately affect the financial viability of the project.

1.68. The subject matter of the present petition falls squarely within the exclusive jurisdiction of the Commission under Section 86(1)(f) of the Act. Further, TANGEDCO/TNSLDC/TANTRANSCO are also situated within the territorial jurisdiction of the Commission. Accordingly, the Commission has the requisite jurisdiction to decide the present petition under Section 86(1)(f) of the Act. The Petitioner has not filed any other similar petition before any other forum.

1.69. Carrying Cost is applicable from the day the expenses have been incurred by the Petitioner and the same have not been recovered. Petitioner is entitled to Carrying Cost from the beneficiaries and any deferment shall have a time value of money attached to it.

1.70. Since the burden of carrying cost is a consequence directly flowing from the denial of loss of generation/ deemed generation; the relief in such regard cannot be complete unless this part is also allowed as pass-through. It is therefore imperative that the consequential relief of carrying cost would also flow from the main relief of compensation, the purpose of award of carrying cost being to compensate "*for time value of the money*".

1.71. The aforesaid principle has been adopted by the Ld. Tribunal time and again in a catena of Judgments. Some of those are as follows:

(a) Judgment dated 22.03.2022 passed in Appeal No. 118 of 2021 and Appeal No. 40 of 2022 titled as *RIPL vs. MERC & Anr*. and *APML vs. MERC & Anr*. The relevant extract is reproduced hereunder:

> *"16. **It is a settled position of law that carrying cost is payable as per the provisions of PPA to compensate the affected party for time value of funds deployed on account of Change in Law events. The LPS provision in the PPA is also meant for compensation towards time value of money on account of delayed payments.** Therefore, the rate prescribed for LPS in Article 11.3.4 of the PPA (i.e., SBI PLR plus 2%) ought to be considered for the recovery of carrying cost. The appellants cannot be restored to the same economic position, as it was prior to the occurrence of the Change in Law events, unless the rate of interest applicable for LPS is granted.*

(b) Hon'ble Supreme Court in the case of *Kavita Trehan and Anr. vs. Balsara Hygience Products Ltd*, [(1994) 5 SCC 380] had observed that the jurisdiction to make restitution is inherent in every court. The Hon'ble Tribunal in Judgment dated 20.12.2012 passed in Appeal No. 150 of 2012 tilted as *SLS Power Limited vs. Andhra Pradesh Electricity Regulatory Commission* while relying upon the aforesaid principle held as follows:

> **"**…***The carrying cost is the compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time. Therefore, the developers are entitled to interest on the differential amount due to them as a consequence of re-determination of tariff by the State Commission on the principles laid down in this judgment.*** *We do not accept the contention of the licensees that they should not be penalized with interest. The carrying cost is not a penal charge if the interest rate is fixed according to commercial principles. It is only a compensation for the money denied at*

the appropriate time."

(c) Judgment dated 13.04.2018 passed in Appeal No. 210 of 2017 titled as *Adani Power Limited Vs. CERC*:

> ***"vii.*** *After going through the SLS case we find that* ***this_Tribunal has held that the principle of carrying cost has been well established in the various judgments of this Tribunal and the carrying cost is the compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time and accordingly, the developers are entitled to interest on the differential amount due to them as a consequence of re-determination of tariff by the State Commission*** *on the principles laid down in the said judgment.**"***

Notably, the aforesaid Judgment has been affirmed by the Hon'ble Supreme Court *vide* its Judgment dated 25.02.2019 in Civil Appeal No. 5865 of 2018

1.72. Further, the Hon'ble Tribunal in its recent Judgment dated 15.09.2022 in Appeal No. 256 of 2019 and batch titled as *Parampujya Solar Energy Private Limited vs CERC & Ors.* has reiterated the well settled principle and held as follows:

> *67.* ***There is no contest to the proposition that grant of carrying cost is affording to the party affected the time value of money. The expressions "carrying cost" and "time value of money" have been defined in P Ramanatha Aiyar Advanced Law Lexicon, as under: "Carrying Cost Book value of the assets and interest accrued thereon but not received. [Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998, Para 2(1)(ii)]" "Time Value of Money Theory which postulates that one's money is more valuable now than at any time in the future, whether it be in an hour's time, next week or next year. For example, the earlier money s received the sooner it can be invested to earn interest, and the later it is paid out the longer it will earn***

interest. (International Accounting; Business; Investment)"

68. In Indian Council of Enviro-Legal Action v. Union of India & Ors. (2011) 8 SCC 16, the Supreme Court had ruled that compensation ought to be granted on compound interest basis as it takes into account, the time value of money and the inflationary trends, which is the true spirit of restitution of the affected party."

1.73. In view of the above it is submitted that the compensation being claimed by the Petitioner in the present Petition ought to be allowed along with carrying cost on the compounding basis.

2. Counter affidavit filed on behalf of the Respondents 1, 2 & 3 :-

2.1. The State Load Despatch Centre (SLDC) is functioning as an apex body as per sections 32 & 33 of the Electricity Act and acting under the direction of the Central Government System Operator, Southern Regional Load Despatch (SRLDC), Bangalore who is acting under the control of Power System Operation Corporation Limited (POSOCO), New Delhi who is the sole authority of the National Grid (one Nation one Grid).

2.2. 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 in the 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".

<u>Clause 2.7 of the Indian Electricity Grid Code</u>

"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".

2.3. The Hon'ble Central Electricity Regulatory Commission's (CERC) Deviation Settlement Mechanism does not permit the under drawl of not more than 250 MW and the grid operating frequency 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.

2.4. 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 attract penal action by the Southern Regional Load Dispatch Centre. Hence, the legal provisions do not permit injection of surplus power into the system.

2.5. The 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".

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.

2.6. 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".

2.7. <u>Indian Electricity Grid Code (IEGC) - 2nd Amendment with effect from 17.02.2014.</u>

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.

Clause 6.4.7 - 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.

2.8. 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.

2.9. 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. Further, it is submitted that, Section 2 (54) of the Electricity Act, 2003, defines real time operations. SLDC has done the present acts only by following the above definition.

> *(54). "real time operation" means action to be taken at a given time at which information about the electricity system is made available to the concerned Load Despatch Centre;*

2.10. 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. In order 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.

2.11. 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.

2.12. They have a solar power plant with a capacity of 100 MW in Tamil Nadu and does not require traverse.

2.13. "*TNSLDC and TANTRANSCO have miserably failed to discharge their Statutory function/obligation*" is denied and wrong since SLDC is maintaining the TN Grid 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 Statutory provisions in the Electricity Act, 2003, IEGC, TNEGC, CERC/TNERC Regulations.

2.14. The contention of the petitioners is totally unacceptable inasmuch as the Grid Security is paramount. It is relevant to submit that, 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."*

2.15. The petitioner narrates his profile and stated about the Respondents.

a. the petitioners describe their grid connectivity approvals for a collective sale of 100 MW to TANGEDCO and execution of Power Purchase Agreements (PPA) with the first Respondent, TANGEDCO.

b. Further, it is submitted that the petitioners has 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 denied and baseless 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 and the Regulation 1(6) stipulates as follows.

> *"1(6) They shall not be applicable to co-generation, captive power plants and generation of electricity from renewable sources of energy 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".*

c. The Respondents herein submit that the very specific contention was raised by M/s. Adani Green Energy Limited before this Hon'ble TNERC during the

determination of tariff for the solar generators in T.O. No. 2/2017 dated 28.03.2017 - Solar Tariff Order. The specific contention made before the Regulatory Commission 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 considered by this Hon'ble Commission and there was no appeal filed by M/s Adani Green Energy Limited.

d. Subsequently in T. O. No. 5/2018 dated 28.03.2018 - Solar Tariff Order again the issue of deemed generation was 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.

e. Subsequently in T. O. No. 5/2019 dated 29.03.2019 - Solar Tariff Order again the issue of deemed generation was 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".*

The above demand for grant of deemed generation was not considered by this Hon'ble Commission. There was no appeal filed by M/s National Solar Energy Federation of India and M/s Swelect Energy Systems Limited. The above order is binding on the petitioners and had become final. The petitioners cannot raise this issue in the present petition on the above grounds.

f. The Hon'ble TNERC has issued Judgment 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 and 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".

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.

g. 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".

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 this 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.

2.16. The averments of the petitioner that *"TANTRANSCO/SLDC in the instant case are acting in grave violation of the overall scheme of the Act and the Policies/Regulations framed thereunder"* is denied since 'Must Run' status provision is stipulated subject to grid security only and back down instruction has been issued to the petitioner is based on the provisions mentioned in para 3 only. The section 86 (1) (e) of Electricity Act, 2003 provides that it is the function of State Commission to promote the renewable sources by providing suitable measures for connectivity within the grid. The referred provisions of Electricity Act and the National Electricity Policy herewith 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. The Section 33(1) of the Electricity Act, 2003, provides that "*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".* Hence the averments of the petitioner that "*it is evident that the backing down instructions communicated therein are cryptic, unilateral, arbitrary"* is denied.

2.17. The averments of the petitioner that "*TNSLDC/TANTRANSCO under the guise of 'grid security' is imposing curtailment to purchase cheaper power from alternate sources*" is nothing but figment of imagination of the Petitioner and hence denied. It is submitted that,

TN SLDC is maintaining the State grid with out any major grid disturbances for more than twenty years. Also, Tamil Nadu is having more Renewable Energy which are infirm nature and without accurate forecasting and scheduling mechanism, SLDC is maintaining the grid safely by regulating the available generation at that moment in the real time grid operation. SLDC is maintaining the grid security as per the mandated conditions 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 Settlement Mechanism (DSM) Limit within (plus or minus) 250 MW from the scheduled power to Tamil Nadu which declared by the Regional Load Despatch Centre (RLDC) in 15 minutes time block in day ahead and intra day in real time operation.

(c) 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. Incidences happened during the Year 2012 in Northern, Eastern & Central part of India except Southern Grid. During

that time, 620 million peoples were without power supply for 3 consecutive days. There were two consequent occasions during July, 2012.

(d) If SLDC does not control grid parameters, then violation message issued by SRLDC (POSOCO-Power System Operation Corporation Limited) to control the above parameters. In the violation messages, POSOCO has directed to control the under drawl within the specified limit, citing IEGC Clauses 5.4.2(a), 5.4.2(b), 6.4.6, 6.4.7, 6.4.10, 6.4.12, with a comment to restore to schedule, stating as emergency condition of the grid .

(e) The SRLDC have empowered to take physical regulatory measures apart from penalizing commercially for the default in maintaining grid discipline by SLDC according to the CERC (Deviation Settlement Mechanism) Regulations.

2.18. SLDC is regulating the generation available from various conventional sources through Merit Order Despatch principles and the merit order stake is prepared among conventional generators only. Merit Order Despatch is not applicable to RE generators. If there is a necessity to reduce generation to maintain the grid security parameters within the permissible limits, back down instructions are being issued to conventional generators upto their technical minimum according to merit order stake. Even after backed down the maximum possible conventional generation, the grid security parameter is still persisting beyond the stipulated limit, curtailment of RE power is being carried out to come down the

same within the stipulated limits to maintain grid discipline & grid security in the interest of Public. Hence, claiming of compensation for deemed generation by the petitioners cannot be accepted. The Grid security parameters prevailed at the moment when the backed down instructions issued are the material evidence not under post facto.

2.19. 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 that, the solar generators are curtailed meagerly for grid safety purposes and the furnishing the quarterly report mentioned reasons for curtailment. Further, The Grid Security is the exact reason for back down instructions and bonafide preventive action was taken by the system operator in the real time to avoid possible breach of the system parameters. The details regarding the back down, Grid Frequency and Deviation Limits during the time of back down instructions are annexed.

2.20. The petition has referred the Judgment dated 02.08.2021, passed by the Hon'ble Appellate Tribunal for Electricity, in Appeal No. 197 of 2019 with respect to compensation for the curtailment of energy other than the grid security purposes. The Hon'ble APTEL has relied on the POSOCO findings. The POSOCO has analyzed the data in 15 minutes under post facto whereas the grid security parameters are monitored in real time situation. Further, Deviation Settlement Mechanism Limits as stipulated by the CERC (Deviation Settlement Mechanism) has not been considered as a Grid Security parameter in the above Judgment. Because of error in law on the following grounds, a Civil Appeal has been filed

by the SLDC/Tamil Nadu Transmission Corporation Limited and the Tamil Nadu Generation and Distribution Corporation Limited before the Hon'ble Supreme Court of India vide Civil Appeal No. 2572 of 2022.

i. POSOCO is not a Statutory authority to scrutinizing data as per the provisions of the Electricity Act, 2003.
ii. Compensation arrived based on the POSOCO Report
iii. Absence of Forecasting and Scheduling mechanism
iv. Grid Security yet to be defined by the Regulatory authority
v. Deviation Settlement Mechanism has not considered as a grid security parameter which is against the objective of the CERC's DSM Regulations.
vi. Post Facto analysis ignoring real time grid operation
vii. No rule of law mandating curtailment of Renewable Energy
viii. Decision/modalities cannot be framed without provisions for curtailment by the Regulatory Authority.
ix. Deemed Generation allowed even there is no provision of deemed generation in the EPA, Tariff Orders & Tamil Nadu Power Procurement from New and Renewable Sources of Energy Regulations, 2008 of this State Regulatory Commission.
x. Violations committed by the solar generators not accounted.

The aforesaid Civil Appeal is pending before the Hon'ble Supreme Court of India. Even though there is no stay, before a finality arrived at the Hon'ble Supreme Court of India, referring the APTEL Order by the petitioner is not appropriate.

2.21. Back down instructions were issued to the petitioner based on the real time grid parameters. After the RE curtailment followed by conventional generation is done, the grid parameters come down within the permissible limits. If any analysis made taking into consideration in the subsequent blocks in which the grid parameters were brought under control after curtailment of RE, then the true picture as to why the curtailment was carried out could not be revealed. Therefore, POSTFACTO analysis never reveals the accurate conditions which warranted the cause of curtailment in real time by the SLDC. A decision which has been made in the real time operation for grid safety by the SLDC and on later date, questioning the decision taken on real time by the petitioners, is not appropriate and totally false and contrary to the Energy Purchase Agreement (EPA) executed by the petitioners. Further, it is submitted that. POSOCO in its report submitted to APTEL with respect to Appeal No. 197 of 2019, has clearly mentioned as follows;

"Note: - All the above analysis is based on post facto Frequency, generation and Drawal data whereas TN SLDC system operator may have taken actions based on prevailing frequency and estimate on likely frequency, RE generation and drawal in subsequent blocks".

