

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**  
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

**Petition No. 33 of 2023**  
**Date of Order: 03.01.2025**

Petition under section 86 of Electricity Act 2003 for setting aside the letter/ order dated 30.01.2023 passed by PSPCL imposing a recovery amounting to Rs. 3,02,82,726/- (i.e. Rs. 1,80,14,020/- as principal amount + Rs. 1,22,68,706/- as interest) on the Petitioner Generating company in violation of prevalent laws Rules and Regulations.

In the Matter of: Enterprise Business Solutions Private Limited, having its registered office at Village Sahiba, Block Saroya, Shahid Bhagat Singh Nagar, Punjab through Sh. Tajinder Pal Singh, Ahuja, General Manager.

....Petitioner

Versus

1. Punjab State Power Corporation Limited, through its Chairman-cum-Managing Director, the Mall, PSEB Head office, Patiala, Punjab 147001.
2. Chief Engineer (Power Purchase and Regulations), Punjab State Power Corporation Limited, Patiala, ISB Shed No. T, A-1, Thermal Designs, Patiala- Punjab-147001.

.....Respondents

Commission: Sh. Viswajeet Khanna, Chairperson  
Sh. Paramjeet Singh, Member

**ORDER**

1. The Petitioner has filed the present petition disputing the PSPCL's demand notice dated 30.01.2023 citing it to be based on an erroneous inspection report and in contravention of the PPA. The submissions made in the Petition are summarized as under:

1.1 That, the Petitioner has initially executed Power Purchase Agreements for Solar PV based Power plants of 5 MW with NTPC Vidyut Vyapar Nigam Limited and of 1.5 MW with IREDA. As per the agreements, these projects were to be completed and duly commissioned within 12 months. However, by the time the Petitioner completed the installation of capacity upto 2 MW and Piles & Structural work for remaining 4.5 MW, unfortunately the dead line for completion passed and these PPAs got cancelled. Therefore, the Petitioner approached the Commission through a Petition No. 59 of 2012, which was allowed by the Commission vide Order dated 23.11.2012 directing PSPCL to sign the PPA with the Petitioner for supply of power from its 1.5 MW installed DC Capacity at an interim rate of Rs.5.67/kWh, subject to payment of arrears for power supply at the rates discovered through "Reverse bidding process" to be executed by PEDA. Accordingly, a PPA was signed with PSPCL on 09.01.2013 while the solar power plant of the Petitioner was synchronized with PSPCL's Grid on 07.12.2012. Subsequently, in compliance of Order dated 20.12.2013 passed by the Commission, an amended PPA dated 28.06.2016 was signed between both the parties for enhancing the tariff to Rs.8.247/kWh in place of Rs.5.67/kWh.

1.2 That, the Petitioner had divided its Solar plant into three blocks - Block A, Block B, and Block C for the convenience of operation and these blocks were clearly marked and defined at the plant site. Only Block A and Block B were connected to the control room for generating power corresponding to 1.5 MW installed capacity and the capacity of 0.5 MW remains unutilized from the

beginning in the shape of Block-C at the Petitioner's plant. Also, the Petitioner's plant was under constant supervision from the concerned authorities through SCADA system installed as per the instructions of Chief Engineer PP&R on 25.05.2018, and no violation of the PPA was ever found.

- 1.3 That, on 04.06.2021, an enforcement team of PSPCL conducted an inspection of the plant, wherein, the installed DC capacity of the solar power plant was shown as 1.7502 MW against the allowed capacity of 1.5 MW. Based on this report, PSPCL issued a default notice dated 11.08.2021 stating that the Petitioner had not complied with the clauses of the PPA. The Petitioner vide its reply dated 07.09.2021, explained that while there were some extra panels of 0.5 MW Capacity installed the reason was stated to be that the Modules situated in Block-C were not connected/ generating Power at all and that the inspection team had only counted Panels that too wrongly and did not check whether they were connected or not. However thereafter as a precaution the petitioner Company had totally removed the Modules from Block- C and had also repaired all the faulty modules, inverters etc. after this letter.
- 1.4 That, after more than a year of submission of reply by the Petitioner, PSPCL re-inspected the plant on 23.11.2022 and found that installed DC capacity of the plant was 1.24 MW. Based on its report dated 04.06.2021 i.e., after more than one and half years, PSPCL imposed a penalty of Rs.3,02,82,726/- on the Petitioner vide its letter/order dated 30.01.2023.
- 1.5 That the Petitioner gave a Legal notice dated 27.02.2023 in terms of Clause 16.1.0 of the PPA to resolve this dispute.

