

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

SITE NO. 3, BLOCK B, SECTOR 18-A, MADHYA MARG, CHANDIGARH

Petition No. 41 of 2022

Date of Order: 06.02.2023

Petition under Section 86 (1) (f) of the Electricity Act, 2003 seeking adjudication of disputes between the petitioner and the respondent PSPCL herein in respect of the claims of the petitioner totaling Rs. 39,22,037/- alongwith interest and costs arising out of and in connection with the Power Purchase Agreements dated 20.11.2008 and 04.06.2009.

AND

In the matter of: Gill Acqua Hydro Power Generation Company Pvt. Ltd.
Registered office. Lane-3 Green Field Colony,
Anandpur Road, Distt. Pathankot, Punjab- 145001,
through its Director Sh.Vishal Malik, son of Sh. Bahal
Singh Malik, aged 55 years.

Petitioner

Vs.

Punjab State Power Corporation Limited. The Mall,
PSEB Head office, Patiala, Punjab- 147001, through its
Chairman-cum-Managing Director.

Respondent

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

Petitioner: Sh. Sarthak Gupta, Advocate

PSPCL: Ms. Suparna Srivastva, Advocate

ORDER

1. The Petitioner has two Power Purchase Agreements (PPAs) dated 20.11.2008 and 04.06.2009 with PSPCL in respect of its Small Hydro based Power Plants of 6.00 MW (MB-II) and 3.00 MW (MB-III) at Madhopur Beas Link, District Gurdarspur. The present petition has been filed for adjudication of its disputes pertaining mainly to the Energy Accounting/Metering, PSPCL's Curtailment/Force-Majeure Notice dated 30.03.2020 and Interest on delay in payments. The submissions made by the Petitioner are summarized as under:

1.1 Energy Accounting:

The clauses of both the PPAs are identical and both the aforesaid Plants i.e. MBL-II and MBL-III have a common Interconnection Point. As per the PPAs, the Petitioner is required to install meters at the Interconnection point (Main Meter) and at the Grid Substation of PSPCL (Check Meter). Further, Meter readings of the Main Meter are to form the basis of billing. However, in case of errors in the same or if the metering equipment become defective, the billing is to be done on the basis of Check Meters.

a) The Petitioner installed two meters at the Interconnection Point (called MM & CM) and a third meter at the Grid Sub-Station of PSPCL contractually referred to as the Check Meter (Contractual Check Meter). In addition, meters were also installed next to both the MBL-II and MBL-III Stations.

b) Since the commissioning of the plants, the meters were working without any defect. However, on 31.05.2019, a JMR was taken wherein a discrepancy between the readings of the Main Meter

and the Check Meter installed at the Interconnection Point was noticed. On further comparing the readings of the said two meters with the other installed meters, it was revealed that the Main Meter was not recording energy properly. That a Data Download (DDL) of the meters revealed that till 27.04.2019, the Main Meter was working properly and after that some error started coming in its readings. After duly enclosing the downloaded readings as well as the comparison sheet of the Main and Check Meters, the Petitioner requested PSPCL vide letter dated 01.06.2019 to get the meter checked from its Mobile Meter Testing Squad (MMTS) at the earliest and to permit the Petitioner to use the meter readings of the Check Meter for billing purpose.

- c) Thereafter, the meters were checked on 06.06.2019 by the MMTS team of PSPCL. However, since Meter Testing Equipment (MTE) was not available with the said team, they did a Data Download (DDL) of the readings from the meters. On downloading of data, it was found out that the readings of the Check Meter installed at the Plant Side (Interconnection Point) were matching with the readings of the Meter installed at the Grid (Contractual Check Meter). However, the readings of the Main Meter were not matching with the readings of the aforesaid Check Meters. On this basis, the MMTS team noted that the Main Meter was recording lesser generation of energy. It accordingly recommended immediate replacement of the said meter as well as its checking through ME Lab.
- d) On the basis of the said report, the Petitioner vide its letter dated 01.07.2019 requested PSPCL to consider the Check Meter for

billing purpose. Accordingly, PSPCL released payments to the Petitioner on the basis of invoices prepared on the basis of meter readings of the Check Meter. There was no dispute for about two years since June, 2019.