From the above, it is clearly evident that the POSOCO report could not be relied upon to assess the real time operation of the SLDC. In a nutshell, instantaneous data should not be compared with average data, taken on Post facto basis at the relevant moment.

2.22. As directed by the APTEL in its Judgment, dated 02.08.2021 in A. No. 197 of 2019, a "Model Guidelines for Management of RE Curtailment" issued by the Forum of Regulators (FOR) during the month of November-2022, it has been clearly specified the parameters for ascertaining Grid safety/Security vide Para 3 as follows;

> ***"3 Specifying the parameters for ascertaining Grid safety /Security:***
> *1.1* ***Grid Security:***
> *IEGC 2010 Clause 5.2(u) specifies as under:*
>
> *"System operator (SLDC/ RLDC) shall make all efforts to evacuate the available solar and 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. For this, Data Acquisition System facility shall be provided for transfer of information to concerned SLDC and RLDC."*
>
> *The "Draft central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2022" has outlined the definition of the Grid Security as below;*
>
> ***"Grid Security"*** *means the power system's capability to retain a normal state or to return to a normal state as soon as possible, and which is characterized by operational security limits;.*
> *[Explanation: Normal state means the state in which the system is within the operational parameters as defined under IEGC.]*

Above definition of Grid Security shall be incorporated in the respective State Grid Codes along with stipulation of following parameters and conditions thereof as Grid Security Parameters to ascertain the boundary conditions, breaching of which could potentially affect reliable and safe Grid operations and hence warranting appropriate actions on part of System Operator to initiate RE curtailment, as under:

Sr. No.	Parameter	Specific Conditions
1	Operating Frequency band	Average frequency for two or more successive time-blocks exceeds 50.05 Hz
2	State Volume Limits[2] as per CERC Regulations	Under-drawal by State at state periphery outside the range of 250 MW[3] for two or more successive time blocks.
3	Technical Minimum Margin for TPS % of MCR or Installed Capacity	In case all intra-state thermal generating stations are operating at technical minimum of 55% (or asper State Grid code subject to conditions for specific generating units, as approved by State Commission) and no further limit for backing down any thermal generation unit exits.
4	Thermal limit of Transmission lines	Permissible maximum Loading limit on transmission line shall Be its thermal loading limit as stipulated under [4]CEA (Manual of transmission planning criteria), 2022
5	Transformer/ICT loading limits	Loading limit for Inter-connecting transformer (ICT) shall be its Nameplate Rating as stipulated under [5]CEA (Manual of transmission planning criteria), 2022

<table>
<tr>
<td>6</td>
<td>Operational voltage limits</td>
<td>The steady state operating voltage limits under Normal conditions shall be within operating range as specified under Table-1, Clause (b) of Regulation 3 of CEA (Grid Standards) Regulations, 2010 and amendments thereof,
<table>
<tr><td>Operating Voltages</td><td>IEGC/CEA limits</td></tr>
<tr><td>765kV</td><td>728-800 kV</td></tr>
<tr><td>400kV</td><td>380-420 kV</td></tr>
<tr><td>220kV/ 230kV</td><td>198-245 kV</td></tr>
<tr><td>132kV</td><td>122-145 kV</td></tr>
<tr><td>110kV</td><td>99-121 kV</td></tr>
<tr><td>66kV</td><td>60-72 kV</td></tr>
<tr><td>33kV</td><td>30-36 kV</td></tr>
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2. *Concept of Volume Limits at State periphery has been done away as per CERC DSM Regulations, 2022. However, date of effectiveness of these Regulations and Procedures thereunder are yet to be notified. At present, Volume Limits at State periphery continue.*

3. *Revised to 200 MW for RE rich states (with installed RE > 1000 MW) as per CERC DSM Regulations, 2022. However, date of effectiveness and Procedures yet to be notified.*

4. *Ref. clause 4.2.2. and elaborated under Table-II Annexure-V for different types of line configurations employing various types of conductors as specified under CEA (Manual of transmission planning criteria), 2022*
5. *Ref. clause 4.2.4 of CEA (Manual of transmission planning criteria), 2022*

Above parameters shall be considered as operational parameters with boundary conditions for safe and reliable Grid operations and System operator (SLDC/ RLDC) shall make all efforts to evacuate the available solar and wind power to the maximum extent so long as grid parameters are within the above stipulated limits and shall not resort to RE curtailment. However, in case of breach of any of the boundary conditions as outlined in respect of above grid parameters and if in the opinion of System Operator, the continued injection of variable RE power is likely to further worsen the situation to affect reliable and safe grid operations, System operator may instruct the solar /wind generator to back down generation on consideration of grid security or to ensure safety of any equipment or to ensure that no personnel is endangered and Solar/ wind generator shall comply with the same. In case of curtailment of solar/wind generation, the protocol as prescribed in clause(4) infra shall be followed".

"4.4.2 The SLDCs may initiate the Backing down or Curtailment in case under-drawal of State is beyond the Threshold Limit at the state periphery. The SLDCs shall also take into consideration the Grid Frequency while acting on the volume limits.

Table 1: Representation of Curtailment Decisions by SLDC

Curtailment for maintaining Volume Limit (Under-drawal) at State Periphery		
	For Deviation <= 250 MW (or threshold limit as specified)	*For Deviation > 250 MW (or threshold limit as specified)*
F < 49.90 Hz	*No*	*No*
F >49.90 and < 50.05 Hz	*No*	*Yes*
F > 50.05 Hz	*Yes (Provided Grid Frequency exceeds 50.05 Hz for two or more successive time blocks.)*	*Yes (Provided Under-drawal by State at state periphery is outside the range of 250 MW for two or more successive time-blocks.)*

2.23. In the aforesaid Model Guidelines, it has been clearly mentioned vide Para 4.4.2 that, back down instruction issued for Deviation Settlement Mechanism Limits while crossed the permissible limits when grid frequency is within the stipulated limits (i.e. frequency and DSM limits are independent grid security parameters) which was not considered in the findings of the aforesaid APTEL Judgment even it is the objective of the CERC's DSM Regulations for grid security. The Model Guidelines for Management of RE Curtailment is enclosed.

2.24. Clause 3(d), 3(e) and 3(h) of the Energy Purchase Agreement (EPA) are the mandatory provisions for parallel operation of any generator with the Licensee's Grid. The grid security throughout the State is maintained based on the provisions of the Electricity Act, IEGC and TNEGC and CERC/TNERC Regulations mentioned in earlier paras and hence curtailment instructions issued in view of grid safety & security are not in any contravention to the Electricity Act and prevailing Laws including the provisions of the EPA. The following Clauses are also stipulated in the EPA **(Typed set page No. 61 to 76)** for grid security.

(a) 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:-

> Clause 2(d) *"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".*

In view of the said clause in the EPA entered into between the parties, as and when necessity arose, the solar generator is asked to back down generation to safeguard the grid.

(b) 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, 2003 (CA 36 of 2003) and regulations made thereon."*

From above clauses, it is clearly indicated that the injection/despatch of solar power is subject to maintaining the safety and security of Grid only 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.

(c) It is submitted that the Section 37 of the Indian Contract Act, 1872 reads as follows:-

> *"Section 37 – Obligation of parties to contracts- The parties to a contract must either perform or offer to perform their respective promise."*

There is a promise on the part of the Petitioner to abide by clauses 2(d), 3(a) and 3 (l) of the Energy Purchase Agreement. Hence, the loss of revenue as alleged by the

Petitioner cannot be a ground for absolving its obligation, to observe, the backing down and curtailment instructions, issued by the Respondent in the safety of the Grid.

2.25. The Appellate Tribunal for Electricity in the order dated 16.05.2011 in Appeal No. 123 of 2010 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"

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. Further, it is respectfully submitted that, the averments made by the petitioners that the terms of the PPA have 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 has only breached the

contract and claiming for the deemed generation charges against the mentioned Court Orders is not tenable and it is the duty of every generator to operate parallelly with the Electricity Grid and further to obey the SLDC instructions to maintain grid discipline and security.

2.25. The averments made by the petitioner that "*backing down issued to solar generators under merit order dispatch*" is denied and completely baseless since 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.

2.26. Aggrieved by the Appellate Tribunal's judgment, dated 02.08.2021 in Appeal No. 197 of 2019 based on the report furnished by POSOCO, a Civil Appeal has been filed by SLDC/Tamil Nadu Transmission Corporation Limited and the Tamil Nadu Generation and Distribution Corporation Limited before the Hon'ble Supreme Court of India vide Civil Appeal No. 2572 of 2022 and is pending. At this stage, the discussion about the above judgment is not appropriate.

2.27. The petitioner has referred the Hon'ble Tribunal Judgement, dated 19.07.2021 in Appeal No. 220 of 2019 and 317 of 2019 with respect to compensation charges relates

to arrangement of adequate quantity and quality of coal which does not relates to this case.

2.28. The averments of the petitioner that "*the arbitrary curtailment/back down is repugnant to the overall interest of the RE generators which resultantly defeats the purpose and mandate of Section 86(1)(e) of the Act*" is wrong and denied on the following grounds;

(a) The section 86(1)(e) of Electricity Act, 2003 provides that it is the function of State Commission to promote the renewable sources by providing suitable measures for connectivity within the grid. The referred provisions of Solar Policy are the policy directions and guidelines for encouraging the capacity addition of the non-conventional energy sources.

(b) Tamil Nadu is one of a pioneer in promoting Green Energy.

(c) There is no doubt 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. The year wise solar generation for the past nine years is tabulated as below:

Period of FY	Solar Generation in Million Units
2014-15	159
2015-16	507
Period of FY	Solar Generation in Million Units
2016-17	1478
2017-18	2799
2018-19	3556
2019-20	4947
2020-21	6115
2021-22	7203
2022-23	9293

(d) 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.

(e) The 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“

In real time grid operation is a tough one with the dynamic varying grid parameters and with infirm RE power injection. The back down instructions issued to maintain grid security and grid discipline in the public interest due to dynamic varying grid parameters and also due to infirm RE power.

Hence, maintaining grid security as per the various Electricity Laws in force is not against any Promotional Policy of Renewable Energy and Article 12 & 14 of the Constitution of India.

2.29. The petitioners claim of carrying cost by referring the various judgments is denied that the referred Judgments are not relates to this case since backing down instruction is issued based on the various provisions of the laws stipulated for grid security in the real time grid operation in the public interest only.

2.30. The deemed generation could not be ascertained/permitted in the absence of forecasting & scheduling along with commercial mechanism due to the infirm & volatile nature of RE sources. Due to the huge variation in the RE power, 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.

Further, it is respectfully submitted that back down instructions issued for network issue & overloading of equipment are also coming under the grid security definitions. Hence, the petitioner cannot entitle to claim compensation for the same also.

2.31. As 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 TN SLDC 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 cascaded effects to neighboring States and not to breach the grid discipline/grid security.

3. Rejoinder on behalf of the petitioner to the Reply filed by Respondents 2 & 3

3.1. As a result of such rampant and arbitrary backing down from April 2020 to January 2022 by Respondent No. 3, i.e., the Tamil Nadu Transmission Corporation Ltd. ("**TANTRANSCO**") and Respondent No. 2 i.e., Tamil Nadu State Load Despatch Centre ("**TNSLDC**") at the behest of Respondent No. 1, i.e., Tamil Nadu Generation and Distribution Corporation Limited ("**TANGEDCO**"), the Petitioner has suffered a loss of 7102 MWh amounting to Rs. 2,46,44,455/- (Rupees Two Crores, Forty-Six Lakhs, Forty-Four

Thousand, Four Hundred and Fifty-Five Only) along with the carrying cost amounting to Rs. 82,38,300/- (Rupees Eighty-two Lakhs, Thirty-Eight Thousand, Three Hundred Only) for the said period.

3.2. Despite the status of 'Must-Run' being accorded to the Petitioner's project, and even though the Petitioner has been declaring full availability of its Plant, TANTRANSCO, and TNSLDC continue to issue curtailment instructions for clear economic consideration at the behest of TANGEDCO. Hence, the Petition was filed seeking compensation for generation loss and revenue loss and treating the generation loss of 7102 (MWh) as deemed generated power.

3.3. On 18.07.2023, the Counter Affidavit under consideration was filed on behalf of Respondent Nos. 2 and 3 i.e., TNSLDC and TANTRANSCO. Pursuant to the same, the instant Rejoinder is being filed on behalf of the Petitioner.

3.4. *Vide* the Counter Affidavit dated 18.07.2023, the Respondents have broadly raised the following contentions which are erroneous on one ground or the other:

(a) In terms of Sections 32 and 33 of the Act, TNSLDC is required to maintain continuous power throughout the state and has the power to restrict any surplus power injected into the system.

(b) In terms of the CERC Deviation Settlement Mechanism, a drawl of more than 250 MW is not permitted. Tamil Nadu being a renewable-rich state, it is

challenging to maintain grid discipline and operate the grid during demand periods, night hours, rainy season, etc.

(c) In terms of Clause 5.2(u) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 ("**IEGC**"), the grid controller is mandated to restrict the injection of power whenever the grid conditions warrant.

(d) TNSLDC has issued the backing down instructions, in order to maintain the 'grid safety', in terms of 'real-time operation'. In terms of the EPA, the grid availability shall be subject to the restrictions and control as per the orders of SLDC.

(e) 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.

3.5. At the outset, it is respectfully submitted that the averments made by Respondents in their Counter Affidavit are denied in toto. Nothing contained therein may be deemed to be admitted unless specifically admitted in the instant Rejoinder. The facts leading to the filing of the present Petition have already been set out in detail therein. Therefore, the Petitioner craves liberty to refer and rely on the contents of the same, which are not being repeated

herein for the sake of brevity and may be read as part and parcel of the instant Rejoinder. The Petitioner is filing an Issue Wise Response to the contentions raised by Respondents and craves liberty to file a detailed para wise rejoinder and additional submissions if deemed appropriate by the Commission.

3.6. Before adverting to a detailed Issue Wise Rejoinder, the Petitioner most respectfully submits that upon a bare perusal of the Counter Affidavit filed by Respondents, it is evident that the contentions raised thereunder are completely vague and lack substance. Respondents have evaded the specific allegations made against them under the present Petition and have failed to justify their stand.