Whereon, a meeting took place on 15.03.2023 between the representatives of both sides, wherein, PSPCL supplied two documents pertaining to its generation data for the very first time. That it is imperative to highlight that the following errors render the report wholly unreliable and any action based on such report is grossly unjust and arbitrary:

- a) As per this report dated 04.06.2021, the inspecting team found the following Capacity of Wp modules in the solar power plant of the Petitioner Company, on the basis of which they calculated the installed DC Capacity of the Plant:

Rating (Wp)	Nos. of Modules	MW
225	1476	0.3321
230	972	0.22356
235	1242	0.29187
320	2766	0.88512
325	54	0.01755
Grand Total	6510	1.7502

Herein, the inspecting team has shown 2766 number of 320 Wp modules indicating 0.88512 MW of DC Capacity, whereas there were no 320 Wp modules installed in the Plant of the Petitioner Company. This fact could be verified from the next inspection report dated 23.11.2022, when the same team from PSPCL found that installed DC Capacity of the Plant is 1.24065 MW.

- b) As per the admission of the inspection team, a huge number of modules were found to be disconnected, faulty, lying idle and without Wp Capacity stickers. However, no detail of such modules is mentioned in their report.

- c) Had they conducted a video-graphed inspection, this error could have been avoided and the correct installed DC capacity of the plant would have been determined.
- d) It is also questionable as to what is the Standard Operating Procedure (SOP) for conducting these kind of inspections under the Electricity Act, 2003 or any other regulations or circular issued by PSPCL from time to time and whether it is simply enough to count the Watt Peak modules to calculate the capacity of the whole power plant or some kind of mechanical inspection should also have been done by the concerned inspecting team to check the installed DC Capacity of the plant, specifically when the inspecting team itself admits that a huge number of modules in each WP are not connected and they were faulty and lying idle in every Row and column.
- e) Also, the inspecting team did not inform the responsible technical person of the Petitioner's Company who could have assisted in verifying the facts, mentioned in the report or provided assistance during the inspection. Instead, only a non-technical caretaker, Mr. Ashok Kumar, was present during the inspection, he was merely 10<sup>th</sup> pass. The inspecting team handed over a copy of the inspection report to Mr. Ashok Kumar. He only signed the report as a token of receiving the report.
- 1.6 On the basis of such an erroneous report dated 04.06.2021, it could not be said that the Petitioner had violated any sub-provision of article 13.0.0 of the PPA. The material obligation of the Generating Company under the PPA was to supply regular

solar power to PSPCL. The Generating Company has neither failed or refused in any way to perform its obligations and nor has it increased its installed DC Capacity. PSPCL is now using this report to withhold the monthly payments for electricity produced by the solar plant of the Petitioner Company. PSPCL is not clearing the invoice for the months of November 2022 to January 2023 and also of February 2023 & March 2023.

1.7 It is therefore prayed that:

- a) The letter/order dated 30.01.2023 passed by PSPCL, whereby unjust and arbitrary recovery amounting to Rs.3,02,82,726/- (i.e. Rs.1,80,14,020/- as principal amount + Rs.1,22,68,706/- as interest) imposed on the petitioner may be set aside;
- b) Direction may be issued to PSPCL to clear the outstanding dues against Invoices for the months of November 2022 to March 2023 (which comes to Rs 31,58,607/-) and to clear the invoices issued by the Petitioner during the pendency of this petition.

2. The Petition was taken up for hearing on admission on 09.08.2023. After hearing the Ld. Counsel for the Petitioner, the Petition was admitted with directions to the Respondent PSPCL to file its reply within two weeks with a copy to the Petitioner who may file its rejoinder thereto, if any, within one week thereafter with a copy to PSPCL. In compliance, PSPCL filed its reply on 12.09.2023 and the Petitioner filed its rejoinder thereto on 09.10.2023. Subsequently, PSPCL also filed an additional affidavit on 02.11.2023 and the Petitioner filed a rejoinder thereto on 20.02.2024. Considering the submission/request of the Petitioner that PSPCL is not paying its

monthly bills for power supply and in the absence of payments the petitioner company is on the verge of closure, the Commission, vide interim Order dated 22.02.2024 ordered PSPCL to pay the amount of current bill(s) to the Petitioner for energy supplied corresponding to the capacity installed as per provisions of the PPA, pending the decision in this petition,.

