

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

Petition No. 15 of 2020
Date of Hearing: 14.07.2022
Date of Order: 22.07.2022

Petition under Section 33 read with Section 86 of the Electricity Act 2003 and Regulation 14.1.6 of the Punjab State Electricity Regulatory Commission (Punjab State Grid Code) Regulations, 2013 challenging the arbitrary and unreasonable actions of Punjab State Load Dispatch Centre in refusing the availability declaration of by GVK Power (Goindwal Sahib) Limited for its 2 x 270 MW Thermal Power Plant and notifying the declared capacity as zero in the State Energy Account from 30.03.2020 till date.

AND

In the matter of: GVK Power Goindwal Sahib Limited, Plot No. 10, Paigah House, 156-159, Sardar Patel Road, Secunderabad - 500003

Versus

1. Punjab State Load Dispatch Centre, Through its Chief Engineer, SLDC Building near 220 KV Grid Station, PSTCL, Ablowal, Patiala –147 001, Punjab
2. Punjab State Power Corporation Limited, Through its CMD, PSEB Head Office, The Mall, Patiala (Punjab)

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

GVK: Sh. Vishrov Mukherjee, Advocate

PSPCL: Sh. Sakya Singha Chaudhary, Advocate
Sh. Rupinderjit Singh Randhawa, CE/ARR&TR

Sh. Ravi Luthra, SE/TR-2
Sh. Gurvinder Singh, Sr.Xen/TR-5
Sh. Baljinder Pal Singh AE/TR-5

PSLDC: Sh. Sehaj Bir Singh, Advocate

ORDER

1. GVK Power Goindwal Sahib Limited (GVK) has filed the present petition seeking to set-aside the instructions of Punjab State Load Dispatch Centre (PSLDC) dated 02.04.2020 to generators including GVK to discontinue their generating facility from PSPCL/PSTCL in terms of the respective PPAs and to direct the PSLDC to revise the State Energy Account (SEA) from 30.03.2020 thereby reflecting correct declared capacity/availability of the petitioner's project. GVK has submitted that:

- a) GVK has been supplying 540 MW power to PSPCL in terms of the Amended and Restated Power Purchase Agreement dated 26.05.2009 (PPA). However, on 29.03.2020, PSPCL issued a Notice citing lockdown imposed by the Governments due to the outbreak of Cobid-19 pandemic requesting GVK to not declare availability from its project, as PSPCL is not obliged under force majeure conditions to avail power declared available and pay capacity charges.
- b) On 01.04.2020, PSLDC issued an email to GVK stating that PSPCL had issued the Force majeure notice in terms of the PPA and therefore not giving any requirement since such date. Therefore, schedule of power is not being provided in the absence of any requirement from PSPCL and GVK should take up the matter with PSPCL. GVK was instructed to not declare DC till further restoration of power by PSPCL.

Further, on 02.04.2020, PSLDC issued a notice to generating companies including GVK to discontinue their generating facility immediately from PSPCL/PSTCL system till Covid-19 epidemic lasts as per the relevant clauses of PPAs.

- c) PSLDC actions are contrary to the provisions of the Punjab Grid Code and Electricity Act 2003. PSLDC's statutory duty under the Electricity Act and Grid Code is to optimally schedule power and dispatch of electricity in Punjab in accordance with the contracts entered into by the generating stations and the licensees. However, in the present case action of PSLDC amounts to adjudication of the rights of GVK and PSPCL under the PPA by accepting PSPCL's declaration of force majeure and treating GVK's DC as zero MW and effectively granting relief to PSPCL.
 - d) GVK disputed the notice/directions issued by PSPCL/PSLDC and subsequently also communicated its objections on the SEAs prepared by PSLDC in terms of Regulation 14.1.6 of Grid Code.
 - e) That PSLDC has been selective in its approach in revising the DC of generating companies to zero MW. PSLDC has discriminated against IPPs renewable, Biogas and co-generation projects including GVK in favour of PSPCL.
 - f) GVK has also disputed the declaration of force majeure by PSPCL reserving its right to take appropriate action with regard to the notices issued by PSPCL and has limited the present petition to PSLDC.
2. PSLDC and PSPCL filed their respective replies dated 10.08.2020 to the petition, justifying their actions and opposed

the admissibility of the petition. The petitioner in its rejoinder dated 02.09.2020 submitted that in terms of the prayers being sought, the legal issue to be adjudicated and decided by the Commission is 'whether PSLDC has the power to unilaterally revise the DC/Availability declared by a Thermal Power Plant on day-ahead basis and can direct IPPs such as GVK to not declare availability of the Project'.

3. The Commission vide Order dated 08.09.2020 observed that:

"The issues involved in the present petition are also the subject matter of adjudication before the Hon'ble Punjab & Haryana High Court in CWP No. 7519 of 2020 & CWP No. 7715 of 2020, though the parties are different. The Commission finds it appropriate to admit and then adjourn the matter sine – die and the same may be taken up after the decision of the Hon'ble High Court in the above noted Writ petitions. GVK is directed to approach the Commission accordingly."

4. The Hon'ble Punjab and Haryana High Court has disposed of the CWP No. 7519 of 2020 and 7715 of 2020 vide order dated 04.07.2022.

5. The petition was taken up for hearing. The Hon'ble Punjab and Haryana High Court has disposed of the CWP No. 7519 of 2020 and 7715 of 2020 vide order dated 04.07.2022 allowing the petitions, quashing the notices issued by PSPCL and the actions of PSLDC as a follow up consequence of the notices issued by PSPCL. It has further directed the Punjab State Load Dispatch Centre for appropriate remedial action in accordance with law, keeping in mind the relevant clauses of the PPA, the Electricity Act, 2003 and PSERC Regulations. The Ld. Counsel

for the petitioner submitted that the Hon'ble High Court has allowed the CWP No. 7519 of 2020 and 7715 of 2020 vide order dated 04.07.2022 and the issue involved in the present petition is duly covered under the Order dated 04.07.2022. The Ld. Counsel for the respondents have also acknowledged the Order passed by the Hon'ble High Court and has agreed that the issue decided upon by the High Court is the same as in the present petition. The Hon'ble Punjab and Haryana High Court has held as under in its Order dated 04.07.2022 in CWPs no. 7519 of 2020 and 7715 of 2020:-

"{77} in the light of aforesaid contractual position, the petitioners have absolute right to claim capacity charges in terms of Articles 4.3 and 4.4 of the Power Purchase Agreements. Force Majeure in terms of Article 12 of the Power Purchase Agreements, does not envisage such provision for non-payment of capacity charges. The parties cannot resile from their payment obligations on account of force majeure.

[78]. The action of PSLDC is found to be contrary to State Grid Code. Under Regulations 11.3.10, 11.3.12 and 11.3.13 of the Punjab Grid Code and Article 8.3 of the Power Purchase Agreements, the petitioners are duty bound to correctly declare their availability/declared capacity everyday corresponding to their capabilities to generate electricity. PSLDC in turn, is duty bound to consider the declared capacity and prepare the SEA accordingly. PSLDC cannot deviate from its statutory obligations in this regard.

[79]. Section 32 of the Electricity Act, 2003 has obligated Punjab State Load Dispatch Centre to discharge its statutory

functions being responsible for optimum scheduling and dispatch of electricity within a State, in accordance with the contracts entered into with the licensee so the generating companies operating in that State. Punjab State Load Dispatch Centre is an independent body and is not supposed to act on the instructions of PSPCL.

[80]. Regulation 14.1.6 of the Punjab State Electricity Regulatory Commission (Punjab State Grid Code) Regulations, 2013 specifies that Monthly State Energy Accounts for Punjab shall be prepared by SLDC by 7th of every month and shall be conveyed to all concerned for raising bills. Such energy accounts shall be subject to inspection/verification/checking and raising any objection within 15 days of date of issue. If no objection is raised, energy accounts shall be finalized. In case, any objection is raised, same shall be deliberated in Commercial and Metering Committee and finalized as per their decision. Supplementary bills/credit note shall be raised accordingly. In the aforesaid Regulation, Commercial and Metering Committee (CMC) is the designated authority to deliberate upon the issue and decide the same in case, objection is raised within the prescribed time.

[81]. For the reasons recorded hereinabove, I am of the considered opinion that Punjab State Load Dispatch Centre has not performed its legal obligation as per mandate of the Electricity Act, 2003, Power Purchase Agreements and Punjab State Electricity Regulatory Commission (Punjab State Grid Code) Regulations, 2013. The in action on behalf of Punjab State Load Dispatch Centre is liable to be deprecated. The impugned actions/notices are hereby quashed. However, Punjab State Load Dispatch Centre shall

proceed to act in accordance with defined duties/obligations under the Electricity Act, 2003, Power Purchase Agreements and Punjab State Electricity Regulatory Commission (Punjab State Grid Code) Regulations, 2013 in the context of scheduling the energy. In case of any objection in terms of Regulation 14.1.6 of the Punjab State Electricity Regulatory Commission (Punjab State Grid Code) Regulations, 2013, consequent action would follow.”

The petitioner has prayed for setting aside the instructions of PSLDC dated 02.04.2020 to discontinue generating facility from PSPCL/PSTCL and direct PSLDC to revise the SEA from 30.03.2020 and daily implemented DC in terms of the actual DC declared by GVK as well as PAFM and upload such SEA on its website. Keeping in view the Order dated 04.07.2022 passed by the Hon'ble High Court, the prayers in the present petition are allowed. The notice dated 02.04.2020 issued by the PSLDC under challenged here is quashed. The Punjab State Load Dispatch Centre shall proceed to act in accordance with defined duties/obligations under the Electricity Act, 2003, Power Purchase Agreements and Punjab State Electricity Regulatory Commission (Punjab State Grid Code) Regulations, 2013 in the context of scheduling the energy and shall revise the SEA appropriately in terms of this Order.

The petition is disposed of accordingly.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 22.07.2022