3.7. Respondents No. 2 and 3 by way of the Counter Affidavit have attempted to justify the arbitrary and erroneous curtailment instructions issued to the Petitioner, however, while doing so no proof has been placed on record. In this regard, the following is relevant:

(a) For the period 22.03.2020 to 08.04.2020, Respondent No. 2 and 3 by way of the data furnished have contended that curtailment was being done due to the tripping of 110kV Sembatty-Theni Line. However, at the same time, Respondent No. 2 and 3 have failed to provide any evidence as to whether the tripping of the line was due to their own fault or not because in terms of the Act, Respondents No. 2 and 3 are statutorily obligated to maintain and operate an adequate transmission infrastructure. Therefore, any tripping of a transmission line would be to the account of Respondent No. 2 and 3.

(b) For the rest of the period, Respondent No. 2 and 3 have taken umbrage under the argument of high frequency and under drawal for curtailing the RE Generators such as the Petitioner as a last resort. However, while contending so, Respondents No. 2 and 3 have once again failed to substantiate the same by any documentary proof.

(c) Another contention that has been raised by Respondents No. 2 and 3 is the crash of demand due to COVID-19. However, at the same time, no document whatsoever has been provided by Respondent No. 2 and 3 for the same. Even otherwise, the argument of reduction in demand due to Force Majeure in any case is liable to be rejected as the generation and supply of electricity was considered to be an essential commodity and therefore were exempted from lockdown imposed by the Government of India and various other State Governments, including the Government of Tamil Nadu. In this regard, reliance is placed upon the Judgment dated 04.07.2022 of the Hon'ble Punjab and Haryana High Court in CWP No. 7519 of 2020 and 7715 of 2020 wherein it was held as follows:

> *"[68]. The impugned actions on behalf of Punjab State Load Dispatch Centre are contrary to the decision dated 06.04.2020 passed by the Ministry of Power, wherein it has been expressly stated that notwithstanding the lockdown, the obligation to pay for capacity charges as per power purchase agreement shall continue. Despite the aforesaid decision, PSPCL has not withdrawn impugned notices and SLDC has not acted in terms of defined duties arising out of Electricity Act, 2003 and Punjab State Electricity Regulatory Commission (Punjab State Grid*

Code) Regulations, 2013. The orders passed by the Ministry of Power have the force of law and are binding in nature.
[70]. The impugned actions on behalf of PSPCL and PSLDC are contrary to the guidelines issued by the Ministry of Home Affairs under the Disaster Management Act, 2005. Section 72 of the Disaster Management Act overrides any other law for the time being in force. On the one hand, the petitioners were directed to remain available to generate power under Disaster Management Act, 2005 (and expose itself to criminal prosecution for violation), whereas on the other hand, PSPCL has invoked force majeure and denying the lawful claims of the petitioners while complying with the provisions of Disaster Management Act, 2005 and guidelines issued by the competent authority. ....
……… ***[74]. Evidently, as per Ministry of Home Affairs notice dated 24.03.2020, power generation, transmission and distribution units and services were exempted from the lockdown. PSPCL issued the impugned notice dated 29.03.2020 in utter disregard to the aforesaid order dated 24.03.2020. The alleged drastic reduction in load/demand would not constitute a force majeure event under the Power Purchase Agreement****.”*

(d) Respondents No. 2 and 3 have also placed on record, letters highlighting grid violations from Southern Regional Load Despatch Centre ("**SRLDC**") dated 01.06.2020, 02.06.2020, 01.10.2020, 12.10.2020, 06.11.2020, 14.11.2020, 06.12.2020, 14.02.2021, 15.02.2021 and 28.02.2021. While these are only 9 instances, Respondents No. 2 and 3 have failed to highlight what steps were taken before curtailing RE Projects such as the Petitioner's as in terms of the Act and the Grid Code, Thermal Generators are to be curtailed first and only if the situation of Grid Security persists, RE Generators can be curtailed.

3.8. Therefore, while Respondent No. 2 and 3 have raised the aforesaid contentions/reasons for curtailing the power generation from the Petitioner's Plant, no data or justifications/steps taken by Respondent No. 2 and 3 have been furnished to show that:

(a) Grid frequency merits backdown of "Must Run" generating stations;

(b) Thermal Stations were backed down first upto their technical minimum or taken to Reserve Shut Down and only then RE Generators were curtailed

(c) There is no purchase from short-term market (power exchange) (UI overdrawls) during the times when solar plants were backed down.

3.9. A party is required to specifically deal with the allegations made against it under a pleading. The same has been set out under Order VIII Rules 4 and 5 of the Code of Civil Procedure, 1908 ("**CPC**") in explicitly clear terms. For the ease of reference of the Commission, relevant extracts of Order VIII Rule 4 and 5 of the CPC are reproduced hereunder:

> *"4. Evasive-denial.— **Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.***
>
> *5. Specific denial.— **(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:***

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission:

Provided further that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability.**"**

3.10. On a reading of the provisions mentioned above, it becomes clear that while responding to averments made under a pleading, a party is bound to deal with the substance of the contentions in specific, rather than merely denying the same in vague and ambiguous terms.

3.11. In this regard, reliance is placed on the Judgment passed by the Hon'ble Supreme Court of India in *Balraj Taneja v. Sunil Madan*, (1999) 8 SCC 396 where the Hon'ble Court while observing the scheme of Rule 5 of Order 8 observed as follows:

> *"9. The scheme of this rule is largely dependent upon the filing or non-filing of the pleading by the defendant.* ***Sub-rule (1) of Rule 5 provides that any fact stated in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, shall be treated as admitted.*** *Under Rule 3 of Order 8, it is provided that the denial by the defendant in his written statement must be specific with reference to each allegation of fact made in the plaint.* ***A general denial or an evasive denial is not treated as sufficient denial and, therefore, the denial, if it is not definite, positive and unambiguous, the allegations of facts made in the plaint shall be treated as admitted under this rule****."*

3.12. Further, the Hon'ble Supreme Court in the matter of *Gian Chand & brothers and Anr vs. Rattan Lal and Ors.*, (2013) 3 SCR 601 where the Court has observed that it is not sufficient to deny that an allegation or a substantial issue, it must be answered in detail and

with fact to show the reason for such denial. Relevant extracts of the Judgment are reproduced hereunder for ready reference:

> *"21. The present case is not one such case where the plaintiffs have chosen not to adduce any evidence. They have examined witnesses, proven entries in the books of accounts and also proven the acknowledgements duly signed by the defendant.* ***The defendant, on the contrary, except making a bald denial of the averments, had not stated anything else. That apart, nothing was put to the witnesses in the cross examination when the documents were exhibited. He only came with a spacious plea in his evidence which was not pleaded****. Thus, we have no hesitation in holding that the High Court has fallen into error in holding that it was obligatory on the part of the plaintiffs to examine the handwriting expert to prove the signatures. The finding that the plaintiffs had failed to discharge the burden is absolutely misconceived in the facts of the case.*
>
> *22.* ***The said aspect can be looked from another angle. Rules 3, 4 and 5 of Order VIII form an integral code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its noncompliance. It is obligatory on the part of the defendant to specifically deal with each allegation in the plaint and when the defendant denies any such fact, he must not do so evasively but answer the point of substance. It is clearly postulated therein that it shall not be sufficient for a defendant to deny generally the grounds alleged by the plaintiffs but he must be specific with each allegation of fact (see Badat and Co., Bombay v. East India Trading Co.5).***
>
> *23.* ***Rule 4 stipulates that a defendant must not evasively answer the point of substance.*** *It is alleged that if he receives a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received, and that if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.* ***Rule 5 deals with specific denial and clearly lays down that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted against him.***

> *24. **We have referred to the aforesaid Rules of pleading only to highlight that in the written statement, there was absolutely evasive denial. We are not proceeding to state whether there was admission or not, but where there is total evasive denial and an attempt has been made to make out a case in adducing the evidence that he was not aware whether the signatures were taken or not, it is not permissible**."*

3.13. Recently, the Hon'ble Supreme Court *in Jaspal Kaur Cheema v. Industrial Trade Links*, (2017) 8 SCC 592 has observed that failure to make specific denial or making evasive denials would amount to an admission of a fact. The relevant extract is reproduced hereinbelow for ease of reference:

> *"7. In terms of Order 8 Rule 3 of the Code of Civil Procedure, 1908 (for short "the Code"), a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order 8 Rule 5 of the Code. In other words, the written statement must specifically deal with each of the allegations of fact made in the plaint. **The failure to make specific denial amounts to an admission.** This position is clear from the decisions of this Court in Badat and Co. v. East India Trading Co. [Badat and Co. v. East India Trading Co., (1964) 4 SCR 19 : AIR 1964 SC 538] , Sushil Kumar v. Rakesh Kumar [Sushil Kumar v. Rakesh Kumar, (2003) 8 SCC 673] and M. Venkataramana Hebbar v. M. Rajagopal Hebbar [M. Venkataramana Hebbar v. M. Rajagopal Hebbar, (2007) 6 SCC 401] ."*

3.14. The Hon'ble Delhi High Court in the matter of *Arora Electric & Cable Co. vs. Shiv Charan & Bros*, 1998 SCC OnLine Del 179 has dealt extensively on the point of 'evasive denial' in the pleadings and has held that the same is not permissible. The relevant extracts of the Judgment are reproduced hereunder:

> *"The object of this provision is to narrow the issues to be tried in the case and to enable either party to know what the real point is to be discussed and*

decided. The word "specifically" qualifies not only the word "deny" but also the words "stated to be not admitted" and therefore a refusal to admit must also be specifically stated. A defendant can admit or deny the several allegations made in the plaint and if he decides to deny any such allegations, he must do so clearly and explicitly. ***A vague or evasive reply by the defendant cannot be considered to be a denial of fact alleged by the plaintiff. A party is expected to expressly deny the fact which is within its knowledge and a general denial is not a specific denial by "necessary implication". In other words, the denial should be definite and unambiguous.*** *The scope of this provision has been considered in Badat & Co. v. East India Trading Co. AIR 1964 SC 53S, where His Lordship Subba Rao, J. after referring to Rules 3, 4 and 5 of Order 8 of the Code has observed as under:—*

"These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its noncompliance. The written-statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of fact is not specific but evasive, the said fact shall be taken to be. admitted. In such an event, the admission itself being proof, no other proof is necessary. The first paragraph of R. 5 is a reproduction of O. XIX, R. 13 of the English rules made under the Judicature Acts. But in mofussil Courts in India, where pleadings were not precisely drawn, it was found in practice that if they were strictly construed in terms of the said provisions, grave injustice would be done to parties with genuine claims. …."

3.15. From a perusal of the above-reproduced Judgments, the following arises for the kind consideration of the Commission:

(a) Respondents were statutorily obligated to deal with the issues raised under the present Petition by the Petitioner specifically, which they have not done.

(b) Respondents were required to justify their stand in the Counter Affidavit by way of substance, which is absent in the Counter Affidavit.

(c) As such, the baseless and vague denials must be considered as an admission on the part of Respondents.

3.16. In the absence of specific denial, the issues raised under the present Petition must be considered as admitted by Respondents and the Counter Affidavit is liable to be dismissed.

3.17. In fact, it is pertinent to mention herein that pursuant to the NSEFI Judgment dated 02.08.2021 passed by the Hon'ble Tribunal, the Forum of Regulators ("**FoR**") has issued Model Guidelines for Management of RE Curtailment for Wind and Solar Generation ("**FoR Guidelines**") on 18.11.2022.

3.18. The FoR is a body that has been constituted by the Central Government in pursuance of a statutory mandate under Section 166 of the Act. The relevant extracts of Section 166 of the Act are reproduced hereunder for the ease of reference:

> *"**Section 166. (Coordination Forum):** --- (1) The Central Government shall constitute a coordination forum consisting of the Chairperson of the Central Commission and Members thereof, the Chairperson of the Authority, representatives of generating companies and transmission licensees engaged in inter-State transmission of electricity for smooth and coordinated development of the power system in the country.*
> ***(2) The Central Government shall also constitute a forum of regulators consisting of the Chairperson of the Central Commission and Chairpersons of the State Commissions.***
> *(3) The Chairperson of the Central Commission shall be the Chairperson of the Forum of regulators referred to in sub-section (2).*
> ***(4) The State Government shall constitute a Coordination Forum consisting of the Chairperson of the State Commission and Members thereof representatives of the generating companies, transmission***

licensee and distribution licensees engaged in generation, transmission and distribution of electricity in that State for smooth and coordinated development of the power system in the State.

(5) There shall be a committee in each district to be constituted by the Appropriate Government –

(a) to coordinate and review the extension of electrification in each district;

(b) to review the quality of power supply and consumer satisfaction;

(c) to promote energy efficiency and its conservation"

3.19. It is implied from the above that the FoR Guidelines have been formulated by the FoR in exercise of the powers conferred by the statute itself, making the same a delegated/subordinate legislation and a statutory mandate, which cannot be deviated from by APSLDC. In this regard, reliance is placed on the Judgment passed by the Hon'ble Supreme Court in *Kalyani Mathivanan vs. K.V. Jeyaraj & Ors.,* (2015) 6 SCC 363, where the regulations framed by UGC were held to be a subordinate legislation, and to have a binding effect. For ease of reference, the relevant extracts of the Judgment are as follows:

"22. The UGC Act, 1956 was enacted to make provisions for the coordination and determination of standards in universities and for that purpose, to establish a University Grants Commission.

…….

25. Any other relevant provision with which we are concerned is Section 26- "Power to make regulations". The relevant portion of the said section is quoted below:

………

26. As per Section 28 the rules and regulations framed under the UGC Act are required to be laid before each House of Parliament and when both the Houses agree then the rules and regulations can be given effect with such modification as may be made by Parliament. Section 28 reads as below:

……..

27. From the aforesaid provisions, ***we find that the University Grants Commission has been established for the determination of standard of***

> ***universities, promotion and coordination of university education, for the determination and maintenance of standards of teaching, examination and research in universities, maintenance of standards, etc. For the purpose of performing its functions under the UGC Act (see Section 12) like defining the qualifications and standard that should ordinarily be required of any person to be appointed in the universities [see Sections 26(1)(e) & (g)] UGC is empowered to frame regulations.*** *It is only when both the Houses of Parliament approve the regulation, the same can be given effect to.* ***Thus, we hold that the UGC Regulations though a subordinate legislation has binding effect on the universities to which it applies; and consequence of failure of the university to comply with the recommendations of the Commission, UGC may withhold the grants to the university made out of the fund of the Commission (see Section 14)****."*
>
> *[**Emphasis Supplied**]*

3.20. Moreover, as per FoR Guidelines, it is clearly specified the parameters for ascertaining Grid Safety/Security which are as follows:

(a) Operating Frequency Band

(b) State Volume Limits as per CERC Regulations

(c) Technical minimum margin for TPS

(d) Thermal Limit for transmission line

(e) Transformer/ICT Loading limits

(f) Operational Voltage limits

3.21. The above parameters shall be considered as operational parameters with boundary conditions for safe and reliable grid operations and System operator (SLDC/RLDC). No such parameters were submitted to claim that the curtailment was done due to grid safety/stability.