- e) In the meanwhile, since the MMTS team of PSPCL had vide report dated 12.06.2019 recommended replacement of the Main Meter, the Petitioner bought the same on 28.08.2020 for Rs. 99,120 and deposited the same with PSPCL on 01.09.2020 for testing from its ME Lab, after paying a fee of Rs. 2,950/-. The said meter is lying with PSPCL as of date and the same has not been installed.
- f) In February, 2021 the MMTS team of PSPCL, after roughly two years of its last visit in June 2019, visited the project site for the checking of the installed meters. Surprisingly, both the Main Meter and the Check Meter were found to be working satisfactorily. PSPCL informed the Petitioner vide its letter dated 17.03.2021 that since the Main Meter had been found to be correct vide the MMTS report dated 22.02.2021, the billing from June 2019 to January 2021 was required to be revised, as per which, an amount of Rs. 9,10,582 was recoverable from the Petitioner.
- g) The Petitioner replied vide letter dated 19.03.2021 stating that it was the MMTS team of PSPCL itself which had vide its report dated 12.06.2019, found the Main Meter to be defective. That till date, the readings of the Main Meter were not corresponding with the Check Meter and Contractual Check Meter i.e. the Meter installed at the Grid-Substation of PSPCL, meaning thereby that there was some fault in the Main Meter. Accordingly, the

Petitioner made a request to PSPCL to re-test the Main Meter and till such re-testing to hold the demand of Rs. 9,10,582. It was further requested that metering may be continued on the Check Meter itself.

- h) PSPCL vide letter dated 22.03.2021 again reiterated its demand and sought to resile from earlier MMTS report dated 12.06.2019 on the basis that the same was based upon DDL reports. Petitioner vide letter dated 27.03.2021 intimated PSPCL that there was no provision in the PPAs for reverting back to the Main Meter readings retrospectively. The Petitioner vide letter dated 05.04.2021 again wrote to PSPCL that one could not revert to the Main Meter readings retrospectively, especially in light of Clause 9.5.0 of the PPAs.
- i) It is pertinent to mention here that even after the Main Meter was found to be working satisfactorily in the second MMTS report dated 22.02.2021, the readings of the same were not corresponding with the readings of the Check Meters, which is evident in the JMR taken on 30.04.2021. Accordingly, the Petitioner vide letter dated 01.05.2021 enclosed the JMR and requested PSPCL to get the meter checked from the MMTS team and to replace the Main Meter with the new meter that the Petitioner had already purchased and deposited with PSPCL. It was thus intimated that no recovery whatsoever on the basis of meter readings of the Main Meter was justified.
- j) The Petitioner thereafter raised the monthly invoices for the month of April, 2021 on the basis of Check Meter readings totaling Rs. 23,58,998 for both the plants (MBL-II and MBL-III). PSPCL passed the said bills for only Rs. 20,46,739, deducting

Rs. 3,12,259 by re-computing the bills on the basis of Main Meter readings. Furthermore, PSPCL illegally deducted Rs. 9,10,582 on account of the amount recoverable from the Petitioner for the June 2019 to January 2021 period.