### **3. PSPCL's Replies dated 12.09.2023 and 02.11.2023:**

Replies of the Respondent PSPCL are summarized as under:

3.1 That, in terms of the PPA, the liability of PSPCL is to purchase all the power generated from its '*1.5MW capacity*' project (with the contractual conditionality of the installed capacity) and pay the agreed tariff for the same. It follows as a natural corollary that if any energy was supplied by the Petitioner in violation of the installed capacity, PSPCL is not liable to make any additional (tariff) payment for the same.

3.2 Therefore, under clause 5.4.0 of the PPA, PSPCL has been vested with the right to designate from time to time, officers/officials for inspecting the Generation Facility of the project for the purpose of verifying the Petitioner's compliance with the PPA, including verification of the installed capacity of the project. Also, it is a matter of common knowledge that in a solar PV power plant, the installed capacity or the capacity is the summation of name plate ratings of all solar panels whereas the AC capacity is the summation of wattage from all inverters.

3.3 Accordingly, the plant was inspected on 4.6.2021 to check the installed capacity and it was found that the installed (DC) capacity of the project was 1.7502 MW which was in excess by

16.68% of the contracted capacity, which was a violation and a material breach of the PPA. Accordingly, on 11.8.2021, PSPCL issued a Default Notice to the Petitioner under Article 13.3.0 of the PPA as under:

*“iv. Compliance with the terms & conditions of the PPA is an express and mandatory Contractual obligation of your company and as per PPA, no tolerance is allowed on the capacity of the project.*

*v. Upon checking of your above said project by PSPCL on 04.06.2021, the installed DC capacity has been found 1.7502 MW which is in excess of allowable capacity by 16.68%. You are thus in violation of the express and mandatory contractual obligations and the same amounts to an Event of Default by you in terms of clause 13.1.0 of the PPA. Owing to such violation, PSPCL has been constrained to pay energy charges for un-authorized installed capacities i.e, capacity installed in excess of permissible capacity and the same are liable to be recoverable alongwith interest.*

*In view of the above, notice is hereby being issued to you under clause 13.3. 0 of the PPA to forthwith cure the above default by removing the excess installed DC capacity from your project. ... You must also explain as to why an amount proportionate to the energy supplied against excess installed capacity of your project should not be recovered from you from the date of commercial operation (COD) of your project including interest.”*

3.4 However, the Petitioner, vide its letter dated 7.9.2021, disputed the Inspection Report citing that it was not correct. It was stated that it had only connected 1.5 MW DC power for supplying power to the grid and that its project was under constant supervision through the SCADA system and as per its Report of 2018, the recorded capacity of the plant was not in violation of the PPA and the installed capacity stated therein. The Petitioner relied upon the SCADA Installation Report even when it was



aware that the SCADA has nothing to do with the actual installed DC capacity at the plant premises which can only be verified through physical checking. The SCADA system records only the real-time generation data indicating the AC power being injected into the system and not the installed DC capacity of the plant.

3.5 That, the Petitioner's project was inspected for the second time on 23.11.2022, wherein it was found that the installed DC capacity of the project was 1.24065 MW i.e., within the installed capacity agreed under the PPA. The default thus having been cured, the Petitioner was to refund the amounts claimed for the excess power injected till 22.11.2022 in violation of the PPA. Accordingly, PSPCL issued Demand Notice dated 30.1.2023 to the Petitioner stating as under:

*"You are well aware that as per PPA, as no tolerance is allowed on the capacity of the project to be installed. However, upon checking of your project by a team of PSPCL on 4.6.2021, the installed DC capacity was found to be 1.7502 MW which was in excess by 16.68% of the contracted capacity. Accordingly, a detailed report was prepared at site which was duly signed by the site in-charge of your generating plant (Copy of the Enforcement Checking Report is attached herewith for ready reference). ....*

*.....In response thereto, you, vide your Reply dated 7.9.2021, stated that the PSPCL checking team had counted all the solar panels installed at site and did not check the connected DC power of the running plant. Thereafter, PSPCL referred back the matter to the checking offices for comments on your contentions and in this regard, it was intimated that the checking team had taken into consideration only those modules which were in circuit. Further, it was intimated that in the plant's earmarked area there were a huge number of defective or idle modules which were not connected with the system and the same were not taken into consideration while counting by the checking team. Also, there were a number of prepared structures*

*outside of the plant's earmarked area, and the same were also not counted during checking.*

.....