3.22. Further, in terms of Annexure 12 of the FoR Guidelines, the format for data submission is tabulated hereunder for ease of reference:

12 ANNEXURES

ANNEXURE - 1

Format of Curtailment event for SLDC

			Curtailment Period			Actual	
Sr. No.	Date	Name of PSS	From Time Block	To Time Block	Reason for Curtailment	Generation at the time of Curtailment	System Parameters (*)

3.23. However, despite noting the FoR Guidelines in their Counter Affidavit, Respondent No. 2 and 3 have failed to place on record the data in the said format. Therefore, on this ground alone, the contentions raised by Respondent No. 2 and 3 are liable to be rejected and the Petitioner's claim ought to be allowed.

3.24. Furthermore, at the cost of repetition, it is reiterated that the Respondents are a creation of the Act and are statutorily obligated to ensure scheduling and despatch of electricity in the State of Tamil Nadu. However, the conduct of the Respondents has been arbitrary and in gross violation of the existing legal and regulatory framework, viz.:

(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/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, one of the objectives of the Tariff Policy is to promote generation of electricity from renewable sources.

(f) **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.

3.25. The backing down/curtailment imposed by the Respondents is illegal and arbitrary. The curtailment instructions were issued by the Respondents solely for commercial and economic reasons and there is no element of grid security involved.

3.26. Under the guise of grid security, the Petitioner is being subjected to illegal and arbitrary backing down/curtailment, which caused a substantial loss of generation and consequent loss of significant revenue to the Petitioner. The Petitioner imposed curtailment only to purchase cheaper power from alternative sources which is not only in gross violation of the prevalent law but is also contrary to contractual obligations under the PPA. The issue of curtailment has been continuous and has severely impacted the viability of the projects of the Petitioner.

3.27. The "Must Run" status conferred to renewable energy is meant for its promotion. If this status is not adhered to, the RE Generators will be deprived of recovery of legitimate tariff. Accordingly, the Petitioner is entitled to compensation in the form of deemed generation which are the charges at the tariff as envisaged under the EPA along with applicable carrying cost computed on a monthly compounding basis.

3.28. A perusal of the Reply shows that mere broad claims of the SLDC being required to maintain grid security have 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 the 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 Respondent SLDC ought to be rejected. In fact, nothing has been placed on record by Respondent SLDC to establish a case of threat to the Safety and Security of the State Grid.

3.29. 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.

3.30. It follows that 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 Petitioner. In fact, such a course of conduct has been cautioned by this Hon'ble Commission at countless intervals, one of which was while passing the following judgment 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****."*

3.31. 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 Petitioner's project that came about as a result of the "Must-run" status.

3.32. 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.

3.33. Hence, in the absence of any data whatsoever to demonstrate the 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, does not imply that such power 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"*

3.34. 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.***

3.35. Being a creation of the Act, Respondents 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 Petitioner, 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.

3.36. 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."*
>
> ***Orders are not like old wine becoming better as they grow older****.*"

3.37. It is the contention of the Respondents that the Petitioner has agreed to be bound by the provisions of the Act, IEGC, Tamil Nadu Electricity Grid Code ("**TNEGC**"), and other codes and Regulations issued by the Commission and CEA as amendments from time to time. Further, the EPA dated 28.09.2017 executed provides that the evacuation of the Solar Power shall be subject to the Grid Stability (which is under control by the SLDC) and merit order dispatch principles shall not be applicable to the same. For ease of reference, the extracts as relied on by the Respondents are reproduced below:

> *"2(d) "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'*
>
> *…*

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 2003 (CA 36 of 2003) and regulations made thereon."

3.38. The Respondents while placing selective reliance on the terms of the EPA have failed to appreciate that the EPA has to be read as a whole. While the EPA refers to the fact that the parties have agreed to comply with the IEGC, TNEGC and the relevant rules and regulations framed under the Act, the Respondents have failed to substantiate the reasons for backing down. Further, while relying on Clause 2 (d) of the EPA, the Respondents have contended that there has been no breach of the contract to attract compensation and even otherwise Section 73 of the Act is inapplicable.

3.39. The Hon'ble Tribunal in *Prayatna Developers Private Ltd. (PDPL) v. National Thermal Power Corporation Ltd. (NTPC),* 2020 SCC Online CERC 172 has held as follows:

*"36. **The Petitioner has submitted that since the model PPAs are worded in a peculiar way, the intent of the provision must be considered.** The meaning/interpretation of the Hon'ble Supreme Court's judgment (in thermal PPAs) cannot be read/used to restrict the rights of a private investor/generating company**. The private company has no control over the terms of the provisions made part of the model PPAs. This is a settled position of law that in case there is any ambiguity in the interpretation of the agreement, the rule of Contra Proferentem will apply. The rule of Contra Proferentem, provides that in case of ambiguity or two possible interpretations, the Court will prefer that interpretation which is more favorable to the party who has not drafted the standard agreement.** In this regard, the Petitioner has relied upon following Judgments of the Hon'ble Supreme Court : Bank of India v. K.*

Mohandas, reported as (2009) 5 SCC 313; United India Insurance Co. Ltd. v. Pushpalaya Printers, reported as (2004) 3 SCC 694"

3.40. On a conjoint reading of the aforesaid Judgment and the provisions of the EPA, the scheme of the Act, it can be ascertained that the provisions of a Model EPA and EPA dated 28.09.2017 envisage promotion of Renewable Energy and that Respondents have to ensure there is maximum off take of power from such Solar Generators. Even otherwise, while it is true that both parties shall comply with the TNEGC, IEGC, however, the Petitioner's case is that the Respondents have been misusing their power under the IEGC, TNEGC as well as under the Act and arbitrarily backing down the Petitioner due to economic reasons. The Respondents have failed to show that they have been complying with the provisions of the EPA to the letter and spirit. It is a settled law that parties are bound by the terms of the contract.

3.41. On the other hand it is relevant to mention herein that the power plant of the Petitioner has been designed in a manner which is compliant with the grid security standards. In this regard, the following provisions of the EPAs are noteworthy:

(d) 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*."

(e) 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/STU. "

(f) 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/STU to facilitate safe parallel operation of the Generators with grid and to prevent disturbances to the grid."*

3.41. Adequate safety measures have been incorporated at the generator's end to ensure grid security. However, due to reasons best known to TANTRANSCO/TNSLDC, the Petitioner is being subjected to illegal and arbitrary backing down/curtailment, resulting into huge generation and revenue loss.

3.42. It is also a trite law that a contract has to be read as a whole, meaning thereby each and every provision has to be given effect. This principle has been settled by the Hon'ble Supreme Court in *Provash Chandra Dalui v. Biswanath Banerjee*, reported in 1989 Supp (1) SCC 487. The relevant extract of the said judgement is set out below:

> *"10. 'Ex praecedentibus et consequentibus optima fit interpretatio.' The best interpretation is made from the context. Every contract is to be construed with reference to its object and the whole of its terms. The whole context must be considered to ascertain the intention of the parties. It is an accepted principle of construction that the sense and meaning of the parties in any particular part of instrument may be collected 'ex antecedentibus et consequentibus;' every part of it may be brought into action in order to collect from the whole one uniform and consistent sense, if that is possible. As Lord Davey said in N.E. Railway Co. v. Hastings [1900 AC 260, 267] :*

"... the deed must be read as a whole in order to ascertain the true meaning of its several clauses, and... the words of each clause should be so interpreted as to bring them into harmony with the other provisions of the deed if that interpretation does no violence to the meaning of which they are naturally susceptible...."

In construing a contract the court must look at the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly. If the words are clear, there is very little the court can do about it. In the construction of a written instrument it is legitimate in order to ascertain the true meaning of the words used and if that be doubtful it is legitimate to have regard to the circumstances surrounding their creation and the subject-matter to which it was designed and intended they should apply."

3.43. Therefore, since the generation loss suffered by the Petitioner is due to no reason attributable to itself, it cannot be penalized to bear the burden of such generation loss and thus, is required to be paid compensation by the party in breach. Admittedly, Respondents in the instant case, is guilty of misfeasance and legal *mala fide* as it acted in contravention of its statutory duties under the Act by issuing unlawful and arbitrary curtailment instructions. In this regard, reliance is placed upon the Judgment dated 14.11.2013 passed in Appeal No. 175 of 2012 by Hon'ble Tribunal wherein it has held that SLDC is liable to pay compensation as it was found guilty of legal mala-fide by knowingly breaching its statutory duty and committing misfeasance. The relevant extracts of the Judgment dated 14.11.2013 are reproduced hereunder for ease of reference:

""….62. As held by the Hon'ble Supreme Court to establish misfeasance on the part of SLDC, it is enough to show that SLDC is guilty of legal mala-fide by

knowingly breaching its statutory duty and with knowledge that its action is likely to cause losses to the Appellant. ….

….. 77(3). ***This conduct on the part of the State Load Despatch Centre which is public office cannot be said to be bona-fide and genuine. When SLDC has got the knowledge that they cannot rely upon the Government memorandums on the basis of which the earlier order passed by the State Commission on 29.9.2010 after they were quashed, even then they refused to schedule power to the Appellant as requested by the Appellant, would show the malafide attitude of SLDC and due to that the Appellant suffered a loss. Therefore, we are of the view that since misfeasance by the SLDC with its knowledge has been established, the Appellant is entitled to claim for compensation from SLDC.****"*

3.44. The Respondents have also contended that the Act being a complete code, the Contract Act is not applicable. In this regard, the following is relevant:

A. Though a complete code, the Act does not preclude the application of the Contract Act

3.45. Ordinarily, special legislation applies to matters exclusively covered by it in preference to 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.

3.46. 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.*

3.47. 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.

3.48. 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*".

3.49. 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. <u>It is clearly not the intention of the legislature, in such a case, to annul or detract from the provisions of other laws</u>****. 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. <u>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</u>****.*

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."

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

3.51. The Respondents contend that the case of the Petitioner cannot rely on the Judgment passed by the Hon'ble Tribunal in Appeal No. 197 of 2019 i.e., NSEFI Judgment, as such, since the Judgment has been appealed before the Hon'ble Supreme Court of India.

3.52. The provisions of the Code of Civil Procedure, 1908 ("**CPC**") provide that an appeal shall not operate as a stay of proceedings except when the Appellate Court has granted a stay.

3.53. Order XLI Rule 5 provides that no stay will operate on a Decree/ Appealed Order merely on the filing of an Appeal. For ease of reference, the relevant provision is extracted below:

"5. Stay by Appellate Court.—(l) ***An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree****.*

Explanation.—An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance."

3.54. Therefore, the contention of the Respondents that the decision of the Hon'ble Tribunal in Appeal No. 197 of 2019 has been appealed before the Hon'ble Supreme Court of India does not stand correct. In this regard, reliance can be placed on the landmark judgment of *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*, (2005) 1 SCC 705, wherein the Hon'ble Supreme Court while dealing with the provisions of Order 41 Rule 5 CPC the Hon'ble Supreme Court observed as under:-

*"**8. It is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the court below. A prayer for the grant of stay of proceedings or on the execution of decree or order appealed against has to be specifically made to the appellate court and the appellate court has discretion to grant an order of stay or to refuse the same**. The only guiding factor, indicated in Rule 5 aforesaid, is the existence of sufficient cause in favour of the appellant on the availability of which the appellate court would be inclined to pass an order of stay. Experience shows that the principal consideration which prevails with the appellate court is that in spite of the appeal having been entertained for hearing by the appellate court, the appellant may not be deprived of the fruits of his success in the event of the appeal being allowed....*

9.** …However, this is not the only condition which the appellate court can impose**. The power to grant stay is discretionary and flows from the jurisdiction conferred on an appellate court which is equitable in nature. To secure an order of stay merely by preferring an appeal is not a statutory right conferred on the appellant. So also, an appellate court is

not ordained to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has been made. *Therefore, an applicant for order of stay must do equity for seeking equity…"*

[**Emphasis Supplied**]

3.55. Further, it is submitted that the Hon'ble Tribunal in *BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission*, 2013 SCC Online APTEL 137

> *"**23. As mentioned above, mere filing of the Appeal without getting stay of the operation of the judgment of this Tribunal and mere proposal to file the Appeal before the Hon'ble Supreme Court could not be the ground for refusal to implement the judgment of this Tribunal.***
>
> *…*
>
> ***25. As laid down by the Hon'ble Supreme Court that mere filing of the Appeal or proposal to file the Appeal would not amount to the effect of automatic stay**.*
>
> ***26. This principle has been laid down in the following judgments as quoted earlier:***
>
> ***(a) Atma Ram Properties v. Federal Motors Pvt. Ltd., (2005) 1 SCC 705***
>
> ***(b) Madan Kumar Singh v. Distt Magistrate: (2009) 9 SCC 79***
>
> ***(c) Thirunavukkarasu Mudaliar (Dead) by LRs. v. Gopal Naidu (Dead) by LRs., (2006) 12 SCC 390***
>
> *27. When a similar issue was raised before this Tribunal in the case of DTL v. DERC, this Tribunal gave a judgment on 29.9.2010 holding that the **Delhi Commission cannot claim that mere pendency of the Appeal before the Hon'ble Supreme Court would make the State Commission entitled to contend that they need not follow the judgment of this Tribunal**."*

3.56. On a conjoint reading of the judgments mentioned above the following can be ascertained:

(a) An Order/Judgment under appeal is effective in nature.

(b) Stay will operate on the Order/Judgment only if a stay been specifically granted by the Appellate Court.

3.57. Therefore, the contention of the Respondents that the decision of the Hon’ble Tribunal dated 02.08.2021 passed in Appeal No. 197 of 2019 will not be binding and applicable on the present matter based on a wrong interpretation of the law and therefore liable to be dismissed.

Applicability of ‘Must Run Status’ and Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021

3.58. In respect of the ‘Must-Run’ status of the Petitioner in the capacity of being an RE Generator, it is the contention of the Respondents that the said status is not absolute but subject to various conditions including grid security. Further, with respect to the Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021 (“**Must Run Rules**”), the stand of the Respondents is that since the said rules were enacted in 2021, the same cannot be applied retrospectively.