- k) The DDL readings of the Meters from 17.04.2021 to 31.05.2021, shows that the Main Meter was recording less energy whereas the Check Meter was OK. The Petitioner thus requested PSPCL to get the metering Current Transformer (CT) and Potential Transformer (PT) checked from its Protection Team.
- l) The Protection Team visited on 19.05.2021. They reconnected the connections of CT and PT after proper cleaning of terminals and the seals were installed. The said report clearly mentions that the Protection Team opened and cleaned the CT and PT terminals. After 19.05.2021, the readings of the Main Meter started corresponding with the readings of the Check Meter.
- m) The fact was also verified by the Protection Team of PSPCL in its visit dated 17.06.2021. It is thus clear that the Main Meter was not recording the readings properly earlier due to either some loose connection or due to the deposition of carbon on the terminals. The Petitioner cannot be put to a loss for such faults in the Main Meter readings.
- n) Petitioner further raised the bills for May 2021 on the basis of Check Meter readings, for Rs. 85,43,747. However, illegally, PSPCL passed the said bills for Rs. 78,11,425, thereby deducting Rs. 7,32,322 by re-computing the bills on the basis of Main Meter readings.

o) Petitioner intimated the PSPCL about all the above said facts in its detailed representation dated 03.07.2021 and requested PSPCL to release the deducted amount of Rs. 19,55,163/-. PSPCL replied vide letter dated 13.07.2021 taking the erroneous plea that the Protection Team had found the CT and PT units to be working satisfactorily and since the accuracy of the Main Meter had earlier been found to be within prescribed limits, billing from June-2019 to May-2021 had to be done on the basis of the Main Meter readings. PSPCL completely ignored the following facts:

- (i) A team of PSPCL itself had previously concluded that the "Main Meter" was faulty, which is why the Petitioner bought a new Meter at a cost of Rs. 99,120/- and further paid the charges for its testing.
- (ii) For the period of June 2019 to May 2021, the Main Meter could not have been functioning properly, since the readings of the Check Meter at the Interconnection Point and the Contractual Check Meter at the Grid Sub-Station was tallying whereas those of the Main Meter at the Interconnection Point were not tallying with the said two Meters. Hence, the Main Meter was faulty for a specific period.
- (iii) On 19.05.2021, the Protection Team had opened and cleaned the CT and PT units connected to the Main Meter, which thereafter led to its working satisfactorily
- (iv) Till date, PSPCL has not been able to provide any reason whatsoever for the discrepancy in the readings of the Main

Meter with those of the Check Meter and the Contractual Check Meter for the period of June 2019 to May 2021.

- p) Such discrepancy, in and of itself, proves that there was some defect in the Main Meter due to which it was recording lesser energy than the one generated, something attested to by the earlier MMTS report dated 12.06.2019, which PSPCL is wrongly trying to resile from. It was only after the visit dated 19.05.2021 of the Protection Team, who opened and cleaned the CT and PT terminals that the readings of the “Main Meter” started corresponding with the readings of the “Check Meter” and the “Contractual Check Meter”.
- q) The Petitioner is thus entitled to get the billing from June 2019 to May 2021 done on the basis of the readings of the Check Meter and release an amount of Rs. 19,55,163 along with the interest at the contractually stipulated rate. The Petitioner tried its best to mutually resolve the disputes between the parties by writing the letters and further meeting the officers of PSPCL on various occasions after PSPCL’s letter dated 17.03.2021 but all went in vain.

1.2 Curtailment/Force majeure Notice dated 30.03.2020:

The Petitioner on 31.03.2020 received via e-mail an illegal and arbitrary notice dated 30.03.2020 from PSPCL citing Clause 19.0.0 of the PPAs for curtailing of power under force majeure conditions/event.

- a) It was intimated that due to load crash on account of the lockdown imposed due to COVID-19 pandemic, PSPCL was prevented from performing its obligation of purchasing and

accepting energy from the Petitioner. The same was a force majeure event as per PSPCL and it was accordingly instructed that if any energy was injected into PSPCL system, then the same would be at the risk and cost of the Petitioner.

b) The Petitioner replied vide letter dated 01.04.2020 intimating PSPCL that load crash due to a pandemic was not covered under the relevant force majeure clause and that under no circumstance could generation from canal based hydro projects be curtailed as per the State Grid Code, 2013. It was further pointed out that only load crash due to wide spread rains, cyclones or typhoons was covered under the force majeure. PSPCL however chose not to respond to the said letter. Thereafter, PSPCL vide its letter dated 07.04.2020 allowed the Petitioner to inject power into PSPCL system.