*The installed DC Capacity of your solar plant was again checked by PSPCL team on 23.11.2022 and has been found 1.24065MW which is within limit (Copy of ECR attached). Therefore, the recovery of amount for supply of excess energy to PSPCL against un-authorized excess installed DC capacity from 7.12.2012 (COD of your project) upto 22.11.2022 shall be applicable and shall be carried out along with interest. The un-authorized energy supplied during this period is 2184312 KWh and the corresponding recoverable amount is Rs.1,80,14,020/- and interest amount is Rs.1,22,68,706/- (upto 04.01.2023) (Calculation Sheet attached)."*

Accordingly, PSPCL started deducting the above recoverable amount paid in excess to the Petitioner from its bills raised for the month of November 2022 onwards.

3.6 The contentions raised by the Petitioner are completely untenable and cannot be accepted inasmuch as,

- a) In so far as the first inspection and ECR dated 4.6.2021 is concerned, the checking of DC solar capacity along with the counting of modules was done in the presence of the Petitioner Company's representative Mr. Ashok Kumar and it was only after he agreed with the checking that the ECR was signed. During the first inspection of Block C, all the modules were found to be in circuit. However, in the second inspection dated 23.11.2022, the modules in Block C were found to be removed from the site and the installed DC capacity of the Petitioner's solar plant was found to be within the permissible limit.

- b) The team had inspected each and every module thoroughly and counted the capacity wise installed and in-circuit modules; the same were documented in the Reports. Further, due to the available technical data which supported the fact of installation of additional modules at the site, videography of the same was not deemed necessary.
- c) So far as the accounting error is concerned, PSPCL referred the matter back to the checking offices wherein it was intimated that the checking team had taken into consideration only those modules which were in circuit. Further, it was intimated that in the plant's earmarked area there were about 40-50 modules which were lying idle/out of circuit in the adjoining area of the control room and the same were not taken into consideration while counting by the checking team. Also, some of the modules at the plant were not labelled and therefore, based on their physical attributes and being installed alongside the modules having wattage of 325Wp, it was determined by Respondent that such unlabeled modules be also categorized as having the wattage of 325Wp. However, Mr. Ashok Kumar specifically mentioned that some of the modules were not of 325Wp but instead were of 320W capacity, and as such, to prevent any conflict, the unlabelled modules were treated as 320Wp by the Respondent PSPCL team as per the request of the representative of the Petitioner company.
- d) The Petitioner has stated in the present Petition that PSPCL did not inform any technical person of the Petitioner Company who could have assisted them in verifying the facts as mentioned in the Report during the first inspection and got

the Inspection Report signed by Mr. Ashok Kumar, who was a non-technical caretaker. In this regard, it is important to mention herein that even during the second inspection, the said Mr. Ashok Kumar, the “non-technical caretaker” as stated in the Petition, represented the Petitioner company and signed the Report; however, the Petitioner company seems to be satisfied with the second inspection but not with the first inspection, which clearly goes to show that the stand taken by the Petitioner that Mr. Ashok Kumar was not a competent person is only an afterthought.

3.7 That the power generated from the DC capacity installed in excess of the contractual limit does not come under the purchase obligations of PSPCL and as such, tariff recovered for the said energy is liable to be refunded by the Petitioner to PSPCL.

3.8 That the available generation data (i.e. power exported to PSPCL) for the period from FY 2018-19 to FY 2022-23 is tabulated as under:

Sl. No.	Period	Power exported (KWH)	Power exported (in MU)
1.	FY 2018-19	1918870	1.92
2.	FY 2019-20	1903060	1.90
3.	FY 2020-21	1919754	1.92
4.	FY 2021-22	1370316	1.37
5.	FY 2022-23	1115000	1.12

From the above generation data, it is understood that, in FY 2018-19, FY 2019-20 and FY 2020-21, the Petitioner was exporting 1.90 MU each year. However, after the inspection dated 04.06.2021 in FY 2021-22, the power exported to PSPCL decreased drastically to 1.37 MU i.e. a decrease of approximately 28.62%, which further decreased to 1.12 MU in

FY 2022-23. Thus, it is evident that till the time the first inspection was carried out by PSPCL, Block C was in circuit and it was only after the first inspection when the Block C was removed from the circuit that the power being exported to PSPCL decreased drastically.

3.9 That PSPCL has started deducting the amount paid in excess to the Petitioner from its monthly bills and has recovered an amount of Rs. 67,65,555/- from the bills raised for the months of Nov-2022 to Sept-2023.

#### **4. Rejoinders by Petitioner to PSPCL's replies:**

The Petitioner vide its rejoinders to PSPCL's replies, while reiterating the issues raised in the petition, further submitted as under:

4.1 The purpose behind the demarcation of plant into three blocks namely A, B and C was that block A and B are to work as operational blocks for generation of solar power for PSPCL as per PPA and Block C was to serve as backup for solar modules, panel, inverters etc for repair and maintenance of Block A and B.

4.2 That the whole case of the Petitioner is based upon the fact that the inspection team of PSPCL wrongly counted the solar panels/modules therefore their Calculation regarding the installed DC Capacity of plant is factually wrong and hence the recovery sought by PSPCL is patently wrong and is liable to be set-aside.

4.3 It is further pertinent to mention here that as per minutes of meeting held on 15.03.2023 between officials of PSPCL and Representative of the Petitioner Generating Company PSPCL inspecting team stated as under in Para 3 :

*“Para 3 - Some of the modules were not labelled, and it appeared that they were installed alongside other modules that had wattage of 325W. Based on their physical attributes, it was determined that the unlabelled modules were also 325W and should be categorized as such. Mr. Ashok expressed his displeasure by stating that some of the modules were not of 325W capacity but instead were of 320W. In order to prevent any conflict and lack of availability of labels on Modules, the unlabelled modules were treated as 320W as per the request of the representative.*

This statement by PSPCL makes it clear, that there were at least 2766 modules which were not labelled and deeming of all such the modules/Panels as of 320 Wp is a big blunder on part of the Inspecting team. The modules/ panels of missing sticker/ labels could be any WPs. It is further submitted that this very well tells about the technical qualification of the inspecting team and Mr. Ashok as well, who does not even know that there were no such modules ever installed in the plant and the Respondent PSPCL gave him the report and obtained his signatures without actually caring to ascertain whether he is an authorized person of the Petitioner company or some 10<sup>th</sup> pass caretaker. In fact Mr TPS Ahuja is the authorized person from very beginning of the Solar power plant in the year 2012. No effort was made by the inspecting team to call him on site. Rather, they took words of Mr. Ashok kumar, who is merely 10<sup>th</sup> pass and is a Non-technical caretaker of the plant, who does routine work of cleaning and informs the head office in Chennai in case of any fault in the plant.

- 4.4 The report submitted by the inspecting team is incomplete on one other count as it failed to mention the number of inverters

attached with the modules. Without the exact number of inverters, counting of modules only will not give the complete picture and to rely on this report is a failure on the part of PSPCL.

4.5 Another important issue is to ascertain the period of default, if any, on the part of the Petitioner:

a) PSPCL has sought to recover the amount for supply of alleged excess installed DC capacity from 07.12.2012 i.e. the COD of the project up to 22.11.2022, which is totally wrong and illegal. The inspection performed by the inspecting team of PSPCL denotes the capacity installed on that particular date of inspection i.e 04.06.2021. Accordingly, even if it is presumed that there is excess installed capacity in the Solar Power Plant of Generating company, it cannot be presumed that the said installed capacity was installed since the commissioning of the project. The date of the checking out could be used only prospectively and not retrospectively.

b) After issuing a Default Notice to the Petitioner on 11.08.2021 under clause 13.3.0, PSPCL issued the Demand Notice dated 30.01.2023 conveniently overlooking the provisions of clause 5.4.0 of the PPA under which it had invoked the right to designate from 'time to time' officers/officials for inspecting the Generation Facility of the project. Herein, the question that arises is that what could the term '**time to time**' mean. For this, we need to have a look at Clause-9 of the PPA. Though this clause talks about inspection of energy meters, it states that these inspections should be conducted within every 6 months. Therefore applying this analogy, which is

very much part of the PPA, the term 'time to time' under clause 5.4.0 as well means every 6 months. Another aspect in the above mentioned clause is the word 'SHALL' meaning there by that this is a mandatory provision but despite this PSPCL failed to perform its duty cast of on them under the PPA.

- c) Therefore, PSPCL cannot take benefit of its inaction as they did not carry out any inspection/ checking for last more than 10 years. It is a settled principle of law that all the provisions in an agreement have to be read harmoniously and conjointly. It is also presumed that each and every provision of the PPA, has been brought into the agreement with some purpose. Therefore PSPCL, before invoking clause 13.3.0 ought to have ensured compliance of clause 5.4.0 of the agreement as well, which mandated inspecting of the generating facility from time to time, which, as submitted by the petitioner, would mean a mandatory half yearly checking of the installed DC capacity of the plant. By not doing so, PSPCL cannot be allowed to take advantage of its own wrong and permitted to extend the period of default beyond the period of 6 months prior to the date of inspection.
- d) This Commission, in Petition No. 21 of 2023, titled "PN Energy Ltd Vs PSPCL", while considering a similar argument, has directed PSPCL to rework the recoverable amount so due and refund the excess amount deducted from the Petitioners bills along with the applicable late payment surcharge.



- 4.6 During the initial inspection conducted by the inspecting team of PSPCL, they neglected to furnish any data alongside their inspection report. Instead, all the data collected during the said inspection, or later on by PSPCL, was only provided to Petitioner during the meeting consequent to the statutory notice dated 27.02.2023 issued by the petitioner, rendering it inconsequential.
- 4.7 The details of deductions provided by PSPCL upto the month of September 2023 are correct and indeed, Rs 67,65,555/- is outstanding towards PSPCL for the energy supplied by the Petitioner. The Petitioner prays that PSPCL be directed to release this amount and further bills as well during the pendency of the present petition so that the petitioner can operate this solar power plant efficiently and effectively.
5. The Petition was taken-up for hearing on 14.11.2024. After hearing the parties, the Order was reserved with directions that the parties may file consolidated submissions within two weeks with a copy to each other. PSPCL and the Petitioner submitted their respective consolidated submissions on 03.12.2024 and 04.12.2024, mainly reiterating the earlier submissions. Wherein, PSPCL also clarified on the issue of the term 'RTC' mentioned in its checking report, as under:

*“19. The learned counsel of the petitioner during the arguments on hearing dated 14.11.2024 stated that in the checking report dated 04.06.2021, the time of the checking is mentioned as 11:02 hrs and the R.T.C is mentioned as 11:51 hrs. The learned counsel of the petitioner during the arguments assumed the meaning of R.T.C. as “Return to Centre”, and thus stated that whole checking was conducted in less than an hour. In this regard, it is submitted that the learned counsel of the petitioner has misinterpreted the R.T.C as Return to centre, while the actual meaning of R.T.C. is “Real Time Clock” of the energy meter..”*

## 6. Observations and Decision of the Commission

The Commission has examined the submissions, arguments thereon and written submissions thereof by the parties. The Commission observes that there is no dispute between the parties on the issue that, in terms of the PPA, the Petitioner's right to supply and PSPCL's obligation to accept/pay the tariff stipulated therein is subject to the limitation of the installed DC capacity of 1.5 MW. Herein, the issue for consideration is the Petitioner's plea that the PSPCL's demand/recovery notice is based on an erroneous inspection report dated 04.06.2021 and for the period in contravention of the provisions of the PPA. The Commission examines the same as under:

### 6.1 Issues raised w.r.t. the Inspection Report dated 04.06.2021:

#### a) Un-connected/Block-C Modules:

The Petitioner, while admitting to existence of extra panels/modules of 0.5 MW Capacities in Block-C but maintaining that they were not connected/generating power, has alleged that the PSPCL's inspection team had merely counted rows and columns considering all the solar panels/modules installed at site without checking whether they were connected or not.

On contra, PSPCL's contention is that its team had inspected each and every module thoroughly and determination of the installed DC solar capacity was carried out after considering only the in-circuit modules. It was stated that approx. 40-50 modules lying idle/out of circuit in the adjoining area of the control room were not taken into count and hence not

mentioned in the report. It was also submitted by PSPCL that, during the first inspection all the modules of Block-C were found in circuit, however the same were found to be removed from the site during the second inspection when the installed DC capacity of the Petitioner's solar plant was found to be within the permissible limit.

While the notice issued to the Petitioner by PSPCL dated 30.01.2023 mentions an excess DC capacity of 16.68%, the Commission notes that in the second inspection (i.e., after dismantling of modules from Block-C as per the Petitioner's own admission), the computed installed DC Capacity of the plant was found to be reduced to 1.24065 MW i.e., even below the permissible DC Capacity of 1.5 MW. This reduction in the installed capacity by about 0.50 MW between the two inspections is same as being claimed to be installed by the Petitioner in Block C. This reduction in capacity by 29.1% ( $1.7502 - 1.24065 = 0.50955$  MW) from that found in the 1<sup>st</sup> Inspection, is also reflected in the corresponding reduction of 28.27% in power injection by the Petitioner from an annual 1.90/1.92 MU in FY 2018-19 to FY 2020-21 to 1.37 MU in FY 2021-22 i.e, almost the same as the % age reduction in the installed capacity. The generation further decreased to 1.12 MU in FY 2022-23, indicating a continuous and substantial drop in the generation after the first inspection and the consequent and obvious removal of excess capacity by the generator. Thus, the Petitioner's plea that the panels/modules of 0.5 MW capacity installed in Block-C included by PSPCL in its report were not connected or generating power is contrary

to the data available on the record and hence is not sustained. Further, the Petitioner's reference to the SCADA System is also not of any help as it records only the real-time AC power generation data and not the installed DC capacity of the plant.

**b) Unlabelled Modules:**

The Petitioner's plea is that the consideration of 2766 unlabelled modules as of 320 Wp is erroneous as the modules of such capacity were never installed in the plant. On the contra, PSPCL's contention is that, although based on their physical attributes and being installed alongside the modules of 325Wp capacity, the unlabeled modules were required to be categorized as of 325Wp capacity, however on specific mentioning by the Petitioner's representative Mr. Ashok Kumar, these were counted as of 320Wp to prevent any conflict with the Petitioner company.

The Commission is of view that, in a contract based on the installed DC Capacity, it was the duty/obligation of the generating company to ensure proper up-keep of the labeling tag/strip of the installed modules. Further, modules of similar capacity/rating have similar physical attributes/dimensions and therefore modules of 200Wp series cannot be at all confused with that of 300Wp series. Herein, as per the Petitioner's own admission, the plant has installed only modules of 325Wp (i.e., of 300Wp series). Still PSPCL appears to have adopted a casual and perfunctory approach, purportedly on the insistence of the Petitioner's representative, in considering the unlabelled modules having

similar physical attributes/dimensions as of 325Wp capacity and also installed in rows of 325Wp modules to be of 320Wp capacity. Otherwise, computation of the installed capacity of the plant would have come out to be even higher. The analysis of the generation data of the Petitioner's plant also bears this out.

**c) Issue of the Petitioner's Representative:**

PSPCL's contention is that the checking of the installed solar DC capacity through physical counting of capacity wise modules was done in the presence of the same representative of the Petitioner on both occasions and both the reports have been signed and received by him. The Petitioner's plea is that the inspecting team did not inform the responsible technical person of the Petitioner's Company and instead the inspection was carried out in the presence of Mr Ashok who is only a 10<sup>th</sup> pass caretaker.

The Commission notes that both the Inspection reports have been signed by Mr Ashok (acknowledged as the plant's Caretaker) as the Petitioner's representative. The Commission finds no merit in the Petitioner Company's objection of him as its representative in the first inspection and contrarily acceptance during the second inspection. Moreover, such inspections have an element of surprise and are not required to be intimated in advance. The Commission also notes that the PSPCL's inspection team was present at site for almost the full day and the Petitioner's caretaker present at site was at liberty to call any other authorised representative(s) to the site if so required to assist/witness the

inspection. The onus of such internal procedure lies with the Petitioner and not with PSPCL which would naturally deal with the representative available on Site.

**d) Other Issues raised regarding the Inspection:**

- (i) As regard the Petitioner's plea that the report submitted by the inspecting team is incomplete as it failed to mention the number of inverters and faulty/idle modules, the Commission is of view that although their particulars could have also been mentioned in the report, however, not mentioning of the same does not render the inspection report as unacceptable, as it is the sum of the nominal DC rating (Wp) of the solar PV modules installed in the plant that is required for verification of the installed DC capacity (expressed as MWp) of a solar PV power station. Otherwise also, the generator would ordinarily keep/store any faulty/idle modules in stacks and not in a structured form.
- (ii) Further, the Petitioner's plea that had PSPCL conducted a video-graphed inspection, the correct installed DC capacity of the plant would have been determined within the permissible limit is also not convincing, since the Petitioner himself has been remiss in not maintaining proper labelling on the modules.

**6.2 Import-export data of the Petitioner's plant:**

The Petitioner's plea that the import export data of the plant was not provided by PSPCL for submission of its reply also cannot be accepted in view of the fact that the same data pertains to the

Petitioner's own plant, based on which it had been raising its monthly bills for supply of power. The Commission also notes that in its reply dated 19.02.2024 to PSPCL's affidavit containing the said data, the Petitioner has not disputed the same and has only stated that the same was not furnished alongside the inspection report and was provided later during its meeting with PSPCL.

### **6.3 The consideration of period of default:**

The Petitioners plea is that the inspection denotes the capacity installed at a particular time, accordingly, even if it is presumed that there is excess installed capacity, it cannot be assumed that the said capacity was installed since the commissioning of the project. The Petitioner's submission is that Article 5.4.0 of the PPA, under which PSPCL had invoked its right to inspect the Generation Facility of the project, when read with Article 9 of the PPA about inspection of energy meters, implies that such inspections shall be conducted within every 6 months. However as PSPCL did not carry out any inspection/ checking of the plant for the last more than 10 years, it cannot be allowed to take advantage of its own wrong/inaction and permitted to extend the period of default beyond the period of 6 months prior to the date of inspection, as already held by this Commission in a similar case of M/s PN Energy Ltd.

The Commission observes that Article 9 of the PPA, as also admitted by the Petitioner in its submission, pertains to the checking of energy meters. In fact, the Commission's observations in Petition No. 21 of 2023 as cited by the Petitioner were made in reference to PSPCL's reliance on Article 9.7 of the

PPA to justify the consideration of period of default in the said case.

However, that is not the case in the present petition. Herein, the generation data of the plant submitted by PSPCL, which has not been disputed by the Petitioner, indicates clearly that the Petitioner's plant was indeed injecting generation in excess of the permissible installed DC Capacity since FY 2018-19. As per the observation made under Para 6.1(a) above, the power injection by the Petitioner's plant got reduced from an annual 1.90/1.92 MU (in FY 2018-19 to FY 2020-21) to 1.37 MU in FY 2021-22 indicating a reduction of 28.27% i.e., almost the same as the % age reduction in the installed capacity. The generation from the plant decreased further to 1.12 MU in FY 2022-23, showing a continuous and substantial drop in the generation after inspection/removal of excess capacity by the generator, indicating clearly that the Petitioner's plant was indeed injecting generation in excess of the permissible installed DC Capacity since FY 2018-19.

The Commission notes that the default was found to be cured in the second inspection carried out by PSPCL after intimation/request made by the generator for its re-checking. Therefore, PSPCL cannot seek to extend the period of default beyond the date of intimation/request made by the generator for its re-checking.

**Accordingly, PSPCL will consider the period of default from FY 2018-19 to the date of intimation/request made by the generator for its re-checking and rework the recoverable**



**amount so due and refund the excess amount, if any, deducted from the Petitioner's bills.**

The petition is disposed of in light of the above analysis, observations and directions of the Commission.

Sd/-  
(Paramjeet Singh)  
Member

Sd/-  
(Viswajeet Khanna)  
Chairperson

Chandigarh  
Dated: **03.01.2025**