3.59. Rule 3 of the Must Run Rules recognizes the must-run status of Renewable Energy Generators including solar 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. For ease of reference, the aforesaid Rule 3 of the Must Run Rules, 2021 are as follows:

> *"3. Must-run power plant.—(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, as may be notified by the Appropriate Government, **which has entered into an agreement to sell the electricity to any person, shall be treated as a must-run power plant.***
>
> ***(2) A must-run power plant shall not be subjected to curtailment or regulation of generation or supply of electricity on account of merit order dispatch or any other commercial consideration: Provided that electricity 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 for curtailment or regulation of power, the provisions of the Indian Electricity Grid Code shall be followed.***
>
> ***(3) In the event of a curtailment of supply from a must-run power plant, compensation shall be payable by the procurer to the must-run power plant at the rates specified in the agreement for purchase or supply of electricity**."*

3.60. In so far as the aforesaid objections of the Respondents are concerned, the following is necessary for consideration by the Commission:

(a) The 'must-run' status of the RE Generators has been recognized by the IEGC which was enforced in 2010 *vide* Clause 5.2(u), which is reproduced above.

(b) The language of Rule 3 of the Must-Run Rules, 2021 recognizes the power plants that have already entered into an agreement to sell electricity.

(c) The Respondents have acted in blatant disregard to the OMs 01.04.2020 and 04.04.2020 issued by the MNRE by violating the must-run status of the

Petitioner without providing any reasons for the same.

(d) In terms of Section 32 of the Act, the Respondent is a creation of statute and is statutorily mandated to provide an efficient, coordinated, and economical system for intra-state transmission lines for smooth flow of electricity.

(e) The National Tariff Policy 2016 *vide* Clause 4(e) and (f), Clause 5.2 provide that the renewable energy generation of electricity should be encouraged, and it is the stated objective of the National Tariff Policy 2016 to promote the generation of electricity from renewable sources.

(f) The Must-Run Rules 2021 were passed after observing the sorry state of affairs across the country and thus the object of the said rules cannot be discarded on a mere technicality as to whether the same is applicable prospectively or retrospectively.

(g) In this regard, reliance is further put on the Hon'ble Tribunal's judgment dated 30.05.2019 in Appeal No. 350 of 2017 in *Ramnad Solar Power Ltd. vs. TNERC & Ors.* which upheld the 'must run' status of solar power plants under the IEGC and the TNEGC.

3.61. Without prejudice to the above, in respect of the contention of applicability of the Must Run Rules, as raised by the Respondents, deserves to be dismissed outrightly in the light of recognition of RE Generators as "Must Run" provided under Part- 6 of IEGC. The

relevant extracts of IEGC are reproduced hereunder for the ease of reference of this Hon'ble Commission:

> *"Part-6*
> ***SCHEDULING AND DESPATCH CODE***
> *…*
> *6.5 Scheduling and Despatch procedure for long-term access, Medium-term and short-term open access*
> *…*
> *11. ….. All renewable energy power plants, except for biomass power plants, and non-fossil fuel-based cogeneration plants whose tariff is determined by the CERC shall be treated as 'MUST RUN' power plants and shall not be subjected to 'merit order despatch' principles."*

3.62. The MNRE by way of its letters/notifications dated 01.08.2019, 01.04.2020, and 04.04.2020, 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 as Must Run status has been accorded to RE Generators such as the Petitioner.

3.63. At this juncture, reliance is placed on the Judgment dated 12.08.2021 passed in Appeal No. 126 of 2020 titled *Tata Power Renewable Energy* Limited *vs. Andhra Pradesh Electricity Regulatory Commission & Ors.* by the Hon'ble Tribunal as well as Judgment dated 15.03.2022 passed by the Hon'ble AP High Court in W.A. No. 383 of 2019 wherein the 'Must Run' status of the RE Generators has been recognized at the highest pedestal.

3.64. In view of the above, clearly the issue of power curtailment faced by RE Generators such as the Petitioner has been recognized at the highest level and the must-run status has been granted to the RE Generators in furtherance of the objectives of the National Tariff Policy. The challenge to the Must Run status raised by the Respondents is nothing but blatant disregard of the legal position as settled by the Hon'ble Tribunal.

3.65. In so far as the contention of Must Run status being rejected by the Commission is concerned, it is submitted that the Solar 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 this Hon'ble Commission in M.P. No. 16 of 2016.

3.66. 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 referred by Respondents to contend otherwise is not applicable to the Petitioner, having been rendered inter-se the parties therein.

4. Additional affidavit filed on behalf of the respondents 2 & 3 :-

4.1. During the hearing held on 31.10.2023, this Honourable TNERC directed to furnish the data as per the FOR guidelines and the daily order, dated 31.10.2023 is as follows;

> *"….. The counsel for the petitioner submitted that oral instruction were given for back down without proof regarding frequency and the data furnished by the respondents is not as per the FOR guidelines. The counsel for the petitioner further sought directions to the respondents to file the relevant data with proof as to the necessity for back down instruction and prayed that the data has to be furnished as per the FOR guidelines so as to enable him to argue further. Commission directed TANGEDCO to file relevant data before 14.11.2023"*

In compliance with above said directions, this additional affidavit is filed on behalf of Respondent No. 2 and 3.

4.2. As directed by the APTEL in its Judgment, dated 02.08.2021 in A. No. 197 of 2019, a "Model Guidelines for Management of RE Curtailment" issued by the Forum of Regulators (FOR) during the month of November-2022, it has been clearly specified the parameters for ascertaining Grid safety/Security vide Para 3 as follows;

> ***"3 Specifying the parameters for ascertaining Grid safety /Security:***
>
> ***3.1. Grid Security:***
>
> *IEGC 2010 Clause 5.2(u) specifies as under:*
>
> *"System operator (SLDC/ RLDC) shall make all efforts to evacuate the available solar and 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. For this, Data Acquisition System facility shall be provided for transfer of information to concerned SLDC and RLDC."

The "Draft central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2022" has outlined the definition of the Grid Security as below;

"Grid Security" *means the power system's capability to retain a normal state or to return to a normal state as soon as possible, and which is characterized by operational security limits;.*
[Explanation: Normal state means the state in which the system is within the operational parameters as defined under IEGC.]

Above definition of Grid Security shall be incorporated in the respective State Grid Codes along with stipulation of following parameters and conditions thereof as Grid Security Parameters to ascertain the boundary conditions, breaching of which could potentially affect reliable and safe Grid operations and hence warranting appropriate actions on part of System Operator to initiate RE curtailment, as under:

Sr. No.	Parameter	Specific Conditions
1	Operating Frequency band	Average frequency for two or more successive time-blocks exceeds 50.05 Hz
2	State Volume Limits[2] as per CERC Regulations	Under-drawal by State at state periphery outside the range of 250 MW[3] for two or more successive time blocks.
3	Technical Minimum Margin for TPS % of MCR or Installed Capacity	In case all intra-state thermal generating stations are operating at technical minimum of 55% (or as per State Grid code subject to conditions for specific generating units, as approved by State Commission) and no further limit for backing down any thermal generation unit exits.

<table>
<tr><td>4</td><td>Thermal limit of Transmission lines</td><td>Permissible maximum Loading limit on transmission line shall Be its thermal loading limit as stipulated under [4]CEA (Manual of transmission planning criteria), 2022</td></tr>
<tr><td>5</td><td>Transformer/ICT loading limits</td><td>Loading limit for Inter-connecting transformer (ICT) shall be its Nameplate Rating as stipulated under [5]CEA (Manual of transmission planning criteria), 2022</td></tr>
<tr><td>6</td><td>Operational voltage limits</td><td>The steady state operating voltage limits under Normal conditions shall be within operating range as specified under Table-1, Clause (b) of Regulation 3 of CEA (Grid Standards) Regulations, 2010 and amendments
thereof,
<table>
<tr><th>Operating Voltages</th><th>IEGC/CEA limits</th></tr>
<tr><td>765kV</td><td>728-800 kV</td></tr>
<tr><td>400kV</td><td>380-420 kV</td></tr>
<tr><td>220kV/ 230kV</td><td>198-245 kV</td></tr>
<tr><td>132kV</td><td>122-145 kV</td></tr>
<tr><td>110kV</td><td>99-121 kV</td></tr>
<tr><td>66kV</td><td>60-72 kV</td></tr>
<tr><td>33kV</td><td>30-36 kV</td></tr>
</table>
</td></tr>
</table>

2. *Concept of Volume Limits at State periphery has been done away as per CERC DSM Regulations, 2022. However, date of effectiveness of these Regulations and Procedures thereunder are yet to be notified. At present, Volume Limits at State periphery continue.*
3. *Revised to 200 MW for RE rich states (with installed RE > 1000 MW) as per CERC DSM Regulations, 2022. However, date of effectiveness and Procedures yet to be notified.*
4. *Ref. clause 4.2.2. and elaborated under Table-II Annexure-V for different types of line configurations employing various types of conductors as specified under CEA (Manual of transmission planning criteria), 2022*

5. *Ref. clause 4.2.4 of CEA (Manual of transmission planning criteria), 2022*

Above parameters shall be considered as operational parameters with boundary conditions for safe and reliable Grid operations and System operator (SLDC/ RLDC) shall make all efforts to evacuate the available solar and wind power to the maximum extent so long as grid parameters are within the above stipulated limits and shall not resort to RE curtailment.

However, in case of breach of any of the boundary conditions as outlined in respect of above grid parameters and if in the opinion of System Operator, the continued injection of variable RE power is likely to further worsen the situation to affect reliable and safe grid operations, System operator may instruct the solar /wind generator to back down generation on consideration of grid security or to ensure safety of any equipment or to ensure that no personnel is endangered and Solar/ wind generator shall comply with the same. In case of curtailment of solar/wind generation, the protocol as prescribed in clause(4) infra shall be followed".

Back down instruction is being issued to the conventional and RE generators for grid security purposes based on the grid security parameters mentioned Clause 3 vide table of the Model Guidelines issued by the Forum of Regulators (FOR).

4.3. As directed by the Commission, the relevant data with respect to the curtailment events in the Format mentioned in the Annexure-1 of the Model Guidelines issued by the Forum of Regulators (FOR) is furnished .

5. Reply on behalf of the petitioner to the Application filed by PEST :-

5.1. Seeking directions against the Respondents towards compensation for loss of revenue suffered due to rampant backing down instructions issued to the Petitioner. It is the case of the Petitioner that the said curtailment/backing down instructions were issued by Tamil Nadu State Load Despatch Centre ("**TNSLDC/Respondent No. 2**") and Tamil Nadu Transmission Corporation ("**TANTRANSCO/Respondent No. 3**") during the period from April, 2020 to January, 2022 in complete disregard to the statutory mandate, *inter alia* the 'Must Run' status accorded to Petitioner's Project, and owing to its own failure to discharge functions/obligations under Section 39 of the Act. Further, the said instructions have been issued arbitrarily and under the garb of grid security without any cogent reasons whatsoever.

5.2. As a consequence of the above, the Petitioner has been made to suffer a loss of 7102 MWH culminating into financial injury of Rs. 2,46,44,455/- (Rupees Two Crores Forty Six Lakhs Forty Four Thousand Four Hundred and Fifty Five Only). Hence, by way of present Petition, the Petitioner is seeking to be compensated for the said loss, along with carrying cost of Rs. 82,38,300/- (Eighty Two Lakhs Thirty Eight Thousand and Three Hundred Only).

5.3. The Commission, on 16.04.2024, after hearing detailed arguments across numerous dates was pleased to reserve the present Petition for Orders.

5.4. However, now after a lapse of 2 months, a party, namely the Power Engineers

Society of Tamil Nadu ("**PESOT/Applicant**") has filed IA No. 01 of 2024 ("**Impleadment Application**") seeking the following reliefs:

> *"15. PRAYER*
> *WE PRAY THE Hon'ble Commission that:*
> *i) To permit to implead in the petition as Respondent*
> *ii) To reopen the case for further arguments*
> *iii) To dispose the petition as not acceptable*
> *iv) To discourage such frivolous petitions in future, to impose hefty cost for wasting every one's time and energy."*

5.5. On 11.06.2024, the Impleadment Application was taken up for consideration by the Commission wherein detailed submissions were made by Petitioner contesting the prayers sought by PESOT. However, the Commission deemed it fit to direct the Petitioner to file a response to the maintainability of the Impleadment Application by 02.07.2024. Further, PESOT was also directed to supply a complete copy of the Impleadment Application to the Petitioner. The same has been made available to the Petitioner only on 19.06.2024, and accordingly, the instant Reply is being filed.

5.6. At the outset, each and every averment made in Impleadment Application is denied. Nothing contained herein shall be deemed to be an admission on the part of Petitioner unless specifically admitted.

5.7. For the convenience of the Commission, issue-wise response to the Impleadment Application is provided hereunder, followed by a response to individual paragraphs.

5.8. First and foremost, a preliminary review of the assertions made in the application

filed by PESOT clearly shows that it bears the characteristics of public interest litigation. Given that State Commissions such as the Commission, as established under Section 82 of the Act, lack the authority to adjudicate/entertain public interest litigation related to duties outlined in Sections 86(b) and 86(f) of the Act, and considering that the power to manage public interest litigation is exclusively vested in Constitutional Courts—namely the Hon'ble Supreme Court and the High Courts of various states. The Commission does not possess the jurisdiction to address the issues presented in the main petition.

5.9. The present proceedings are within the domain of jurisdiction exercised by the Commission under Section 86(1)(e) and (f) of the Act.

5.10. The said provisions provide for the functions to be discharged by the Commission, the power to adjudicate has been consciously restricted to only the disputes between licensees and the generating companies. Under Section 86(1)(f), the only parties which can approach the Commission are the generator, being the Petitioner, and the licensee. The legal position in this regard is also no more *res integra* in the light of plethora of decisions rendered by various forums.

5.11. The PESOT has no *locus* to approach the Commission seeking impleadment in present proceedings. In fact, PESOT is neither a proper nor a necessary party in the present case.

5.12. By nature, the present proceedings so not constitute as a public interest litigation, and only relate to grievance of the Petitioner pertaining to the financial loss that it has been

made to suffer due to rampant and arbitrary backing down instructions issued by TANTRANSCO at the behest of TNSLDC. It is the case of the Petitioner, that the said curtailment instructions have been issued under the garb of grid security in contravention of the statutory mandate and solely due to Respondents' own failure to discharge their mandatory statutory obligations.