c) When the Petitioner submitted its monthly invoices for the month of April 2020 for both the plants (MBL-II and MBL-III), PSPCL illegally and arbitrarily, without considering the Petitioner's letter dated 01.04.2020, deducted an amount of Rs. 11,12,088 from the payment due to the Petitioner. The same was done presumably on account of the 7 days period (01.04.2020 to 07.04.2020) when energy was generated. As against the total billed amount of Rs. 24,42,820; the Petitioner received only Rs. 12,64,051 on 09.07.2020.

1.3 In addition, the payments released to the Petitioner by PSPCL were often delayed, in spite of a clear stipulation in Clause 3.3.0 of the PPAs to release the same within 30 days of the receipt of the monthly invoice, failing which, interest at the rate specified therein in Clause 3.5.0 is liable to be paid. However, PSPCL has not paid

the said interest till date, in spite of a clear stipulation in the PPAs to pay such interest.

1.4 That the summary of the Claims totaling Rs. 39,22,037/- is as under:

Sr. No.	Claim	Amount (Rs.)
1.	Wrongful deduction due to difference in meter readings	19,55,163/-
2.	Costs incurred towards purchasing and testing of a new Meter	1,02,070/-
3.	Wrongful deduction made due to COVID-19	11,12,088/-
4.	Claim on account of interest on delayed payments	7,52,716/-
	Total	39,22,037/-

In view of the above, it is prayed that the Commission may kindly be pleased to:

- a) Award claims totaling Rs. 39,22,037/- along with interest as well as costs in favour of the Petitioner and against the Respondent PSPCL;
- b) Set-aside the notice dated 30.03.2020, if need be, issued by the Respondent PSPCL on account of being in derogation of the PPAs as well as the State Grid Code 2013;
- c) Set-aside the notices/letters dated 17.03.2021, 22.03.2021, 31.03.2021, 16.04.2021 and 13.07.2021, if need be, issued by Respondent PSPCL on account of wrongly and arbitrarily raising a demand of Rs. 9,10,582/- on the Petitioner;
- d) Condone any inadvertent omissions/errors/shortcomings;
- e) Permit the Petitioner to add or modify the submissions advanced under the present Petition; and
- f) Pass such other or further order(s) as this Hon'ble Commission may deem just in the facts of the present case.

2. In the hearing held on 13.09.2022, the Ld. Counsel of the petitioner reiterated the submissions made in the petition. After hearing the Ld.

Counsel for the petitioner, the Commission vide Order dated 19.09.2022 observed as under:

“...the Commission observes that Commercial & Metering Committee (CMC) constituted under state grid code is mandated to resolve energy accounting and settlement of disputes arising out of a metering failure under Regulation 2.7.6 (vi). Accordingly, the petitioner can raise the energy accounting/billing disputes before the said committee.

However, on the issue of dispute raised regarding the force majeure notice issued by PSPCL, the petition is admitted and notice be issued to PSPCL. PSPCL shall file its reply within two weeks with a copy to the petitioner (through hard copy and soft copy). The petitioner may file rejoinder thereto within one week thereafter with a copy to PSPCL (through hard copy and soft copy).”

3. PSPCL filed its reply on 27.10.2022 submitting as under:

- a) The present reply is filed by PSPCL on the limited issue regarding force majeure notice dated 30.3.2020 served by PSPCL upon the Petitioner.
- b) The Petition filed by the Petitioner assailing the force majeure notice dated 30.03.2020 of PSPCL suffers from inordinate delay and laches and as such is liable to be dismissed.
- c) The Petitioner entered into PPAs dated 4.6.2009 and 20.11.2008 with the Respondent setting out the terms and conditions for the purchase of electricity generated from the project. The said PPAs prescribed, inter alia, as under:
 - (i) that the Respondent would purchase and accept all energy made available at the interconnection point pursuant to the terms and conditions of the PPAs [Clause 2.1.1];