5.13. Even the Respondents in the present proceedings have failed to justify the circumstances warranting the issuance of the curtailment/backing down instructions to the Petitioner. The detailed submissions made by Petitioner in the pleadings on record before the Commission are relied upon in this regard.

5.14. Even otherwise, "person aggrieved" is not simply one who is disappointed, but rather one who has endured a legal injury. Additionally, the expansive concept of *locus standi* associated with public interest litigation should not be extended to determine the right of appeal under a specific statute. Such rights should be assessed within the confines of the statute itself, not in isolation. PESOT has not directly experienced a legal injury in this case and therefore cannot be considered an aggrieved person. The only plea taken by PESOT is that it possesses standing as a member of the public served by TANGEDCO and claims that any financial damages suffered by Respondents affect the public at large.

5.15. Moreover, the PESOT's claim to *locus standi*, based on being a member of the public served by TANGEDCO, is tenuous. The matter at hand concerns compensation for deemed generation and not tariff fixation, which might merit broader public involvement.

Such involvement is typically confined to consumer-specific issues, like retail tariff fixation, where consumer participation is directly relevant.

5.16. If the contentions raised by PESOT under the Impleadment Application are taken to be correct, it would imply that in any proceeding, irrespective of its nature, it would be open for any third party to be impleaded claiming that any financial impact of the outcome of such proceedings would fall upon them. Such a scenario would not only lead to unnecessary multiplicity of proceedings, but would also preclude any generator or any party from claiming lawful relief, in its favour, including compensation against loss wrongfully suffered, as the same would be susceptible to challenge by parties such as PESOT claiming to be burdened by end effect of the same. Considering PESOT's stand, it is implied that the concept of 'deemed generation' ought not to exist.

5.17. Even otherwise, PESOT does not have a direct and substantial interest in the matter at hand. The relief sought by PESOT do not stem from any legal right or obligation affected by the outcome of the case.

5.18. In fact, the Commission, recently in a similar matter *vide* order dated 09.05.2024, wherein PESOT was only involved, held that only a generator or licensee has *locus* to approach the Commission upon a dispute having arisen and further emphasized that allowing any other person or entity to intervene in such disputes would undermine the integrity of Sections 86(1)(f) and 86(1)(b) of the Act. The Commission further observed that to entertain the proceedings set in motion by an association which is remotely associated

with dispute resolution postulated under Section 86(1)(f) of the Act which deals with the power procurement process would defeat the very object of the Electricity Act, 2003.

5.19. Without prejudice to the above, it is submitted that the conduct depicted by PESOT under the Impleadment Application cannot be ignored at all as it reeks of collusion, a hand in glove approach, contravenes the basic concept of confidentiality as well as casts aspersions on source of information relied upon by PESOT in support of the Impleadment Application.

5.20. To elaborate upon the above submission, the Petitioner invites the attention of the Commission to the following extracts of the Impleadment Application:

> *"**COUNTER TO THE PETITION***
>
> *7. i) The prayer of the petitioner no soul or life.*
>
> *ii) Any generator connected to the GRID, under custody of the SLDC/RLDC and in this case under SLDC.*
>
> *iii) The primary eligibility of any generator to get connected with GRID is forecasting its generation in a day ahead, and be scheduled of their generation in all the time blocks with the concurrence of the SLDC.*
>
> *iv) Without forecasting and scheduling with SLDC, the injection of power by any generator be treated as unauthorised injection and attract penalty as per law.*
>
> *……..*
>
> *9. The petitioner integrated into the GRID in accordance to the a) Indian Electricity Grid Code, b) TNERC Grid Code, c) DSM regulation, d) open access regulations. These regulations are technical operating system to connect a generator to the Grid. Commercial claims of the generator are termed in PPA/EPA, concurrence to the technical operating system. **The so called "deemed Generation" should have a term in the PPA/EPA to authorise make this claim. But there is <u>NO</u> such terms of agreement for***

payment of deemed generation.

As the petitioner admits, agreements are sacrosanct. We also agree to this point. Therefore, the petitioner has no legal right to claim the deemed generation cost, as prayer by the Petitioner.

10. The term under PPA clause 3(L) reads as follows; "Grid availability shall be subjected to the restriction and control as per the orders of the SLDC consistent with provisions of the Electricity Act, and regulations made there under.

…..

13. The references of the petitioner are analysed to its true senses.

…..

iii) ***The Office Memoranda (OM) dated 1/4/2020 & 4/4/2020***

OM has no statutory value. They are intended for internal correspondence of the department. Constitution 13(3)(a) defines "LAW" and OM is not law.

iv) ***Must Run Rule GSR (E) 752 dated 22/10/2022***

the sub clauses (4), (5), (6), (7) under rule 3 amply mandate scheduling for the claim.

v) PPA is sacrosanct, no doubt. But claims beyond its term are unlawful and not acceptable. PPA does not speak about deemed generation. There is no steam in the claim*.*

….

The petition made out no case but established itself as a violator of regulation."

5.21. Upon a perusal of the above reproduced extracts, it arises for the kind consideration of the Commission that PESOT has replied to and has raised contentions in respect of specific contents and documents of the present Petition.

5.22. The submissions made and the documents relied upon by the Petitioner in the present Petition are only available to the parties to the proceedings apart from this Hon'ble Commission. It deserves to be appreciated that the same are not in public domain to be relied upon or analysed by the general public or any party claiming to be stakeholder in

present proceedings. PPA is not only a legally binding document, but it also contains sensitive and proprietary information, must be protected from unwarranted and in fact, unlawful access and scrutiny. PESOT being a third party and having no *locus standi*, should not have had access to these agreements, let alone the ability to quote and rely upon the contents thereof.

5.23. Under such circumstances, PESOT must be put to strict proof in respect of its source of information concerning the specific submissions made and documents relied upon in the present Petition. Needless to mention here, PESOT has not pleaded or placed on record any document to show that it has obtained a copy of the present Petition by any means. Hence, it is most respectfully submitted that prior to this Hon'ble Commission proceeding with the Impleadment Application, PESOT ought to discharge this burden of proof.

5.24. Without prejudice to the above submissions, the para-wise reply to the Impleadment Application is as under:

5.25. The contents of paragraphs 1-2 do not warrant any response by the Petitioner.

5.26. The contents of paragraph 3 are a matter of record. However, without admitting the contents, it deserves to be pointed out that the present Petition was being continuously listed before the Commission for proceedings, however, for no justified reason PESOT did not take any step till 30.05.2024 for approaching the Commission. Paragraph 3 of the Impleadment Application does not set out any grievance of PESOT with the present proceedings, which would justify the filing of the Impleadment Application. In fact, there is

no justification set out in either the para under reply or the Impleadment Application as to why PESOT has approached the Commission at such a belated stage, i.e., after a lapse of 2 months after the Commission has reserved Orders in present Petition after detailed hearing. If the stand of PESOT is taken at its face value, it appears that merely by reading the prayer sought under present Petition, as recorded in the cause list dated 16.04.2024, PESOT has taken steps to be impleaded in the present proceedings, which cannot constitute a lawful basis for allowing the Impleadment Application.

5.27. The alleged response dated 12.01.2024 to RTI query of PESOT by TNSLDC/TANTRANSCO is of any relevance for impleadment of PESOT in present proceedings. It is further specifically denied that the said response is relevant for the adjudication of issues raised in present Petition. In this regard, it is submitted that admittedly, the response to the RTI query showcases the position in respect of scheduling by wind and solar generators as on 12.01.2024. This itself is beyond the period which is the subject matter of present Petition, being from April, 2020 till January, 2022. It is not the case of PESOT that during the said period, i.e., from April, 2020 till January, 2022, the Petitioner was not scheduling power. Any contention pertaining to a period beyond the said period is beyond the scope of the present proceedings. Thus, the Impleadment Application deserves to be rejected on this ground itself. Without prejudice, it is submitted that a perusal of the RTI response dated 12.01.2024 placed on record by PESOT reveals that the same is vague, and not specifically dealing with the Petitioner. The said response does not indicate

any non-compliance on the part of the Petitioner and merely puts forth the requirements in terms of the regulations notified by the Commission, being the appointment of Qualified Co-ordinating Agency by the wind and solar generators for the purpose of scheduling power. In fact even taking the contents of the said RTI response at its face value, PESOT must be put to strict proof as to why it did not take any step from January, 2024 till May, 2024 to approach the Commission agitating the said aspect. The contents of Preliminary Objections and Submissions are relied upon for detailed response to this para.

5.28. The prayer sought by Petitioner under the present Petition is frivolous, arbitrary and unsustainable and would result in tariff hike. It is further specifically denied that upholding the prayer sought by Petitioner would open the flood gate of numerous claims by solar and wind generators for 'deemed generation'. It is further specifically denied that there is any lawful basis under this para justifying impleadment of PESOT in present proceedings. In this regard, it is submitted that the Petitioner has been completely compliant with the applicable rules and regulations notified by Hon'ble Central Electricity Regulatory Commission as well as the Commission. At the cost of repetition, it is submitted that the case of Petitioner pertains to loss in revenue that it has been made to suffer due to unlawful and arbitrary curtailment instructions that came to be issued by TANTRANSCO at the behest of TNSLDC. The Respondents failed to discharge their statutory functions and have not provided any cogent reasons warranting issuance of curtailment instructions to the Petitioner, under the garb of grid security. It is beyond reasonable comprehension that

Petitioner seeking its legitimate claims would cause any financial prejudice to PESOT and if this position is allowed to subsist, the same would imply that no generator would be allowed to approach the Commission or any other forum agitating its claims as per law. The contents of Preliminary Objections and Submissions are relied upon for detailed response to the paras under reply. Further, PESOT is neither a necessary nor a proper party to be impleaded in the present proceedings and its presence is not required to adjudicate upon the issues raised herein.

5.29. The reasons set out in paragraph 6 the impleadment of PESOT in present proceedings can be allowed. It is reiterated that the present proceedings are not in the nature of tariff proceedings, and rather a dispute between the generator and licensee under the aegis of Section 86(1)(e) and (f) of the Act, and only the said parties can be allowed to approach the Commission under the said provision. person aggrieved" is not simply one who is disappointed, but rather one who has endured a legal injury. Additionally, the expansive concept of *locus standi* associated with public interest litigation should not be extended to determine the right of appeal under a specific statute. Such rights should be assessed within the confines of the statute itself, not in isolation. PESOT has not directly experienced a legal injury in this case and therefore cannot be considered an aggrieved person. Hence reliance on Regulation 16(1) of the TNERC (Conduct of Business) Regulations, 2004 as well as Section 94(3) of the Act by PESOT is misplaced. Further, the reliance placed by PESOT on decision rendered in M.P. 15 of 2020 is misconceived as the

said case is factually distinguishable. The said case was a tariff proceeding and not a proceeding under Section 86(1) of the Act.

5.30. The counter to the contents of the present Petition by PESOT is sustainable. It is reiterated that the source of information of PESOT to deal with and respond to specific contents of the present Petition is questionable and PESOT must be put to strict proof towards the same. The contents of Preliminary Objections and Submissions are relied upon in detailed response to this para.

5.31. There exists no logic in the contentions raised by the Petitioner in present Petition. It is further specifically denied that the claim of Petitioner is beyond the terms of the PPA and that Petitioner has no legal right to claim compensation for loss suffered in the instant case. The PESOT has proceeded on an incorrect basis that the generation of power by Petitioner for the period of 21 months was unscheduled, without any basis or cogent reasoning. PESOT must be put to strict proof towards specific contentions raised against the provisions of the PPA. 'Deemed Generation' as a concept already stands recognised by way of plethora of decisions passed by several forums, including the Hon'ble Appellate Tribunal for Electricity ("**Hon'ble Tribunal**"). In fact, the Forum of Regulators ("**FoR**") in terms of the Hon'ble Tribunal's Judgment dated 02.08.2021 passed in Appeal No. 197 of 2019 titled as *NSEFI vs. TNERC & Ors*. have formulated Forum of Regulators Guidelines, November, 2022 ("**FoR Guidelines**") specifically recognising the concept of 'Deemed Generation' as well as prescribing the methodology for computation of compensation in this regard. The

decisions of Hon'ble Tribunal as well as the mandate of FoR Guidelines are inconsistent and irrelevant if the stand of PESOT is taken to be correct. The contents of Preliminary Objections and Submissions are relied upon in detailed response to these paras.

5.32. Further, is a settled position of law that if a statutory authority fails to perform its statutory obligations and functions, the same makes it liable to pay compensation to the affected party. Therefore, the Respondents being a statutory body need to compensate the Petitioner for failure to perform their statutory obligations and functions.

5.33. The claim of Petitioner is not sustainable in terms of the provisions of the Indian Electricity Grid Code, 2010, and TNERC Grid Code, the OMs issued by MNRE, PPA as well as the Must Run Rules. It is submitted that the consistent scheme under grid codes has been to recognise renewable energy generation as Must Run and discourage curtailment against the same. The contents of Preliminary Objections and Submissions are relied upon in detailed response to these paras.

5.34. The reliefs sought by PESOT in this para are sustainable in law or in facts. It is further specifically denied that PESOT has made out any case in its favour to be impleaded in present proceedings. The contents of Preliminary Objections and Submissions as well as submissions made hereinabove are relied upon in detailed response to this para.

5.35. For reasons mentioned herein above, the Application filed by PESOT ought to be dismissed with heavy cost on PESOT. The Petitioner herein has confined its response to the maintainability of the Application filed by PESOT and reserves its right to file a detailed

reply if the Commission decides to implead PESOT.

6. Finding of the Commission:

6.1. We have heard the arguments and examined the documents furnished before us by the parties.

1. The petitioner has prayed to:

    a) Issue directions treating the loss of generation of 1985.52 MUs as computed by them from April 2020 till January 2022 on account of curtailment of power, as deemed generation.

    b) Direct Respondents to abide by the mandate of the Electricity Act, 2003, Regulations and policies to ensure 'Must-Run' status in letter and spirit.

    c) Direct TANGEDCO to make payment at EPA tariff Rs.2.47/kWh accounting to Rs.2,46,44,455/- towards loss of generation of 1985.52 MU.

    d) Direct TANGEDCO to make payment for the carrying cost accounting to Rs.82,38,300/-

6.2. Per Contra, the respondents contended that

a) Curtailment imposed on the petitioner's plants were on account of reasons of safeguarding the grid security as part of grid management in compliance with the

statutory stipulations of the Grid Code and as per the mandated responsibility entrusted to grid mangers by the Electricity Act 2003;

b) Such curtailment carried out for every block of every incident on real time basis to maintain the grid stability is supported by the corroborating factual documents showing the deviation of grid parameter at every instances warranting curtailment.

c) In view of the statutory responsibility of the respondents to safeguard the grid stability and the curtailment had to be resorted in the process following the breach of safe limit of grid parameters, the petitioner's arbitrary claim that curtailment was done for reasons other than grid security perspective is baseless and imaginary and hence the allied claim of monetary compensation is also not entitled for consideration.

6.3. The key issues to be decided:

a) Whether the first pleading of the petitioner in quantifying the loss of generation of 1985.52 MUs from April 2020 till January 2022 on account of curtailment of power and treating them as deemed generation is tenable?.

b) Whether the curtailment was imposed on the petitioner on grounds other than grid security perspective as claimed by petitioner?

c) If the answer for the second question is decided in the affirmative whether it would contemplate review on the decision of first question?

d) *If the answer for the above questions are decided in the affirmative whether the claim of payment for a quantum of Rs.2,46,44,455/- towards the purported loss of generation is sustainable?*

6.4. To seek answer for the first question, the documents furnished by petitioners relating to their claim of deemed generation were scrutinised. The document showed the event wise curtailment for the period in question and summarisation of cumulative duration of event wise curtailment. This apart, there is no concrete proof or supporting material furnished by the petitioner to substantiate their allegation that the disputed curtailment during the period as a whole is entitled to be accounted as deemed generation. Though the petitioner consistently maintained throughout their petition that the curtailment imposed on them were unlawful, no ex facie support documents or materials were placed before us to suggest that the back down instructions issued to them were liable to be termed as unlawful.

6.4.1. The statement of the petitioners such as *'TN SLDC / TANTRANSCO have miserably failed to discharge their statutory function/obligation'* , *'TN SLDC / TANTRANSCO under the guise of 'grid security' is imposing curtailment to purchase cheaper power from alternate source'* etc are also seen throughout the petition but not accompanied by relevant materials anywhere to substantiate such allegations.

6.5. The 2nd respondent in serious retaliation of the claim of the petitioner has contended that the averment of the petitioner that *"TNSLDC/TRANSCO under the guise of 'grid security' is imposing curtailment to purchase power from alternate sources*" is nothing but figment of imagination of the petitioner and hence denied in totality.

6.5.1. The senior counsel appearing for the respondents, while maintaining that allegation of petitioner regarding curtailment sis baseless, questioned the very maintainability of the claim of the petitioner on the deemed generation without showing the due materials to substantiate the claim. The senior counsel was categorical in his argument that entire pleading of the petitioner is based only on law but not on facts; The dispute in this case is not centred on question of law but on facts; The judgements of this Commission and Hon'ble APTEL relied by the petitioner cannot be made universally applicable to all incidents of curtailments as an automatic claim of deemed generation unless such claim is duly supported by basis, facts and supporting documents, he added. The senior counsel taking strong exception on the statement of the petitioner that *'TANGEDCO/TNSLDC/TANTRANSCO in the instant case have time and again acted hand in glove with the sole motive of crippling the petitioner's project one way or the other…'* questioned the wisdom of the petitioner in blindly levelling indiscriminate allegation on the State instrumentalities as crippling a generator, reiterated that the entire pleading of the petitioner is packed with such baseless allegations and assumptions and not on facts and materials; Whereas, the

answering respondents squarely take on and thwart the claim of the petitioner not on mere statements but on the strength of facts and materials through submission of transparent documents, he contended.

6.6. To proceed further on the question of deemed generation, it is relevant to refer Para 2 of the MNRE memorandum dated 04.10.20 relied by the petitioner to understand the applicability of the deemed generation for the plants granted with Must-Run status:

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

6.6.1. Going by the above memorandum, any curtailment would amount to deemed generation only when the curtailment is made for reasons other than grid safety. In other words, a curtailment cannot be automatically amounted to deemed generation unless it is established that such curtailment was done for reasons other than grid security.

6.6.2. The counsel appearing for the petitioner argued that it is for the respondents who have to furnish the materials for justification of the curtailment and it is the tribunal who has to decide on the materials so furnished whether or not the curtailment is lawful or otherwise. That being the sequence of process in this proceeding as advocated by the petitioner himself, without establishing or before deciding whether or

not the curtailments were done other than grid security reasons, the unilateral position preconceived by the petitioner, merely on assumption that entire curtailments for the period in question were unauthorised and terming it as deemed generation, and going further to the extent of quantifying the purported deemed generation can only be termed as untenable.

6.6.3. Added to this, the quantification of loss of generation claimed by the petitioner for each incident has not been explained either by base calculation with source data and factors involved in computation or demonstrated through a working sheet.

6.6.4. The unilateral claim of the deemed generation by the petitioner in the absence of clear demonstration on the nexus of allied factors and materials as discussed hereinabove gives rise to justification to render credence to the argument of respondents that the claim of the petitioner is advanced without facts and supporting materials, solely for the purpose of seeking compensation .

6.6.5. We are of the considered opinion that the question of legality of disputed curtailment is the foundation on which this entire case is built. When it is not decided on facts or adjudicated per se, the unilateral claim of the petitioner on deemed generation without basis and supporting materials is devoid of merit and substance.

6.7. In view of the above, we have to hold that the claim of the petitioner that *quantifying the loss of generation of 1985.52 MUs from April 2020 till January 2022 on account of*

curtailment of power and treating them as deemed generation is untenable and thus the first question is answered in the negative.

6.8. We now proceed to deal with the second question as to ' *whether the curtailment was imposed on the petitioner on grounds other than grid security perspective as claimed by petitioner?'*

Both parties place reliance of the same stipulations of IEGC 2010 and other relevant legal provisions in defence of their respective contentions. The petitioner has placed this Commission's order dated 25.03.2019 in M.P.16 of 2016 in which Commission has already 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 unless warranted by compelling circumstances of grid security. It is a settled matter by now that does not merit redundant review at the cost of repetition.

6.8.1. The petitioner further relied largely on the judgement of Hon'ble Tribunal dated 02.08.21 in the Appeal No. 197 of 2019, in support of their claim of both exemption from curtailment on account of must run status and entitlement of deemed generation on account of curtailment.

6.8.2. Per contra, the respondents have summarily objected that the contention of the petitioner rejecting that the claim of the petitioner as baseless and imaginary.

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 accumulation of each unit of under drawl at frequency above the stipulated limit would resultantly fall in the ambit of endangering the grid safety. The respondent would contend that the curtailment had to be done qua grid security as stipulated in the Grid Code and it is the mandated paramount responsibility of the grid manager to safeguard the grid safety as per the Electricity Act 2003. Given this responsibility of grid management and the statutory stipulations under which the grid is ought to be managed, the question of making good the losses of the petitioner by their baseless claim of deemed generation does not arise.

6.8.3. While the petitioner place volumes of laws, Regulations and legal provisions governing the above issue for their reliance on must run status , and the same being reiterated at length during argument, the respondents have not taken any exception over the entire documents of law advanced by the petitioner except a reservation over the crucial presence of a rider clause as centre stone in all laws, codes and regulations i.e. Grid Safety on which the respondents firmly stand and deliver.

6.8.4. Thus, there is no dispute in laws and regulations put forth by the parties. The crucial split in the entire dispute lies in the petitioner claiming unlawful denial of must-run status to them and respondents opposing the same on grounds of grid safety.

6.9. It is relevant to refer the deviation limit of grid parameters by the CERC (deviation settlement mechanism and related matters) regulation and the notified operating level of the grid frequency:

Operating level of grid frequency	49.90Hz – 50.05Hz
Deviation limits for states like TN where the installed capacity of wind and solar projects is more than 3000W	+/- 250 MW

6.9.1. Our reference is also drawn to the TN grid code and IE grid code that reads as follows;

TN grid Code:

"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".

IE grid Code:

"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.

Clause 5.4.2(a) – SLDC / SEB / distribution licensee and bulk consumer shall initiate action to restrict the drawl 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 drawl schedule shall be priced through the Deviation Settlement Mechanism as specified by the Central commission from time to time.

Clause 6.4.7 – The SLDC, SEB / distribution licensee shall always restrict the net drawl of the state from the grid within the drawl schedules keeping the deviations from the schedule within the limits specified in the Deviation Settlement Mechanism Regulations."

6.9.2. We also take note of the statement of the respondent that

"If there is a necessity to reduce generation to maintain the grid security parameters within the permissible limits, back down instructions are being issued to conventional generators up to their technical minimum according to merit order stake. Even after backed down the maximum possible conventional generation, the grid security parameter is still persisting beyond the stipulated limit, curtailment of RE power is being carried out to come down the same within the stipulated limits to maintain grid discipline & grid security in the interest of public."

6.10. In support of the above statement, the SLDC have furnished the day wise data for the entire period under dispute accompanied with the real time system parameters that are crucial to decide the issue. Besides the frequency and volume deviation at real time operation which are the criteria for grid safety, the back down quantum of own thermal stations and CGS thermal stations, corresponding curtailment duration as furnished by the petitioner on post facto scenario have been furnished by the SLDC in reconciliation of mutual data of petitioner and respondents for each incident of curtailment. The data are also accompanied by the communication of violation message received by the SLDC from the Southern Regional Load Despatch Centre and the subsequent communication sent by SLDC to the petitioner indicating the reason and quantum of curtailment.

6.11. On careful scrutiny of the factual data and documents , it is noticed that all incidents of curtailments during the period of dispute have taken place either at breach of frequency band limit or at breach of volume deviation limit or both, from grid security perspective. We also take careful note of the submission of the respondents that back down instructions are being issued to conventional generators up to their technical minimum and surrendering the CGS power according to merit order stake and even after backed down the maximum possible conventional generation and surrendering the CGS power, the grid security parameter is still persisting beyond the stipulated limit, curtailment of RE power is being carried out. We are reasonably convinced by the transparent data submitted by them in line

with the contention of the respondents for every instant wise curtailment for the entire period in dispute.

6.11.1. The load crash referred during the period in question is directly impacted by Covid which played havoc in all sectors of business not only in Tamil Nadu, but all over the world resulting a cascade effect on reduction of quantum of overall generation in power sector. Hardly few were spared from suffering loss in such situation of international calamity including the petitioners and respondents and the substantial under drawl below the schedule during the period is largely attributable to the total shutdown of the commercial and industrial establishments. Under the circumstances, the respondent is also not bound to be warranted to run the thermal units above the technical minimum all the time irrespective of the changing grid parameters. The materials produced by the respondents indicating the simultaneous curtailment of thermal power from own sources and surrendering of CGS, corroborate the given circumstances of unprecedented ground reality as well.

6.12. The instant wise statement with real time operation , post facto duration of curtailment as furnished by the petitioner vis a vis the crucial criteria of grid safety is compiled as follows:

<table>
<tr><th rowspan="2">Sl. No.</th><th rowspan="2">Date</th><th rowspan="2">Curtailment period as per petitioner.</th><th colspan="2">System Parameters</th><th rowspan="2">Real time period as per respondents.</th></tr>
<tr><th>Under drawl Limit in MW</th><th>Grid Frequency in Hz</th></tr>
<tr><td>1</td><td>22-Mar-20</td><td>13.29-13.41</td><td colspan="3" rowspan="4">Outage of the grid source feeding the petitioner's plant which does not come in the purview of curtailment.</td></tr>
<tr><td>2</td><td>04-Apr-20</td><td>12.59-13.11</td></tr>
<tr><td>3</td><td>05-Apr-20</td><td>14.46-15.06</td></tr>
<tr><td>4</td><td>08-Apr-20</td><td>06.45-10.00</td></tr>
<tr><td rowspan="2">5</td><td rowspan="2">10-Apr-20</td><td rowspan="2">11.04-18.10</td><td>-273</td><td>50.06</td><td>11:05 -18:00</td></tr>
<tr><td>-399</td><td>50.08</td><td>10:10-15:30</td></tr>
<tr><td>6</td><td>11-Apr-20</td><td>11.45-15.08</td><td>-389</td><td>50.06</td><td>11:25-15:00</td></tr>
<tr><td>7</td><td>26-Apr-20</td><td>12.20-15.05</td><td>-389</td><td>50.06</td><td>11:45-15:55</td></tr>
<tr><td>8</td><td>29-Apr-20</td><td>11.35-12.35</td><td>-593</td><td>50.06</td><td>11:20-12:20</td></tr>
<tr><td>9</td><td>20-May-20</td><td>12.50-13.58</td><td>-200</td><td>50.04</td><td>12:30-13:50</td></tr>
<tr><td>10</td><td>07-Jun-20</td><td>11.05-14.30</td><td>-860</td><td>50.08</td><td>10:30-15:30</td></tr>
<tr><td>11</td><td>08-Jun-20</td><td>11:15 - 12:50</td><td>-457</td><td>50.08</td><td>11:00-12:35</td></tr>
<tr><td>12</td><td>11-Jun-20</td><td>10:12 - 15:24</td><td>-726</td><td>50.05</td><td>9:40-14:40</td></tr>
<tr><td>13</td><td>26-Jul-20</td><td>11.25-14.30</td><td>-445</td><td>50.08</td><td>10:55-14:10</td></tr>
<tr><td>14</td><td>07-Aug-20</td><td>10:02 - 15:00</td><td>-465</td><td>50</td><td>9:25-14:50</td></tr>
<tr><td>15</td><td>09-Aug-20</td><td>10.05-15.00</td><td>-542</td><td>50.02</td><td>9:45-14:45</td></tr>
<tr><td>16</td><td>10-Aug-20</td><td>09.30-15.00</td><td>-842</td><td>50.08</td><td>9:05-15:10</td></tr>
<tr><td rowspan="2">17</td><td rowspan="2">11-Aug-20</td><td rowspan="2">10:20-14:45</td><td>-411</td><td>50.06</td><td>10:10-12:00</td></tr>
<tr><td>-254</td><td>50.14</td><td>13:05-14:15</td></tr>
<tr><td>18</td><td>12-Aug-20</td><td>10:15- 15:00</td><td>-281</td><td>50.04</td><td>9:55-14:55</td></tr>
<tr><td>19</td><td>14-Aug-20</td><td>11:10- 14:45</td><td>-464</td><td>50.02</td><td>10:45-14:40</td></tr>
<tr><td>20</td><td>15-Aug-20</td><td>09.40-15.00</td><td>-453</td><td>50.06</td><td>9:30-14:45</td></tr>
<tr><td>21</td><td>16-Aug-20</td><td>08.50-16.00</td><td>-517</td><td>49.98</td><td>8:35-16:10</td></tr>
<tr><td>22</td><td>17-Aug-20</td><td>10:20- 15:00</td><td>-425</td><td>50.05</td><td>10:00-14:45</td></tr>
<tr><td>23</td><td>18-Aug-20</td><td>09.30-15.00</td><td>-680</td><td>50.02</td><td>9:05-15:25</td></tr>
<tr><td>24</td><td>23-Aug-20</td><td>11.05-16.00</td><td>-606</td><td>50.14</td><td>11:00-16:00</td></tr>
<tr><td>25</td><td>29-Aug-20</td><td>12.31-16.00</td><td>-351</td><td>50.03</td><td>12:30-14:25</td></tr>
<tr><td>26</td><td>30-Aug-20</td><td>08:42 - 10:31</td><td>-333</td><td>50.06</td><td>8:15-10:25</td></tr>
</table>