- (ii)
- (iii) that billing and payment for the power sold and purchased under the PPAs would be as per the provision made in clause 3.0.0 of the PPAs; and
- (iv) that in the event of a force majeure condition of Respondent (as defined in clause 19), Respondent may require the Petitioner to temporarily curtail or interrupt deliveries of energy [Clause 11.0.0 and Clause 11.1.5]

Thus, while the Respondent was obligated to purchase and accept all the electrical energy which was delivered by the Petitioner at the interconnection point and pay tariff for the same, such obligation was subject to force majeure occurrences in which the Respondent could require the Petitioner to “temporarily curtail or interrupt deliveries of energy”. Curtailment of power supply in prescribed eventualities was therefore an agreed term under the PPAs which Respondent is within its contractual rights to enforce together with the follow-up consequences of deductions if any, in energy bills corresponding to the energy curtailed.

d) Further, the force majeure clause in the PPAs provided as under:

“19.1.0 If any party hereto shall be wholly or partially prevented from performing any of its obligations under this Agreement by reason of or on account of lightning, earthquake, fire, floods, invasion, insurrection, rebellion, mutiny, civil unrest, riot, epidemics, explosion, the order of any court, judge or civil authority, change in applicable law, war, any act of God or public enemy or any other similar cause or reason reasonably beyond its control and not attributable to any negligent or intentional act, error or omission, then such party shall be excused of its obligations/ liabilities under this Agreement and

shall not be liable for any damage, sanction or loss resulting there from to the other party.”

A perusal of the aforesaid clause showed that on the happening of the specified events mentioned therein, the party suffering such events was “*excused of its obligations/liabilities under this Agreement*”. The obligation of the Respondent under the PPAs was to purchase the power from the Petitioner and pay agreed tariff for the same, the Petitioner enjoying the ‘Must Run’ status as per the State Grid Code for the uninterrupted supply of power from canal based hydro plants, the purchase obligation was with respect to the entire power injected by the Petitioner at the interconnection point. But when the Respondent suffered a force majeure event, then it was excused from the said obligation to buy the entire injected power during the period the force majeure event continued. Read with the provisions of clauses 11.0.0 and 11.1.5 of the PPAs, if any power was injected by the Petitioner at the interconnection point during the period of force majeure/ curtailment, the same did not fall within the contractual findings under the PPAs and consequently the Respondent is not obliged to pay any tariff for the same.

- e) The Respondent submits that vide Order dated 22.3.2020, the Government of Punjab, Department of Health and Family Welfare, imposed restrictions to contain the spread of Covid-19 in the State of Punjab. In the wake of consequent declaration of lockdown in the State, there was a sudden decline/dip in the electricity demand due to closure of industries, commercial establishment, offices etc. which forced the Respondent to curtail its power purchase/generation. Considering that a force majeure situation in

terms of clause 19.1.0 of the PPAs had arisen, the Respondent was constrained to serve force majeure notices dated 30.3.2020 on the Petitioner (as also on all RE generating companies including central sector generating companies) pursuant to clause 11.1.0, vide which it was intimated as under:

“4) You are hereby intimated that as per Force Majeure Clause no.19.1.0 of subject cited PPA, PSPCL is prevented from performing its obligation of purchasing and accepting energy from your generating company facility on account of force majeure event of Epidemic (Covid-19) with immediate effect till this epidemic lasts. During this period, if any power is injected into PSPCL/PSTCL system then the same will be at your risk & cost.

5) This letter may be treated as notice in terms of Force Majeure Clause No.19.0.0 read with clause 11.0.0 of the subject cited PPA.”

The copies of the aforesaid force majeure notices were also served to the RE generators by the State Load Despatch Center (SLDC)/PSTCL to discontinue their supply of electricity during the continuance of the pandemic.

f) That it may be mentioned here that vide its Order dated 24.9.2021 passed in Petition No.21/2021: Solar Power Developers Association Vs. Punjab State Power Corporation Ltd. & Anr., the Commission has examined the legality of the force majeure notices issued to solar power developers in the State and has held the Respondent’s action of issuing the said notices was unjustified. In compliance thereof, the Respondent has paid the deducted amount for the relevant period to the solar power developers. The present case, however, relates to the hydro power projects of the Petitioner.

- g) The Respondent submits that the objections of the Petitioner were not sustainable in view of the express provisions under the PPAs as set out hereinabove which entitled the Respondent to suspend its purchase obligations under the PPAs during the period of a force majeure event of the Covid-19 pandemic. However, after issuance of the aforesaid force majeure notices, the Respondent, vide its letters dated 7.4.2020, allowed all RE generators including the Petitioner to inject power into the distribution/transmission system in the State with immediate effect, the said letters were issued by the Respondent 'without prejudice'.
- h) It is submitted that the curtailment/force majeure notices had been issued to the Petitioner by the Respondent in accordance with the agreed terms of the PPAs entered into with it and as such, cannot be faulted with. However, the Petitioner (as also other RE generators in the State) continued to inject power at the inter-connection point, even though it had a prior intimation of the intention of the Respondent not to accept the same in exercise of the rights under force majeure provision of the PPA. As per the said force majeure notices, the Petitioner (as also the RE generators in the State) had not been paid against the energy supplied/injected by them to the Respondent till 7.4.2020.
- i) In the Tariff Order for Financial Year 2020-21, the Commission also accepted the impact of Covid-19 pandemic on energy sales of the Respondent during the months of April and May 2020. Further, the Commission in its Order dated 17.7.2020 passed in Suo-Motu Petition No.12 of 2020 while reducing the RPO targets of the Respondent for FY 2020-21 also recognized that PSPCL would be

financially constrained due to the Covid-19 pandemic adversely affecting the sale of power to various categories of consumers.

j) In view of the facts and circumstances as set out here in above, it is respectfully submitted that the present Petition is devoid of any merit and is therefore liable to be dismissed.

4. In the hearing held on 02.11.2022, the Petitioner while requesting for time to file rejoinder to the reply filed by PSPCL contended that its claim of Rs. 7,52,716 on account of interest on delayed payments has not been addressed. The PSPCL counsel submitted that although claim of the petitioner on account of interest on delayed payment is a legal issue which needs no reply still PSPCL will address it during final arguments.

5. On 06.01.2023, the Petitioner submitted its rejoinder, stating as under:

a) The petitioner has also sought:

- (i) Rs. 1,02,070/- plus interest on account of costs incurred towards purchasing and testing of new Meter;
- (ii) Rs. 7,52,716/- on account of interest on delayed payments;
- (iii) Claim on account of pre-suit, pendente-lite and future interest;
- (iv) Claim on account of costs;

b) It is denied that the case of the Petitioner is barred by delay and laches. The Petitioner has been raising the issue of wrongful deduction by the Respondent on account of alleged force majeure since April, 2020. In any case, the Petitioner has filed the present Petition assailing the force majeure notice dated 30.03.2020 well within the limitation period of three years. Even otherwise, the case

of the Petitioner is squarely covered by the Order dated 10.01.2022 of the Hon'ble Supreme Court in M.A. No. 21 of 2022 in M.A. No. 665 of 2021 in Suo Moto Writ Petition (C) No. 3 of 2020. Hence, the case of the Petitioner is not barred by delay and latches.

- c) It is admitted that the Petitioner entered into PPAs with the Respondent on the agreed terms and conditions. However, it is denied that either Clause 19 or Clause 11 is applicable in the instant case.
- d) It is submitted that in a similar case in Petition No. 21 of 2021 filed by Solar Power Developers Association the Commission vide Order dated 24.09.2021 has held that PSPCL's unilateral action of curtailing power generation from the Solar Power Developers (SPDs), during the period of 01.04.2020 to 07.04.2020 citing force majeure was unjustified. This Commission accordingly directed PSPCL to make payment to the said SPDs for the said period along with the late payment surcharge as may be applicable. The said Order dated 24.09.2021 is squarely applicable to the facts of the present case as well for the following reasons:
- (i) The notices dated 30.03.2020, which were the subject matter of challenge in Petition No. 21 of 2021, were similar to the notice dated 30.03.2020 sent to the Petitioner herein. Both the notices had invoked Clause 19 r/w Clause 11 of the PPAs citing load crash due to the COVID-19 pandemic.
 - (ii) The SPDs, on whose behalf Petition No. 21 of 2021 was filed, are similarly situated to the Petitioner herein as the plants of both the SPDs and the Petitioner herein enjoy a must-run status as per the State Grid Code.

(iii) The Respondent PSPCL had raised a defence similar to the one as raised in the present case in Petition No. 21 of 2021 as well. The same was not accepted by this Commission in Petition No. 21 of 2021, and the Respondent was thus directed to make payment to the SPDs for the period 01.04.2020 to 07.04.2020 along with the late payment surcharge as may be applicable.

Hence, for the aforesaid reasons, the Petitioner is entitled to parity of treatment with the SPDs and thus the Order dated 24.09.2021 is squarely applicable to the facts of the present case.

e) That it is no defense that Petition No. 21 of 2021 related to SPDs whereas the present case pertains to the hydro power projects of the Petitioner. It is hereby reiterated that the Petitioner is similarly situated to the said SPDs, and is hence, entitled to parity of treatment.

6. In the hearing held on 11.01.2023, Ld Counsel for the parties reiterated their written submissions made earlier in the proceedings. On the issue of the Petitioner's claim of Rs. 7,52,716/- on account of interest on delayed payments, Ld. Counsel for PSPCL submitted that the same pertains to the payments of monthly bills and is required to be dealt under the provisions for same in the PPAs. After hearing the order was reserved.

7. Observations and Decision of the Commission

The Commission has carefully gone through the petition, reply by the respondent, rejoinder by the Petitioner and the arguments made by the parties. The observations and decision of the Commission is as under:

a) Energy Accounting:

- (i) On the dispute regarding the Energy accounts arising out of the metering issue, the Commission vide Order dated 19.09.2022 has already observed as under:

“After hearing the Ld. Counsel for the petitioner, the Commission observes that Commercial & Metering Committee (CMC) constituted under state grid code is mandated to resolve energy accounting and settlement of disputes arising out of a metering failure under Regulation 2.7.6 (vi). Accordingly, the petitioner can raise the energy accounting/billing disputes before the said committee.”

- (ii) As regards the Petitioner’s plea for reimbursement of costs incurred towards purchasing and testing of new Meter purchased by it, the Commission refers to the PSERC Grid Code Regulations, which specify as under.

“16.14 Replacement of Defective or Stuck-up Meter

*Defective or stuck-up meter shall be replaced as soon as possible.
The owner of the meter shall maintain spare inventory of meters in sufficient quantity, so that down time is minimized.”*

As is evident, the Petitioner is mandated to maintain spare inventory of meters in sufficient quantity. Thus its claim for reimbursement of costs incurred towards purchasing the same is not maintainable.

b) Issue of Curtailment/Force majeure Notice dated 30.03.2020 issued by PSPCL for curtailing power during the period from 01.04.2020 to 07.04.2020:

The Petitioner’s plea is that its case is similar to that decided by the Commission in Petition No. 21 of 2021 filed by Solar Power

Developers Association, wherein PSPCL's unilateral action of curtailing power generation from the Solar Power Developers (SPDs) during the period of 01.04.2020 to 07.04.2020 was held to be unjustified.

Whereas, PSPCL objected to the Petitioner assailing its force majeure notice dated 30.03.2020, stating that the same suffers from inordinate delay and latches. PSPCL also reiterated its contentions as made earlier in Petition 21 of 2021; that on account of the force-majeure event i.e. Covid-19 outbreak and pursuant restrictions/ lockdown imposed by the Government resulting in sudden decline/dip in the electricity demand due to closure of establishments/offices, it was constrained to serve force majeure notices dated 30.3.2020 on all generating companies including the Petitioner. Further, regarding the Petitioner reference to the Commission's Order in Petition No. 21 of 2021, PSPCL submitted that the same pertained to the Solar Power Developers, however the present case relates to the hydro power projects of the Petitioner.

The Commission examine the issue as under:

- a) The Commission notes that the issue under consideration is the notice issued by PSPCL on 30.03.2020, thus the petition filed is within the limitation period of three years and cannot be said to be barred by limitation.
- b) As regards the Commission's Order dated 24.09.2021 in Petition No. 21 of 2021 cited by the petitioner, it reads as under:

“There are no two opinions regarding the issue of Covid-19 being an epidemic and declaration of lockdown by the Government to control the same. The petitioner has also admitted to the same in its submissions. However, to absolve either of the party from performing its obligations under the Agreement, it needs to be established that the party has been wholly or partially prevented from performing its obligations under the Agreement on account of such event(s). The Commission is of the view that notwithstanding that it was a force majeure event, the terms and conditions of PPAs needs to be read in conjunction with the provisions of the State Grid Code Regulations (SGC)”

Accordingly, the Commission also refers to the relevant provision of the SGC, which states as under:

“5.4.1 System operator (SLDC) 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.

.....

11.4.1. (xiv) Since variation of generation in run-of-river power stations shall lead to spillage, these shall be treated as must run stations. All renewable energy power plants, except for biomass power plants and non-fossil fuel based cogeneration plants whose tariff is determined by the PSERC shall be treated as ‘MUST RUN’ power plants and shall not be subjected to ‘merit order despatch’ principles.”

Thus, it is evident from the above stated provisions of the State Grid Code Regulations that the Petitioner’s plants being run-of-river power stations, as accepted by PSPCL in its

submissions, enjoy the status of 'Must-Run' similar to the solar power plants. As already held in Petition 21 of 2021, PSPCL's action of curtailment of power from such 'Must-Run' stations, while continuing to draw power from other sources during the impugned period of 01.04.2020 to 07.04.2020, is a violation of the provisions of the Grid Code Regulations. Thus, PSPCL is liable to release the payments for the power injected by the Petitioner's 'must-run' stations during the impugned period along with the applicable interest for the delay in payments as per the provisions of the PPAs.

c) Issue of delay in payment of monthly bills:

The Petitioner has also submitted that the payments released to the Petitioner by PSPCL were often delayed. The Petitioner, through a letter dated 30.10.2020, communicated to PSPCL that an interest of Rs. 7,52,716 is liable to be paid to the Petitioner by PSPCL. However, PSPCL has not paid the said interest till date.

In the hearing held on 11.01.2023, Ld. Counsel for PSPCL submitted that the same pertains to the payments of monthly bills and is required to be dealt under the provisions for same in the PPAs.

The Commission refers to the relevant provisions of the PPAs, which reads as under:

"3.3.0. ... The Board shall make full payment of such Monthly Invoice within 30 days of receipt of the Monthly Invoice hereinafter called the Due Date."

3.5.0 In case the payments are delayed beyond Due Date, the Board/ Generating Company would be liable to pay interest for the delayed

amount as per State Bank of India short term Prime Lending Rate as applicable from time to time plus 2% for the actual period of delay.”

The Commission is of the considered view that the parties are required to diligently fulfill their respective obligations as agreed to in the PPAs. Thus, the Commission directs PSPCL to settle the Petitioner’s grievance in respect of interest payment for the delayed amounts, if any, as per the provisions of the PPAs, subject to the provisions of the limitation Act read with the Order(s) of the Competent Court, if any, in the matter.

The petition is disposed of accordingly.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 06.02.2023