27	06-Sep-20	09.00-14.30	-551	50.04	8:50-14:10
28	07-Sep-20	08.42-10.31	-679	50.02	8:20-10:10
29	08-Sep-20	08:30 - 14:00	-265	50.05	8:15-12:55
30	10-Sep-20	09.54-15.00	-680	50.04	9:25-15:15
31	11-Sep-20	09.40-16.00	-499	50.03	8:50-15:35
			-550	50.03	9:50-16:05
32	12-Sep-20	10.05-15.00	-510	50.05	9:40-16:30
33	13-Sep-20	9.40-14.00	-581	50.05	9:20-13:40
35	14-Sep-20	8.40-14.00	-634	49.91	8:25-15:20
35	15-Sep-20	9.20-15.00	-810	50.05	9:00-14:50
36	16-Sep-20	9.40-14.00	-196	50.06	10:45-14:45
			-510	50.05	13:00-14:55
37	17-Sep-20	9.20-15.00	-514	50.04	9:15-15:55
38	18-Sep-20	9.45-15.00	-331	50.04	9:45-15:20
39	19-Sep-20	9.40-15.00	-520	50.05	9:10-14:45
40	20-Sep-20	9.15-15.00	-301	50.05	8:40-14:45
41	21-Sep-20	10.30-15.00	-332	50.06	10:20-15:55
42	22-Sep-20	9.50-15.00	-454	50.08	9:40-15:15
43	23-Sep-20	9.30-10.43	-482	50.05	9:21-10:37
44	25-Sep-20	11.00-12.00	-364	50.02	10:45-11:45
45	27-Sep-20	10.40-15.00	-534	50.06	10:40-14:30
46	28-Sep-20	9.00-10.03	-607	50.04	8:35-9:35
47	30-Sep-20	8.50-16.00	-776	50.05	8:30-15:35
48	01-Oct-20	9.20-16.00	-553	50.05	9:15-10:10
			-311	50.1	11:40-14:35
			-281	50.06	12:35-16:15
49	02-Oct-20	9.45-15.32	-153	50.14	9:35-15:50
50	03-Oct-20	8.22-16.00	-601	50.06	8:00-15:15
51	04-Oct-20	8.30-16.00	-804	49.94	8:10-16:30
			-378	50.08	10:15-16:30
52	05-Oct-20	9.36-10.10	-408	50.06	9:15-9:45
53	09-Oct-20	8.10-9.08	-908	49.99	7:45-9:00
54	11-Oct-20	9.10-17.00	-253	50.06	8:50-16:10
			-222	50.05	11:15-16:50
55	12-Oct-20	9.40-15.00	-376	50.04	9:00-13:41
			-139	50.05	10:05-15:10
56	13-Oct-20	9.20-14.30	-443	50.02	9:05-14:15

57	14-Oct-20	10.20-15.00	-572	50.06	10:10-14:30
58	15-Oct-20	11.40-14.20	-271	50.08	11:55-14:55
59	18-Oct-20	9.05-16.36	-512	50.05	8:45-16:30
60	14-Nov-20	11.00-14.00	-802	49.97	10:40-13:45
61	25-Nov-20	13.20-16.30	-376	50.11	13:00-16:45
62	26-Nov-20	10.00-16.00	-390	50.04	09:38-16:00
63	06-Dec-20	13.01-15.00	-509	50.03	13:05-17:20
64	12-Dec-20	9.15-10.20	-406	50.08	9:05-10:10
65	15-Dec-20	10.15-11.10	-435	50.05	9:50-11:00
66	20-Dec-20	10.50-15.00	-701	50.05	10:31-16:30
68	25-Dec-20	9.10-9.54	-339	50.1	9:15-9:55
68	26-Dec-20	13.13-16.00	-106	50.09	13:00-16:28
69	27-Dec-20	16.40-17.45	-570	50.02	16:12-17:42
70	06-Jan-21	13.05-14.40	-366	50.21	13:00-14:30
71	07-Jan-21	10.50-16.00	-252	50.06	10:43-14:37
72	14-Jan-21	11.50-16.00	-250	50.1	11:41-17:33
73	16-Jan-21	12.10-16.00	-133	50.06	12:15-13:45
74	17-Jan-21	10.05-17.00	-395	50.05	9:55-10:40
			-447	50.05	11:40-16:00
75	18-Jan-21	11.20-11.55	-250	50.04	10:44-11:25
76	19-Jan-21	14.15-15.55	-473	50.12	13:55-16:30
77	24-Jan-21	9.25-10.36	-430	50.06	9:13-10:20
78	25-Jan-21	9.15-10.35	-403	50.15	9:02-10:20
79	26-Jan-21	9.00-10.35	-462	50.05	8:52-10:30
80	31-Jan-21	9.10-10.38	-536	50.09	8:56-10:31
81	01-Feb-21	9.05-10.10	-411	50.05	8:47-10:05
82	07-Feb-21	9.25-17.00	-309	50.09	9:10-16:41
83	10-Feb-21	13.45-14.05	-284	50.05	13:15-13:55
84	14-Feb-21	8.25-16.40	-500	50.1	8:30-9:30
		13.22-14.19	-365	50.04	13:20-16:30
		14.20-15.14	-323	50.06	14:38-16:35
		15.15-16.40	-240	50.08	15:20-16:35
85	20-Feb-21	9.50-10.30	-400	50.13	9:46-10:29
		14.10-17.10	-444	50.09	14:00-16:55
86	21-Feb-21	7.55-14.10	-762	50.01	7:45-15:55
87	24-Feb-21	13.25-13.56	124	50.05	12:40-13:29
88	28-Feb-21	8.36-9.08	-453	50.1	8:02-9:02
		14.10-17.27	-167	50.14	14:02-17:21
89	02-Mar-21	8.58-16.00	-350	50.12	9:10-10:35

90	03-Mar-21	9.50-11.15	-576	50.09	10:10-10:30
		13.20-15.10	-560	50.06	13:32-16:15
		15.11-16.06	-551	49.92	15:10-17:10
		16.07-17.30	-600	50.01	16:10-17:10
91	04-Mar-21	8.28-9.45	-555	50.06	8:17-10:31
		13.15-14.09	-417	50.1	13:00-16:47
		14.10-16.50	-424	50.07	14:03-16:47
92	05-Mar-21	9.16-10.00	-784	50.07	8:32-9:40
93	07-Mar-21	8.25-9.45	-569	50.09	8:00-9:18
		12.40-14.09	-590	50.05	12:35-15:20
		14.10-15.58	-424	50.08	14:01-15:50
94	12-Mar-21	11.25-15.57	-591	50.05	11:17-15:00
95	14-Mar-21	8.35-9.17	-360	50.08	8:08-10:08
		9.18-17.18	-137	50.05	9:00-16:45
96	29-Mar-21	9.18-11.55	-1061	50.07	9:25-9:45
			-452	50.06	11:47-12:38
97	31-Mar-21	8.55-9.46	-676	50.05	7:55-9:39
98	06-Apr-21	9.04-12.19	-973	50.05	8:45-15:55
99	13-Apr-21	11.20-12.32	-463	50.06	11:59-16:15
			-555	50.06	11:17-13:37
100	11-May-21	9.17-11.52	-763	49.95	9:25-11:50
101	15-May-21	11.20-14.30	-683	50.05	10:30-12:20
			-807	50.05	11:00-12:30
			-806	50.04	11:20-12:30
102	16-May-21	10.56-16.00	-446	50.05	10:35-15:50
103	20-May-21	7.56-15.42	-357	50.09	7:20-15:30
104	21-May-21	11.41-16.30	-309	50	11:30-16:20
105	23-May-21	9.15-13.03	-517	50.19	9:00-12:50
106	24-May-21	9.00-10.34	-603	50.05	8:50-10:25
		10.35-15.14	-567	50.04	10:25-14:20
107	25-May-21	8.30-10.55 & 10.56-15.00	-544	50.05	8:02-14:00
108	26-May-21	8.10-12.57	-596	50.09	7:50-12:27
		13.28-15.40	-502	50.14	13:02-15:35
109	27-May-21	7.22-10.40	-501	50.05	7:20-14:00
		10.41-14.58	-760	50.05	10:31-14:40
110	06-Jun-21	8.10-9.29	-417	50.04	7:31-9:20
		10.20-11.31	-574	50.06	10:01-14:50
		11.32-15.42	-429	50.05	11:15-15:35

111	13-Jun-21	8.55-16.05	-420	50.05	8:40-16:00
112	19-Jun-21	9.45-13.47	-992	50.03	9:35-13:35
113	24-Jun-21	11.32-14.34	-879	50.06	11:00-14:30
114	04-Jul-21	14.00-14.57	-1100	50.12	13:35-14:50
115	05-Jul-21	11.00-14.15	-778	50.05	10:50-14:10
116	11-Jul-21	8.45-15.50	-20.17	50.06	8:31-15:45
117	25-Jul-21	8.45-11.58	-1096	50.02	8:45-11:50
118	04-Nov-21	12.15-15.40	-824	50.05	11:24-12:10
		12.41-13.30	-632	50.07	12:10-13:10
		13.31-16.00	-957	50.07	13:10-17:00
119	05-Nov-21	12.02-15.20	-604	50.07	11:46-15:20
120	10-Nov-21	10.10.11.12	-895	50.08	9:55-11:10
121	15-Jan-22	13.20-13.40	-471	50.11	12:59-13:25
122	16-Jan-22	11.45-15.25	-683	50.01	11:35-15:13

6.13. Above table establishes the instant wise breach of grid safety limit contemplating core answer to the crux issue for rationale conclusion. Another aspect needs to be discussed at this point in supplementation to the dynamic nature of grid parameters. Having not proved their claim with facts and materials, the petitioner sought to make queries in the real time grid parameters demonstrated by the respondents by questioning the pattern of behaviour of grid frequency in a given duration of curtailment. It is our considered opinion that in overall fact finding exercise of the issue on hand, it is important to fit in to the shoe of a grid manager’s crucial role to understand the real time scenario where instant decision has to be taken by them on witnessing the moving demand coupled with fluctuating frequency in the paramount interest of grid safety, which the Grid Code aims at.

6.13.1. It is in this context, Section 2(54) of the Electricity Act, 2003 places special emphasis to understand the real time operation of the Load Despatch Centre as below:

" real time operation" means action to be taken at a given time at which information about the electricity system is made available to the concerned Load Despatch Centre.

6.13.2. It is equally relevant to refer the section 33 of the Electricity Act,2003 at this point:

"Section 33:

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

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

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

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

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

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

6.13.3. Conjoint reading of the above mandate would explain that the SLDC is responsible to give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and such operations are of real time nature which is selectively defined for SLDC by the Act. When the ever watchful grid operator is alerted in real time operation when likelihood of breach of frequency (49.9 Hz to 50Hz) or deviation (-250 or + 250 MW), the damage control measure is bound to be prompted by way of curtailment. Such curtailment needs to be sustained as long as the grid parameters hover above the safe limits. The frequency is bound to fluctuate in tune with dynamic load pattern highly influenced by the infirm RE power and as long it is not settled back within the safe limits, the curtailment is required to be in place. In final analysis, the grid code mandate and must - run norm need a balancing act to fulfil both requirements in tandem. The query of the petitioner on frequency is further answered by the averment of the petitioner that ' *if the SLDC does not control the grid parameters, then violation message is issued by the SRLDC (POSOCO- Power System Operation Corporation*

Limited) to control the above parameters. In the violation messages, POSOCO has directed to control the under drawl within the specified limit, citing IEGC Clauses 5.4.2(a), 5.4.2(b), 6.4.6, 6.4.7,6.4.10, 6.4.12, with a comment to restore to schedule, stating as emergency condition of the grid (typed set Page no.116 to 127)'. Compliance to the direction of the SRLDC to the SLDC to restore to schedule to safely get away from the emergency condition of the grid can happen only when the bonafide curtailment is in place till the grid parameter are back to safe limits to enable SLDC resuming to original schedule.

6.13.4. With the above backdrop and the crucial parameters which are the criteria for the grid safety as tabled above, we are reasonably convinced that the contention of the respondents backed by facts and adequate materials that the curtailment had to be resorted only on statutory requirement of grid safety is acceptable and we find no resultant misfeasance or legal malice on the part of the respondents in this technical analysis.

6.14. In view of the above, the second question as to *Whether the curtailment was imposed on the petitioner on grounds other than grid security perspective as claimed by petitioner* is answered in the negative. As we are unable to accept the contention of the petitioner that the curtailment made by the respondents were unlawful, their allied pleading to treat the curtailment period for consideration of deemed generation is also answered in the negative.

6.15. In the light of the pleading of the petitioner to treat the curtailment period as deemed generation being decided in negative, the decision already made for the first question in the initial part of this order stands reinforced. Accordingly the third question is answered.

6.16. In view of the conclusion arrived at by this Commission on points (a) to (c) this Commission decides that the petitioner is not entitled to any compensation on the count of deemed generation.

Accordingly the fourth question is decided against the petitioner

6.16. Our ruling in our earlier orders regarding mandated implementation of must run status of RE plants in letter and spirit remain reiterated. Situated thus, this Commission decides that the petitioner's prayer in regard to the Must-Run status of RE plants has to be necessarily allowed.

In the result, the petitioner's prayer in regard to Must-Run status of his RE plant is allowed. The petition with regard to other prayers is dismissed.

Parties to bear their respective costs.

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission