

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No. 61 of 2017
Date of Order: 26.02.2018**

In the matter of: Petition under Section 86(1)(f) of the Electricity Act, 2003 read with Regulation 1.10.2 of the Punjab State Electricity Regulatory Commission (Punjab State Grid Code) Regulations, 2013, and pursuant to the Hon'ble Punjab and Haryana High Court's Order dated 28.09.2017 in CWP No.10553 of 2017 concerning disputes between Talwandi Sabo Power Limited on the one hand and Punjab State Load Despatch Centre and Punjab State Power Corporation Limited on the other in respect of alleged mis-declaration of Declared Capability and levy of penalty.

AND

In the matter of: Talwandi Sabo Power Limited, Village Banawala, Mansa-Talwandi Sabo Road, District Mansa, Punjab – 151302.

.....Petitioner

Versus

1. Punjab State Load Despatch Centre through Chief Engineer, SLDC Building, near 220 KV Grid Substation, PSTCL, Ablowal, Patiala-147001.
2. Punjab State Power Corporation Limited, through Chief Engineer (PP&R), Shakti Vihar, Shed No.T1, Patiala-147001.
3. State Grid Code Review Committee, SLDC Building, near 220 KV Grid Substation, Punjab State Transmission Corporation Ltd., Ablowal, Patiala-147001.

...Respondents

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjali Chandra, Member

ORDER:

1.0 The instant petition has been filed by Talwandi Sabo Power Ltd (TSPL), a generating company, which owns a 1980 MW (3x660 MW) thermal power plant supplying its entire power generation to PSPCL in accordance with the

Power Purchase Agreement (PPA). The petition has been filed pursuant to the Order of the Hon'ble Punjab and Haryana High Court dated 28.09.2017 in CWP No.10553 of 2017 in accordance with which the dispute between the parties was relegated for the Commission under Section 86(1)(f) of the Electricity Act, 2003. The petitioner has challenged the legality and correctness of the findings of the Punjab State Load Despatch Centre (PSLDC) regarding mis-declaration of the Declared Capability ("DC") on 5 occasions i.e. on 10.08.2015, 15.01.2017, 17.01.2017, 24.01.2017 and 31.01.2017. The petitioner submitted as under:

- 1.1 On the basis of the PSLDC's finding of the Petitioner's mis-declaration, the Punjab State Power Corporation Limited (PSPC) has levied a penalty of ₹162,74,72,865/- vide its Memo No.278 dated 15.03.2017, out of which a penalty of ₹74,27,27,159/- has already been deducted in contravention of the provisions of the Punjab State Electricity Regulatory Commission (Punjab State Grid Code) Regulations, 2013 (SGC) and the Power Purchase Agreement dated 01.09.2008 executed between the petitioner and PSPCL (PPA).
- 1.2 The petitioner approached the Hon'ble High Court in writ petition CWP No.5269 of 2017 challenging the PSLDC's Final State Energy Accounts and the findings of mis-declaration therein, inter alia on grounds that it had not been heard by the Commercial and Metering Committee ("CMC"), which is the appropriate statutory body to deliberate on objections to the PSLDC's Final State Energy Accounts under Regulation 14.1.6 of the SGC. The Hon'ble High Court vide its Order dated 06.04.2017 directed the CMC to deliberate on the petitioner's objections to the PSLDC's Final State Energy Accounts and the recovery of penalty of ₹84,88,31,039/- was stayed.
- 1.3 In compliance with the Hon'ble High Court's Order dated 06.04.2017, the petitioner filed its objections to the PSLDC's Final State Energy Accounts before the CMC. On 13.04.2017, the petitioner had no knowledge of the composition of the CMC. On 17.04.2017, Dy.CE/Open Access, Punjab State Transmission Corporation Limited

(PSTCL), addressed a letter to the Members of CMC with copy to the petitioner circulating the agenda of the meeting.

- 1.4 The petitioner observed that the Chief Engineer/PP&R, PSPCL and Chief Engineer/PSLDC were the officials who had signed and filed pleadings before the Hon'ble High Court opposing the Petitioner's writ petition CWP no.5269 of 2017. On 21.04.2017, the Dy.CE/Open Access, PSTCL, addressed a letter to the petitioner informing that the meeting with the Commercial and Metering Committee has been fixed for 25.04.2017.
- 1.5 Apprehending that he may not get justice from the CMC, the petitioner expressed its inability to attend the meeting vide letter dated 22.04.2017. Thereafter, the petitioner approached the Hon'ble High Court in CWP No.8492 of 2017 seeking the constitution of an unbiased CMC. The Hon'ble High Court disposed of the said writ petition with an observation that the CMC ought not to comprise persons who had already filed pleadings against the petitioner's submissions. Further, the Hon'ble High Court directed the State Grid Code Review Committee (SGCRC), to consider the petitioner's representation dated 22.04.2017 in the context of the said observation.
- 1.6 However, the SGCRC proceeded to decide the petitioner's objections dated 13.04.2017 itself despite not having the jurisdiction to do so under SGC by passing its Order dated 11.05.2017. The SGCRC took the view that the Hon'ble High Court had directed to consider the representation annexure P-7 vide order dated 25.04.2017. The petitioner again approached the Hon'ble High Court. The Hon'ble High Court clarified its Order dated 25.04.2017 in CWP No.8492 of 2017 vide clarificatory Order dated 01.09.2017 in CM-10204-CWP-2017, where it was held that reference to "Annexure P-7" was merely a typographical error and must be construed as "Annexure P-8".
- 1.7 The petitioner challenged the order of SGCRC dated 11.05.2017 in Hon'ble High Court in CWP No.10553 of 2017. The present petition is in compliance to Hon'ble High Court order dated 28.09.2017. The

petitioner sought relief from the Commission inter-alia on the following grounds;

- i) PSLDC arrived at misdeclaration on 5 occasions without affording opportunity of hearing to the petitioner on all five occasions.
- ii) Demand of demonstration of DC was bereft of any material particulars regarding time blocks in which the petitioner was to demonstrate DC. So penalty is contrary to law.
- iii) Petitioner's actual injection never deviated from DC beyond 12% limit permitted in CERC (DSM), Regulations, 2014 and therefore does not amount to failure of DC.
- iv) Petitioner's deviation from schedule issued by PSLDC was in the interest of protecting the safety of petitioner's plant.
- v) PSLDC issued number of revisions in schedule contrary to SGC, rendering it impossible for petitioner to comply schedule and consequently demonstrate its DC.
- vi) PSPCL's deduction of penalty was contravention of SGC and PPA as it assumes 100% availability of petitioner generating station instead of respective monthly availability stipulated under 1.2.2 of Schedule 7 of PPA for the purpose of computing Capacity Charges to be deducted as penalty in a month.

1.8 Regarding alleged mis-declaration on 10.08.2015, the petitioner submitted that

- (i) On 06.08.2015, a Unit shutdown was taken by the petitioner at 20.46 hrs due to some technical problem in the electrostatic precipitator of its plant, which was communicated to PSLDC and PSPCL. After correcting this issue, the petitioner declared its availability from 10.00 hrs (ramp-up) to full availability at 13.15 hrs of 09.08.2015. The petitioner requested PSLDC vide e-mail dated 09.08.2015 at 00.41 hrs, that while giving a schedule for the petitioner's unit, PSLDC should consider start up time of at least 24 hrs as required to bring back the machine into

operation. However, only 45 minutes was given by PSLDC for unit synchronization, which is technically impossible as a super-critical thermal power generating unit takes approximately 36 hrs to get synchronized, as it was under shutdown for more than 72 hrs. Thereafter, the petitioner gave the PSLDC a tentative ramp-up plan vide e-mail dated 09.08.2015 at 21.11 hrs and revised ramp-up plan vide e-mail dated 10.08.2015 at 06.50 hrs to start the unit under shutdown and synchronized the unit at 07.32 Hrs of 10.08.2015.

- (ii) The petitioner started up its unit for generation as per the given ramp up schedule but due to some technical problem around 09.03 hrs of 10.08.2015 and even after trying for half an hour to increase the load, the petitioner's generation was in the range of 270 MW to 275 MW against Scheduled Generation ("SG") of 308 MW in the time block of 09.45 to 10.00 hrs.
- (iii) The petitioner vide an e-mail at 09.38 hrs reduced its DC from 613.8 MW to 285 MW from 10.00 hrs till 12.00 hrs and communicated the same to PSLDC. In reply to the petitioner's e-mail, the PSLDC revised the SG from 308 MW to 285 MW from 10.00 hrs till 12.00 hrs through SG revision No.5 vide e-mail dated 10.08.2015 at 10.13 hrs. At 12.00 hrs to 12.15 hrs, the petitioner's generation resumed to 291.5 MW and continued its generation at par with SG till 15.30 hrs. Thereafter, PSLDC through SG revision no.8 at 14.46 hrs, increased the SG ramping up by 50 MW each block and then through rev no.9 vide e-mail dated 10.08.2015 at 15.43 hrs further increased SG ramping up from 358 MW from 15.45 hrs to 613.8 MW at 17.30 hrs.
- (iv) The petitioner then went for ramping up as per the schedule but again due to technical difficulties faced in its coal mill, generation could not be increased and hence could not be matched with the SG. Thereafter, the petitioner revised its DC through R-2 vide e-

mail at 16.55 hrs from 613.8 MW to 450 MW from 17.15 hrs onwards till 19.00 hrs and then through R-3 vide e-mail at 17.54 hrs further continued DC to be 450 MW till end of the day.

(v) PSLDC vide its e-mail dated 10.08.2015 at 16.56 hrs, stated that the petitioner's DC was suspected/doubtful and not correct. No DC demonstration notice was issued by the PSLDC to the petitioner as required under regulation 11.3.13 of the Punjab Grid Code. The PSLDC also issued its Final State Energy Account for August, 2015 arriving at a finding that the petitioner has mis-declared its DC on 10.08.2015 without following the procedure prescribed under the Punjab Grid Code. In SGCRC's order dated 11.05.2017, PSLDC has claimed that it issued demonstration instructions telephonically as per prevailing practice at that time but no verbal or written DC demonstration notice was issued by PSLDC on 10.08.2015. PSLDC unilaterally and without providing the petitioner with any opportunity to be heard arrived at a finding of mis-declaration.

(vi) The petitioner submitted its objection to PSLDC and PSPCL vide e-mail dated 10.08.2015 at 23.33 hrs and letters dated 24.08.2015, 16.09.2015 and 24.09.2015, after which no penalty was deducted by PSPCL but now, after a period of almost 2 years, PSPCL looked to deduct a penalty on account of the alleged mis-declaration on 10.08.2015, which is evidently an afterthought. No DC demonstration notice was ever given to the petitioner on 10.08.2015 and as such, the PSLDC's finding of the petitioner's alleged mis-declaration in its Final State Energy Account for August, 2015 is void.

1.9 Regarding mis-declaration on 15.01.2017, the petitioner submitted as under:

(i) On 15.01.2017, PSLDC addressed Memo No.170 to the petitioner stating that at 09.32 hrs on that day, the petitioner's generation was 1193 MW against its schedule of 1227.6 MW.

The petitioner's DC for 15.01.2017 at that time was 1841.41 MW including the DC for the unit which had been directed to remain shut-down by PSLDC. Further, PSLDC directed the petitioner to demonstrate its DC failing which penalty shall be levied under the Punjab Grid Code. However, PSLDC did not specify the time-block(s) in which the petitioner was to demonstrate its DC in accordance with Regulation 13.3.3 of the SGC nor for how long such DC had to be demonstrated. This is significant because one unit of the petitioner's generating station was shut-down and required around 36 hours to demonstrate its DC. Furthermore, the generation schedule issued by PSLDC was lower than the DC for 15.01.2017. In the absence of any clear time-frame, it was impossible for the petitioner to demonstrate its DC. In fact, the petitioner's electricity injection was within the 12% margin provided under the DSM Regulations after it received the DC demonstration notice. In the 5th time-block after receiving the DC demonstration notice, the petitioner over-injected above the SG. Thus, PSLDC's memo lacked material particulars on the demonstration of DC.

1.10 Regarding mis-declaration on 17.01.2017, the petitioner submitted as under:

- (i) On 17.01.2017, the PSLDC addressed Memo No.172 to the petitioner stating that at 08.10 hrs on that day the petitioner's generating station was injecting 252 MW against its schedule of 309 MW. Further, the PSLDC directed the petitioner to demonstrate its DC, failing which penalty shall be levied. However, the PSLDC did not specify the time-block(s) in which the petitioner was to demonstrate its DC as mandated by Regulation 13.3.3 of the Grid Code nor for how long such DC had to be demonstrated. Thus, the PSLDC's memo lacked material particulars on the demonstration of DC and cannot be the basis for the imposition of a penalty.

(ii) In response, the petitioner had a telephonic conversation with the PSLDC's officials to explain that there were various technical issues with the coal feeding system for the generating station, which constrained the petitioner from meeting the schedule. The petitioner also sent an e-mail to the PSLDC on 17.01.2017 recording the said conversation. Further, the petitioner revised its DC downward on 17.01.2017 because of the continuity of technical constraints being faced by it despite trying to set the same right. Notably, the petitioner's reasons for not meeting the schedule were never contested by any party.

(iii) On 17.01.2017, the coal handling plant of the petitioner's generating station faced various technical problems as a result of the poor quality of coal being received at the generating station. Out of two conveyor belts in the generating station's coal handling plant, one had dislocated prior to 17.01.2017. Consequently, coal had to be fed into the boiler through the other operational conveyor belt for extended periods of time. During such extended periods, the second conveyor belt stopped due to choking of coal. The petitioner took oil support to achieve flame stability in the boiler, which is considerably costlier than coal and is not reimbursed to the petitioner. Nevertheless, the petitioner preserved in running the plant to the extent possible keeping in mind the safety of personnel and machinery as well as to ensure it catered to the demand of the consumers of Punjab.

1.11 Regarding mis-declaration on 24.01.2017, the petitioner submitted as under:

(i) On 24.01.2017, the PSLDC addressed Memo No.179 to the petitioner stating that at 14.41 hrs on that day the petitioner's generating station was injecting 1411 MW against its schedule of 1650 MW and directed the petitioner to demonstrate its DC failing which penalty shall be levied. However, the PSLDC did

not specify the time-block(s) in which the petitioner was to demonstrate its DC nor for how long such DC had to be demonstrated as mandated by Regulation 13.3.3 of the Grid Code. Thus, the PSLDC's memo lacked material particulars on the demonstration of DC and cannot be the basis for the imposition of a penalty.

- (ii) At 14.21 hrs, the PSLDC revised the petitioner's schedule from 1450 MW to 1650 MW vide e-mail effective from the time block beginning at 14.30 hrs i.e. within 9 minutes. Thus, the PSLDC did not provide the petitioner with even one full time block to comply with the revised schedule. It is submitted that under Regulation 11.5(xi) of the SGC any revision to the petitioner's schedule will be effective from the following 4th time-block onwards, counting the time-block in which the revision is received. Thus, the PSLDC's revision of schedule is plainly contrary to Regulation 11.5(xi) of the SGC, which is reproduced below for convenient perusal:

11.5 (xi) "If, at any point of time, SLDC observes that there is need for revision of the schedules in the interest of better system operation, it may do so on its own and in such cases, the revised schedules shall become effective from the 4th time block, counting the time block in which the revised schedule is issued by SLDC to be the first one".

The PSLDC arbitrarily revised the petitioner's schedule in contravention of the SGC followed immediately by a demand to demonstrate the DC.

- 1.12 Regarding mis-declaration on 31.01.2017, the petitioner submitted as under:

- (i) On 31.01.2017, the PSLDC addressed Memo No.184 to the petitioner stating that at 08.13 hrs on that day the petitioner's generating station was injecting 1451 MW against its schedule of 1473.12 MW and directed the petitioner to demonstrate its DC failing which penalty shall be levied. Subsequently, at 09.16 hrs,

PSLDC issued another Memo No.188 for demonstration of DC to the petitioner stating that at 09.16 hrs on that day the petitioner's generating station was generating 1397 MW against its schedule of 1473.12 MW. However, the PSLDC did not specify the time-block(s) in which the petitioner was to demonstrate its DC nor for how long such DC had to be demonstrated as mandated by Regulation 13.3.3 of the Grid Code. Thus, each of the PSLDC's memos lacked material particulars on the demonstration of DC and cannot be the basis for the imposition of a penalty. In respect of PSLDC's second memo requiring a demonstration of DC, PSLDC has itself admitted that the petitioner demonstrated its DC vide its e-mail sharing electricity injection data dated 16.02.2017 i.e. in the 6th time block after receiving the first DC demonstration notice. In any event, the petitioner's injection was within the 12% margin permitted under the DSM Regulations.

1.13 On 01.02.2017, the officials of PSPCL jointly collected meter readings from the petitioner's Special Energy Meter ("SEM") for the purpose of energy accounting. In accordance with Regulation 14.1.5 of the SGC, PSPCL is required to share the data collected from the petitioner's SEM with PSLDC by the 5th of every month. In addition to such data, PSLDC also collects instantaneous electricity injection data for every time-block from its Supervisory Control And Data Acquisition (SCADA) System. Thereafter, PSLDC is required to prepare and make available the State Energy Account of the previous month by the 7th of every succeeding month under Regulation 14.1.6 of the Punjab Grid Code. Hence, by the 5th of every month, PSLDC is expected to have available before it data from the petitioner's SEM as well as the SCADA System data for the purpose of preparing the state energy account.

1.14 On 14.02.2017, PSLDC published the Final State Energy Account for January, 2017. Without ever granting the petitioner the opportunity to be heard or even recording the petitioner's objections, PSLDC concluded that the petitioner has mis-declared its DC on three

occasions on 17.01.2017, 24.01.2017 and 31.01.2017. Further, the PSLDC found that 14 days of fixed charges were deductible from amounts receivable by the petitioner from PSPCL. It also expressly recorded that on 15.01.2017, the petitioner had generated 1223 MW against its DC of 1227 MW and the same is not being considered as a mis-declaration because the difference was marginal i.e. a mere 4 MW. The relevant excerpts of PSLDC's Final State Energy Account dated 14.02.2017 is reproduced below:

"TSPL has demonstrated declared capacity as 1223 MW against the required 1227 MW in response to message No.170 dated 15.01.2017. The same has not been considered as misdeclaration due to marginal difference. The PSPCL may give their comments or raise their objections in this regard, if any".

1.15 Thereafter, PSLDC issued revised Final State Energy Account for January, 2017 on 01.03.2017 and intimated the same to the petitioner vide its Memo No.106 dated 02.03.2017. This revised account has been issued by PSLDC in breach of the statutory timelines for publication of state energy accounts under Regulation 14.1.6 of the SGC. In its revised version, PSLDC has considered 15.01.2017 also as a mis-declaration. Consequently, PSLDC has found that a total of four alleged mis-declarations of DC were carried out by the petitioner and 30 days' worth of capacity charges are deductible by PSPCL from the amount payable to the petitioner.

1.16 In the revised Final State Account for January, 2017 dated 01.03.2017, PSLDC has claimed that it had initially not considered 15.01.2017 as a mis-declaration apparently because as per the instantaneous SCADA data available with it the difference between actual injection and the DC was a marginal 4 MW. However, apparently after verification with the SEM data, PSLDC found that the petitioner purportedly mis-declared its DC on 15.01.2017 as well. The relevant excerpts of PSLDC's revised Final State Energy Account for January, 2017 are as under:

“DC demonstrated for dated 15.01.2017 was not considered earlier as mis-declaration due to marginal difference of 4 MW & availability of instantaneous SCADA data only. Now same is verified with SEM data. As per SEM data also TSPL failed to demonstrate declared capacity in response to message No.170 dated 15.01.2017. Accordingly, same has also been taken as mis-declaration.”

- 1.17 Under Regulation 14.1.5 and 14.1.6 of the SGC, PSLDC ought to have had both sets of data i.e. SCADA System data as well as SEM data available before it for verification prior to the preparation and publication of the Final State Energy Account for January, 2017 dated 14.02.2017. The 4 MW under-injection was considered marginal in the first instance, but was considered as mis-declaration later. The PSLDC has not recorded any reasons for not verifying the SCADA System data with the SEM data in the said account of 14.02.2017. The PSLDC has once again, without providing the petitioner with any opportunity to be heard and contrary to the principles of natural justice, arrived at a finding of mis-declaration contrary to the provisions of the SGC and the DSM Regulation.
- 1.18 PSPCL has sought to deduct the aforementioned additional mis-declaration penalty of approximately ₹ 88 crore from the monthly tariff amounts payable to the petitioner under the PPA, which will cause the petitioner grave prejudice and debilitate day-to-day operations of its generating station.
- 1.19 In PSPCL's said memos, which have calculation sheets enclosed, it appears PSPCL has computed the penalty under Regulation 11.3.13 on the basis of the formula for Monthly Capacity Charge Payment set out in Clause 1.2.2 of Schedule 7 of the PPA. However, PSPCL has assumed the generating station's availability to be 100% while computing capacity charges and has therefore arrived at a significantly higher penalty than is contemplated under SGC. The Clause 1.2.2 of Schedule 7 of the PPA does not consider the availability of the generating station at 100% in any scenario.

- 1.20 The formula for capacity charges under the PPA varies depending on the cumulative availability of the generating station as assessed in a particular month. If the cumulative availability is less than normative availability, then the availability as per the state energy account (and not normative availability) is incorporated in the formula for the purpose of computing capacity charges. Normative availability is defined as 80% availability on a contract year basis under the PPA.
- 1.21 If the Final State Energy Accounts for August, 2015 and January, 2017 including the findings that the petitioner has mis-declared its DC on 5 occasions, is allowed to stand and the resultant penalty is allowed to be recovered by PSPCL, the petitioner will suffer irreparable harm. It is stated that the petitioner has an average monthly payment obligation towards its lenders, fuel suppliers, fuel transporters, contractors, employees and other miscellaneous expenses to the extent of ₹ 356.6 Crores. In the circumstances, if PSPCL recovers further penalty, the petitioner will not be able to meet its monthly payment obligations.
- 1.22 The petitioner made the following prayers:
- i) Declare that the findings of respondent No.1 (PSLDC) regarding mis-declaration on 10.08.2015, 15.01.2017, 17.01.2017, 24.01.2017 and 31.01.2017 are void.
 - ii) Direct respondent No.1 (PSLDC) to revise energy accounts of August, 2015 & January, 2017 by excluding the findings regarding mis-declaration and publish the revised energy account at the earliest.
 - iii) Direct respondent No.2 (PSPCL), to refund the illegally deducted amount of ₹ 74,27,27,159/- along with applicable interest as per article 11.3.4 of the PPA.
 - iv) Declare that petitioner did not fail to demonstrate the DC of its generating station on 15.01.2017 & 31.01.2017 as the injection of electricity from petitioner's generating station was within the limits permitted under CERC (DSM) Regulations, 2014 and

direct that no penalty is leviable in respect of misdeclaration of 15.01.2017 & 31.01.2017.

- v) In the alternative, without prejudice to the aforesaid, direct Respondent No.2 (PSPCL) to calculate the Capacity Charges to be deducted as penalty only in accordance with Schedule-7 of Power Purchase Agreement dated 01.09.2008 and not otherwise, if at all payable.
- vi) Waive the levy of penalty on the petitioner under Regulation 11.3.13 of SGC for August, 2015 and January, 2017 as the deviation were due to bonafide reasons in exercise of Hon'ble Commission's power to relax under Regulation 18.2 of SGC.
- vii) Refund the Court fee paid by the petitioner as the petitioner was compelled to approach the Hon'ble commission on account of circumstances precipitated by the respondents and as the matter has been referred by the Hon'ble Punjab & Haryana High Court for adjudication by this Hon'ble Commission.
- viii) Award the petitioner costs and pass such orders that this Hon'ble Commission deems fit in the interest of justice.

2.0 The Commission vide notice dated 21.11.2017, directed the petitioner to immediately supply a copy of the petition to the respondents including State Grid Code Review Committee. PSPCL, SGCRC and PSLDC were directed to file their respective reply to the petition by 27.11.2017. The petition was fixed for hearing on 29.11.2017.

3.0 PSPCL vide e-mail dated 27.11.2017 requested the Commission to grant two week's time for submission of reply and accordingly, postpone the date of hearing. The Commission while allowing the request of PSPCL to grant time to file reply, postponed the date of hearing to 13.12.2017. PSPCL, State Grid Code Review Committee and Punjab State Load Despatch Centre, respondents in this petition were directed vide e-mail dated 28.11.2017 to file reply by 08.12.2017. The Commission also made it clear to all the parties that no further adjournment will be allowed as the matter is

to be decided in a time bound manner as per the directions of Hon'ble Punjab and Haryana High Court.

4.0 PSPCL vide CE/ARR&TR Memo No. 5875 dated 07.12.2017 filed reply and submitted as under:

4.1 As per the provisions of the State Grid Code, the STU (State Transmission Utility) is responsible for co-ordinating and managing the State Grid Code whereas the State Grid Code Review Committee shall be responsible to keep the implementation of State Grid Code under scrutiny and review for any changes, modifications therein. The State Grid Code Review Committee has been given further power to constitute functional committees for implementation of the State Grid Code as per regulation 2.7 of the State Grid Code. But ultimate responsibility for implementation of SGC is on SGCRC. So it cannot be said that the SGCRC is not vested with any powers to deliberate or adjudicate on objections filed by any party against the final state energy accounts issued by the PSLDC. This is virtually part of implementation of State Grid Code. By constituting Functional Committees as per Regulation 2.7, the State Grid Code Review Committee delegate some of its power for implementation of State Grid Code to various functional Committees. It is settled principle of law that by mere delegating some power does not mean that principal is not left with those powers. The SGCRC had rightly decided the objections filed by the petitioner by passing a detailed speaking order.

4.2 Regarding payment for energy supplied by the petitioner to the PSPCL, payment to the petitioner as per PPA is being paid as per two part tariff with capacity charges based on declared capacity (DC) and energy charges based on the power taken by PSPCL. The plant capability of the petitioner is 441.936 lac units/day. Accordingly, it may get capacity charges of $1.20 \times 441.936 = \square 5.30$ crore/day even without giving single unit of power during less requirement/demand of power. So the PSLDC has been cast a duty by the SGC to ask the SGS to

show their Declared Capacity (DC) and check any gaming done by any SGS.

- 4.3 The objective of Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 was to maintain grid discipline and grid security as envisaged under the SGC. As per regulation 7(2)(a) of DSM Regulations, 2014, the 12% margin or 150MW (whichever is less) at particular frequency is available only against the total schedule of Punjab. Presently, there are two large capacity IPPs in Punjab i.e. NPL of 1320 MW & TSPL of 1841.40 MW. Many small power plants are also operating in the State. If each IPP avail 150 MW margin then more than 300 MW margin is available to these IPPs/ other plants, which will beyond the limits set by Regional Load Despatch Centre (NRLDC, Delhi) for safe and secure operation of Grid.
- 4.4 DSM Regulations nowhere recognizes that it is not possible to accurately estimate electricity injection levels with numerical exactitude and so deviation has been permitted. Deviations have been allowed for the purpose of unforeseen events and not for the purpose of gaming.
- 4.5 Regarding the time block(s) in which the petitioner was to demonstrate its DC as per regulation 11.5(xi) of the SGC If, at any point of time, SLDC observes that there is need for revision of the schedules in the interest of better system operation, it may do so on its own and in such cases, the revised schedules shall become effective from the 4th time block, counting the time block in which the revised schedule is issued by SLDC to be the first one. So as per this regulation, the petitioner was required to demonstrate its DC from the 4th Time Block.
- 4.6 PSPCL is bound to pay as per the terms and conditions of PPA. As per the SGC, the PSLDC would make Final State Energy Account and PSPCL is bound to make the payment as per the said account.
- 4.7 PSPCL has calculated the penalty amount for capacity charges for the total days in compliance of regulation 11.3.13 of State Grid Code.

4.8 The clause 1.2.2 of schedule 7 of PPA is related to the payment of monthly capacity charges and has no relation to the penalty amount calculation. As per this regulation, fixed charges for the days are calculated irrespective of the cumulative availability declared in state energy account or normative availability of 80%.

4.9 In case the petitioner is allowed to take benefit of its mis-declarations then it would cause great loss to the electricity consumers of the Punjab. The Capacity charges are paid on the basis of Declared Capacity and not on the basis of actual energy supplied. The petitioner has been paid ₹494.052 crore on the basis of capacity charges without supplying any electricity to the PSPCL. This amount of ₹494.052 crore is allowed to the PSPCL during ARR exercise and the ultimate burden is passed on the actual electricity consumers.

As per the provisions of the Grid Code, there is no need to prove that the petitioner has intentionally mis-declared its DC. Regulation 11.3.13 nowhere says that the intention of the generator has to be seen. The petitioner is paid capacity charges without supplying any electricity only on the basis of declared capacity. So there is no need to pass any order regarding the intention of the petitioner.

5.0 PSLDC vide CE/SLDC memo no. 405 dated 08.12.2017 submitted the reply and made the following submissions;

5.1 The Petitioner entered into a Power Purchase Agreement (PPA) dated 01.09.2008 with PSPCL for generation and supply of electricity from its power project having 3 Units of 660 MW each (1980 MWs) situated at Talwandi Sabo in the State of Punjab. The generation, scheduling, dispatch and delivery of the electricity on a day to day basis under the above PPA is required to be done in accordance with, amongst others, the Punjab State Grid Code notified by the Commission under Section 86(1)(h) of the Electricity Act, 2003 read with the provisions of the PPA.

5.2 The scheduling done by PSLDC is governed by Regulation 11.4 of the Punjab State Grid Code. The steps involved in the Scheduling are as under:

- (a) By 10.00/11.00 hours every day, the Generating Company i.e. the Petitioner would intimate to PSLDC, the declared capacity i.e. station wise ex- power plant MW and MWh capabilities foreseen for the next day.
- (b) The capacity declared by the Petitioner would be for the duration of 00.00 hrs to 24.00 hrs of the following day at 15-minute interval time block (96 time blocks). As per Regulation 11.5 (vii) of the Punjab State Grid Code the Petitioner can revise the declared capacity during the actual day of injection of power by the Petitioner with an advance notice of 30-45 minutes to PSLDC.
- (c) The Distribution Licensee i.e. PSPCL decides on the overall requirement of electricity for the State of Punjab in MW and MWh for next day at 15 minutes interval (96 time block).
- (d) Thereafter, PSLDC finalizes the injection schedule of each Generating Company and drawl schedule for Distribution Licensee i.e. PSPCL.
- (e) On the following day, the Generator injects energy into the grid and recovers its payment on two-part tariff basis. Firstly, on the basis of the capacity declared and secondly, on the basis of energy injection.
- (f) The capacity charges are payable to the Petitioner as per State Energy Account being published in first week of the succeeding month. This account comprises of fixed components so it does not require meter data at the first instance. This is governed by Regulation 14.1.6 of the Punjab State Grid Code.
- (g) The difference between the actual injection of power by the Petitioner and the injection schedule given by PSLDC to the Petitioner is settled through the deviation account maintained as per Regulation 14.1.5 of the Punjab State Grid Code after analyzing meter data in the last week of the succeeding month.

In view of the above, the capacity charges are fixed and are paid on the basis of the capacity declared available by the Petitioner and is not

based on the schedule given by PSLDC or actual energy injected by the Petitioner into grid.

5.3 As per Regulation 11.3.12 of the Punjab State Grid Code, a Generating Company has to declare the plant capabilities faithfully and if it is suspected that the Generating Company has deliberately over/under declared the plant capability contemplating to deviate from the schedule given on the basis of their capability declaration, PSLDC may serve a notice on the Generating Company to explain the situation. Since the capacity charges are payable as per the Declared Capability, so by declaring the capacity at a higher level, the Petitioner would make unfair gains at the expense of consumers in the State of Punjab.

5.4 In the months of December 16 & January 17, PSLDC suspected that the petitioner is not declaring its DC faithfully and accordingly notices were issued on 09.12.16, 16.12.2016, 20.12.2016, 30.12.2016, 05.01.17 and 06.01.17. The above warning messages had no effect on the Petitioner and the Petitioner continued to violate the provisions of the Punjab State Grid Code. After every warning notice, instead of increasing its generation to match the capacity declared by the Petitioner earlier, the Petitioner started revising/reducing the declared capacity itself. The fact that the Petitioner was not able to come up to the capacity declared and the correction has been done by revising/reducing the declared capacity itself establishes the gaming undertaken by the Petitioner and therefore, it is a clear case of mis-declaration as stipulated in 11.3.13 of the Punjab State Grid Code.

5.5 While analyzing the data of December 2016, it was found that the Petitioner had not delivered required generation when maximum generation schedule corresponding to DC was given during the month.

S.No.	Particulars for the Month of December 2016	Time blocks
1.	No. of blocks for which the Petitioner has given maximum Declared Capacity	1769
2	No. of blocks for which PSLDL has given max. schedule corresponding to DCs in the month of Dec.2016	459
3.	No. of blocks for which the Petitioner had not delivered required generation corresponding to blocks mentioned at S.No. 2	387

- 5.6 Due to consistent non-compliance of the directions, PSLDC in January, 2017, instructed the Petitioner to demonstrate the declared capacity on 10.01.2017, 15.01.2017, 17.01.2017, 24.01.2017, 30.01.2017 and 31.01.2017 (twice) as per Regulation 11.3.13 of the Punjab State Grid Code.
- 5.7 The Petitioner failed to demonstrate its Declared Capacity on 15.01.2017, 17.01.2017, 24.01.2017 and 31.01.2017. These were treated as mis-declaration and penalty corresponding to 30 days was imposed on the Petitioner
- 5.8 The total amount of penalty payable for the above mis-declaration worked out to ₹ 159.15 crore (approx.) as per Regulation 11.3.13 of the Punjab State Grid Code for the mis-declarations by the Petitioner in the month of January, 2017.
- 5.9 Apart from the above, there is one more mis-declaration made by the Petitioner in the month of August, 2015 which was conveyed to the Petitioner through Energy Account of August, 2015. The amount of ₹3.6 crore (approx) was not deducted by PSPCL at the relevant time and has been deducted in the month of April, 2017. The objection of the petitioner on mis-declaration relating to August, 2015 is time barred and delayed by a period of one year. The objection should have been filed within 15 days of the issuance of Energy Account as per regulation 14.1.16.

- 5.10 The mis-declaration by the petitioner was for the deliberate purpose of having an unfair financial gain at the cost of the utility and the consumers of the State. The objective and purpose of the Statutory Regulations is to ensure that such mis-declarations are avoided and the penalty has been provided as a regulatory measure to deter such acts of mis-declaration.
- 5.11 The inferences being drawn by the petitioner to the proceedings before Hon'ble High Court are not relevant to this case. The issue before the Commission is whether penalty imposed by PSPCL is justified or not.
- 5.12 Regulation 14.1.6 of the State Grid Code provides that the petitioner can file objections within a period of 15 days of the publication of the energy account. The objections are required to be deliberated in Metering Committee and finalized as per their decision. However, the Petitioner did not represent their case to Metering Committee before filing CWP No. 5269/2017 before the Hon'ble High Court on 14.03.2017 and only approached Metering Committee vide its letter dated 20.03.2017 when the case was already pending before the Hon'ble High Court.
- 5.13 The Petitioner was well aware of the timelines in which it had to demonstrate the capacity declared. As per Regulation 11.5(vii) of the Punjab State Grid Code, the generator is eligible to revise its capacity anytime after giving an advance notice of 30-45 minutes. In view of Regulation 11.5(xi), the directions of PSLDC shall be implemented from 4th time block by counting the time block in which the directions are issued from PSLDC as 1st time block. The demonstration messages are given in accordance with the ramp up/ramp down rate specified by the Petitioner for increasing their generation. The time lines were well understood by the Petitioner as is evident from its letter dated 31.01.2017 claiming that they have demonstrated the Declared Capacity for 10.01.2017, 15.01.2017 and 30.01.2017. For 24.01.2017 and 31.01.2017, the Petitioner claimed that the under injection was within 12 % of the schedule. However, on 17.01.2017, the Petitioner has reduced its declared capacity due to technical reasons. No issue

regarding confusion/vagueness in time line was mentioned by the Petitioner in its earlier correspondence/ clarifications regarding mis-declarations.

5.14 The Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 (DSM Regulations) are not applicable in the present case. The Petitioner is deliberately trying to mix up the issues of mis-declaration and deviation settlement mechanism. The Petitioner's contention regarding provision of 12 % margin as per Deviation Settlement Mechanism Regulations (DSM) is not applicable in case of demonstration of Declared Capacity due to following reasons:

- (i) The objective of Deviation Settlement Regulations is to maintain grid discipline and grid security as envisaged under the Grid Code through the commercial mechanism for Deviation Settlement based on the drawl and injection of electricity by the users of the grid.
- (ii) The present case relates to demonstration of declared capacity under Regulation 11.3.13 of Punjab State Grid Code. The objective of this regulation is to deal with gaming in the declaration of the capacity by a generator and not to deal with deviation from the schedule under dispatch instructions. There is no provision allowing any deviation while demonstrating the Declared Capacity.
- (iii) As per PPA, two-part tariff with Capacity Charges (fixed charges) based on declared capacity and Energy Charges (variable charges) based on the energy scheduled for injection/ sale to PSPCL is payable to the petitioner. Deviation Settlement Mechanism regulations are applicable to settle deviations, if any, from scheduled energy which relates only to the 2nd part of the tariff namely the variable charges. However, 1st part of tariff is independent of Deviation Settlement Mechanism regulations and payments are being made by PSPCL as per the capacity declared by the Petitioner.

- (iv) As per the DSM regulations, there are normal charges when the deviation is within 12% & additional charges when deviation is beyond 12%.
- (v) The objective and purpose of Deviation Settlement Mechanism Regulations providing for 12% is different as compared to the objective and purpose of requiring strict compliance of the declared capacity given and its demonstration when required. The purpose of providing for strict compliance in regard to capacity declaration being demonstrated is to ensure that the generator does not make higher declaration of capacity when it is aware that the Procurers may not require the power and therefore will not schedule the power as per Merit Order Dispatch principles. Declaration of capacity on higher side when the generating units are not physically in a position to generate up to the quantum of declared capacity is an intentional gaming to get more capacity charges and make unlawful gain at the cost of the Procurers/consumers at large. Therefore, generator is expected to ensure declaration of capacity to the extent of machine capability. If the generators are allowed to have the facility of giving declared capacity with such large 12% margin as claimed by the Petitioner, every generator will always be declaring capacity to the extent of machine's physical capacity plus 12% during the period when the generators have the knowledge that there will be less scheduling as per prevailing trend of the power demand of the State and thereby make windfall gain on deemed capacity Charges.
- (vi) as per the Indian Electricity Grid Code, the generators shall have the capability of instantaneously picking up to 105% of Maximum Continuous Rating (MCR) of the unit subject to machine capability. However, the Petitioner failed to demonstrate its Declared Capacity as per Regulation 5.2(h) of the Indian Electricity Grid Code.

5.15 The Petitioner's deviation from the schedule was not for bonafide reasons and for protecting the safety of the plant. Rather, the Petitioner has deliberately over/under declared the plant capability, intending to make unfair gains at the cost of the consumers in the State of Punjab.

5.16 Regarding Mis-declaration August, 2015, PSLDC submitted as under;

(i) Telephonic instructions were given by PSLDC regarding demonstration of declared capacity (as per prevailing practices at that time). The issue of non-receipt of declared capacity demonstration instructions was never raised by the Petitioner through any of its e-mail/ correspondence at the relevant time and is an afterthought. As per Clause 14.1.6 of the Punjab State Grid Code, any objections to the State Energy Accounts (SEA) can be raised within 15 days from the date of Issuance of State Energy Account which was issued on dated 07.09.2015. But the Petitioner had never raised the issue of mis-declaration after issuance of State Energy Accounts for the month of August, 2015. The Petitioner has now raised this issue after one and a half year on 13.04.2017.

(ii) In the letter-dated 24.08.2015, the Petitioner never raised any objection to the issue of mis-declaration. The letter dated 24.08.2015 was written to CE/PPR, PSPCL regarding clarification of failure of the Petitioner generating Units to deliver required out-put generation which leads to Mis-declaration with copy to Chief Engineer/PSLDC for information. The extracts of the Petitioner's letter dated 24.08.2015 read as under:

"1) Afterwards, as per Rev-8 & 9 from PSPCL, load ramp up by 50 MW in each time block was given to TSPL Unit from 15:45 hrs. Accordingly, TSPL started load ramp up by starting 4th mill. While taking 4th mill (Mill D) in operation, mill current starts fluctuating and tripped on high vibration.

2) Afterwards, TSPL tried to take 5th Mill E in service, but mill mix air gate got stuck up and it did not open 100 % on account of

which we were forced to stop mill E also Upto 17:00 hrs. we were matching with schedule generation, after inspecting the said mill problems, we revised DC from 613.8 MW to 450 MW from 17:15 hrs due to all the above mentioned problems.”

- (iii) As per the above, the Petitioner failed to generate the power as per declared capacity. The issue started at 15.45 hrs & the Petitioner's claim that they are matching the schedule up to 17.00hrs is wrong even as per data attached by the Petitioner. As per the data, the Petitioner was under-injecting by around 20% from 15.45-16.15 hrs and continued under-injecting up to 17.15 hrs. However, instead of improving its injection, the Petitioner reduced its Declared Capacity in response to telephonic instructions regarding demonstration of Declared Capacity (as per prevailing practice at that time) resulting into Mis-declaration letter No. 1996/3/SLDC dated 10.08.2015. This fact is further fortified by the letters dated 16.09.2015 and 24.09.2015 sent by the Petitioner to PSLDC.

5.17 Regarding Mis-declaration on 15.01.2017, the facts are as under:

- (i) The Petitioner was well aware of the timelines in which it had to demonstrate the declared capacity. This is clear from letter dated 31.01.2017 written by petitioner before issuance of State Energy Account on 14.02.2017 in which petitioner claimed that he has demonstrated the Declared Capacity as per schedule of running units available with them against PSLDC demonstration message dated 15.01.2017. As per Regulation 11.5.7 of the Punjab State Grid Code, the generator is eligible to revise its capacity anytime after giving an advance notice of 30-45 minutes. In view of Regulation 11.5.11, the directions of PSLDC shall be implemented from 4th time block by counting the time block in which the directions are issued from PSLDC as 1st time block. Accordingly, SLDC directions were effective from 10:15 hrs as the demonstration message was delivered at 09:32 hrs

and the Petitioner was required to step up generation, up to the declared capacity of running units schedule of 1227.6 MW and sustain it up to 11:00 hrs (i.e. till the time generation/injection schedule was reduced as per Dispatch instructions available with the Petitioner).

- (ii) The Petitioner failed to demonstrate capacity of 1227.6 MW even up to 10:30 hrs after receipt of demonstration message at 9:32hrs. Accordingly, the same has been considered as 1st mis-declaration during the month of January 2017 under regulation 11.3.13 of the Punjab State Grid Code. Though, the Petitioner had generated 1227.6 MW only in time block of 10:30 to 10:45 hrs, but failed to sustain it in next block of 10:45 – 11:00 hrs. The demonstration instruction was given only for 2 running units ($2 \times 613.8 = 1227.6$ MW).
- (iii) As per Regulation 13.3.3 of the Punjab State Grid Code, the generating station is required to come up to declared availability within time specified by the generators. The Petitioner has specified a ramp rate while declaring their Declared Capacity.

5.18 Regarding Mis-declaration on 17.01.2017, the facts are as under:

- (i) On 17.01.2017 one unit was running, 2nd unit was under reserve shutdown due to low demand and 3rd unit was under shutdown due to fault at the Petitioner end. So capacity of 922.8 MW of two units (for one running unit and second unit under reserve shutdown) was declared by the Petitioner. However, PSLDC considered capacity to be demonstrated as 309MW for one running unit which comes out after deducting full capacity (613.8 MW) of unit under reserve shutdown from total capacity declared (922.8 MW) by the Petitioner. The Petitioner's failure in demonstration of declared capacity was checked according to the capacity of running unit only.
- (ii) The Petitioner failed to demonstrate 309 MW even up to 9:00 hrs after receipt of demonstration message at 8:15hrs. The

Petitioner continued under injection during time block of 9:00-9:15 hrs in the range of 20% of schedule. Thereafter, the Petitioner reduced its Declared Capacity to 250 MW according to its actual generation. Accordingly, the same has been considered as 2nd mis-declaration during the month of January 2017 under Regulation 11.3.13 of the Punjab State Grid Code

- (iii) Regarding the contention of the Petitioner that the deviation from the schedule and purported failure to demonstrate Declared Capacity was due to reasons entirely beyond its control and on account of bonafide reasons, then the Petitioner should have declared capacity faithfully in the first instance or revised its capacity timely as per regulation 6.5 (18) of IEGC. Instead of revising its Declared Capacity, the Petitioner continued under injection from 04:00 hrs. Accordingly, demonstration message was given at 08:15 hrs. PSLDC was informed regarding technical problems through e-mail at 19:20 hrs of 17.01.2017 whereas the Petitioner was instructed to demonstrate Declared Capacity at 08.15 hrs.

5.19 Regarding mis-declaration on 24.01.2017, the facts are as under:

- (i) On 24.01.2017 also, the Petitioner failed to demonstrate 1650 MW even up to 16:00 hrs after receipt demonstration message at 14:48 hrs. The Petitioner continued under injection till the PSPCL revised its SG to 1200 MW at 18:30 hrs. Accordingly, same has been considered as 3rd mis-declaration during the month of January, 2017 as per clause 11.3.13 of State Grid Code. The averments of the Petitioner to the effect that PSLDC did not provide it with notice of even one full block is without any basis, as in the case of Demonstration notice (issued during 14.45 -15.00 hrs block) for 24.01.2017, the Petitioner was required to demonstrate from 15.30 hrs onwards (4th time block). Further, the revision in the schedule is reflected in the second-time block as due to manual system (through e-mails),

real time operators are issuing injection/drawl schedules after telephonic conversation/ getting consent of officers/officials deputed in shifts at Plant. Any objections in this regard should have been raised during real time only. As per ramp-rate given by the Petitioner itself (1% of unit capacity/minute), the Petitioner was able to increase its generation by 276 MW (1% of 1841.40) even in one-time block. However, the Petitioner was instructed to increase only by 200 MW.

- (ii) The Petitioner was well aware about the time lines during which Declared Capacity has to be demonstrated. The issue related to timelines is an afterthought to escape the penalty imposed on the Petitioner.

5.20 Regarding mis-declaration on 31.01.2017, the facts are as under:

The Petitioner failed to demonstrate 1473.12 MW even up to 9:15 hrs after receipt of demonstration message at 08.20 hrs. Accordingly, same has been considered as 4th mis-declaration during the month of January 2017 under Regulation 11.3.13 of the Punjab State Grid Code. The Petitioner achieved required generation during 9.45 – 10.00 hrs but could not sustain this in next block i.e. 10.00 -10.15hr. Thereafter, required generation was again achieved during 10.15 – 10.30hrs blocks but failed to continue required injection in next blocks till the reduction of schedule by PSLDC from 11:30 hrs onwards. The Deviation Settlement Regulations are not applicable for DC demonstration.

5.21 The State Energy Account, as per Regulation 14.1.6 of the Punjab State Grid Code, is being prepared for the previous month by 7th of succeeding month. It comprises of fixed components 'Capacity declared by seller' and 'injection schedule given by PSLDC' only. Both these components do not require any reference from SEM data in the first instance. However, after receipt of meter data, the injection schedule is compared with actual injection for settlement of 2nd part of tariff. Any deviation/mis-match between injection schedule and meter

data is then settled through deviation settlement account as per Regulation 14.1.5 of the Punjab State Grid Code. This deviation settlement account for the previous month is being published in the last week of succeeding month whereas the State Energy Account for the previous month is being published by 7th of succeeding month. The SEM data in this case was received on 17.02.2017. On 31.01.2017, apprehending that penalty will be imposed on it in accordance with Regulation 11.3.13 of the Punjab State Grid Code, the Petitioner wrote a letter to PSLDC outlining its concerns. The concerns raised by the Petitioner in the letter dated 31.01.2017 were taken in to account before publishing the State Energy Accounts dated 14.02.2017.

5.22 In the letter dated 31.01.2017 sent by the Petitioner, the Petitioner claimed that they have demonstrated the Declared Capacity on 15.1.2017 whereas there was still a difference of 4MW to demonstrate its Declared Capacity. The State Energy Account, supposed to be published by the 7th of each month as per Regulation 14.1.6 of the Punjab State Grid Code, was already delayed by 7 days (i.e. 7.2.17 to 14.2.17) as most of the staff of PSLDC was on election duty (Elections were held in Punjab on dated 04.02.2017). It is submitted that some of PSLDC staff remained busy with their election duty till counting of vote on 11.03.2017. Accordingly, State Energy Account was published on 14.02.2017 without taking into account mis-declaration dated 15.01.2017 in the first instance to avoid injustice on account of ambiguity in data, if any. The difference of 4MW was needed to be verified/confirmed with other source of data. The Petitioner was informed on 16.02.2017, after publishing State Energy Account on 14.02.2017, through an e-mail that the issue regarding mis-declaration on 15.01.2017 was under review. After receipt of SEM data on 17.02.2017, the difference of 4MW was verified & confirmed from SEM data and hence the account was revised by considering mis-declaration on 15.01.2017.

5.23 It is wrong that the Petitioner never had any intention to mis-declare its declared capacity and any deviation from the schedule was on account

of bona fide uncontrollable technical constraints faced in the operation of the plant. The Petitioner was repeatedly violating Regulation 11.3.12 of the Punjab State Grid Code by not declaring its plant capabilities faithfully and accordingly was issued 6 No. warning/gaming notices by PSLDC in the month of December 2016 and January 2017.

5.24 Due to consistent non-compliance of the directions issued by PSLDC, , PSLDC instructed the Petitioner in January, 2017 to demonstrate the declared capacity as per Regulation 11.3.13 of the Punjab State Grid Code and the Petitioner failed to demonstrate its declared capacity on four occasions. In case there was any technical problem as admitted by the Petitioner, the Petitioner should have declared capacity faithfully and further had the option to revise their Declared Capacity during the intra-day as per Regulation 6.5 (18) of the Indian Electricity Grid Code.

5.25 The messages were given to demonstrate capacity as per the time frame i.e. ramp rate specified by the generator. In case the generator has given the declared capacity faithfully of a specified quantum, the generator is already in a position to generate such quantum and no lead time is required to put the machines in shape to generate such quantum. The whole purpose is to ensure that the generator does not game and give declared capacity more than what the machines are capable of. The demonstration of declared capacity is a surprise check to verify whether the generating station can inject power as per their declared capacity or not.

5.26 Regulation 13.3.4 is for monitoring purposes and comes under the Section 13 of Punjab State Grid Code- *"MONITORING OF GENERATION & DRAWAL"* and relate to monitoring of generator output as per contracted capacity. However, Regulation 11.3.13 of the Punjab State Grid Code relates to gaming and demonstration of Declared Capacity under Section 11- *"SCHEDULE AND DESPATCH"* which is independent of monitoring. Demonstration of declared capacity messages to the generators, by its very nature, is to be given abruptly/at random/without prior notice and generators have to comply with the same. The very purpose of requiring the generator to

demonstrate the capacity will be rendered useless if the process suggested by the Petitioner has to be followed i.e. time at which declared capacity is to be demonstrated shall be conveyed by the Petitioner. The claim of the Petitioner 'within the time specified by the generator(s)' mentioned in Regulation 13.3.3 refers to the ramp rate of the Units.

5.27 Further, Petitioner is wrongly interpreting the Regulation 11.3.10 of the Punjab State Grid Code with regard to the meaning of 'ex-power plant basis'. The ex-power plant means net MW/MWh output of a generating station, after deducting auxiliary consumption and transformation losses.

6.0 During hearing on 13.12.2017, the learned counsel for the petitioner argued the case at length and also filed an Order of the Hon'ble Supreme Court dated 04.08.1969 in Civil Appeal No.883-892 of 1966, which was taken on record. The counsel for the petitioner requested for grant of 15 days to file rejoinders to the replies of the respondents. The counsel for PSLDC made her submissions and brought out that during the months of December, 2016 & January, 2017, the petitioner was warned on various occasions and advised to adhere to the Schedule. It was only due to persistent defaults by the petitioner that demonstration notices were issued as per State Grid Code. The Commission directed PSLDC to file 15 minute time block-wise detail of Declared Capability (DC), Schedule Generation, under/over injection along with detail of the events relevant to the dispute during 09.12.2016, 16.12.2016, 20.12.2016, 30.12.2016, 05.01.2017, 06.01.2017, 10.01.2017, 15.01.2017, 17.01.2017, 24.01.2017, 30.01.2017 and 31.01.2017. The Commission directed PSPCL to file an affidavit giving reasons for not recovering the penalty on account of mis-declaration of August, 2015 for almost two years and also explain the methodology used to calculate the penalty for mis-declaration for the month of January, 2017. PSPCL was directed to explain what would have been the Fixed Charges payable to the petitioner for the month of January, 2017 had there been no mis-declaration during the month.

The Commission directed the petitioner to file rejoinder to the replies of the respondents, with copy (hard copy & email) to the respondents by 27.12.2017 and the respondents shall file sur-rejoinder, if any, by 04.01.2018, with copy to the petitioner (hard copy & email). PSPCL and PSLDC shall file their respective affidavit and the information/data as stated above, by 27.12.2017 with copy to the other parties (hard copy & email). The petitioner may file its response to the same, if any, by 04.01.2018 (hard copy & email). The petition was fixed for arguments on 12.01.2018.

7.0 In response to Commission's order dated 01.01.2018, the petitioner filed the rejoinder to the reply of PSPCL vide letter No.TSPL/ PSERC/ AK/ /JAN-18/06 dated 08.01.2018 and made following submissions:

7.1 The SGCRC is not the ultimate authority to implement the Punjab Grid Code. The SGCRC's function under Regulation 2.5.1 of the Punjab Grid Code to "scrutinize and review" the implementation of the Punjab Grid Code cannot be interpreted to mean that the SGCRC can directly implement the Punjab Grid Code itself by usurping the functions and powers of any and all other statutory authorities, agencies and users under the Punjab Grid Code. It is evident from Regulation 2.7.1 of the Punjab Grid Code that the power to co-ordinate and manage the Punjab Grid Code is vested with the State Transmission Utility, and not the SGCRC. The SGCRC's role as prescribed under Regulation 2.5.1 and Regulation 2.7.1 of the Punjab Grid Code is limited only to recommending any revisions to the Punjab Grid Code to the Commission and nothing more. In any event, PSPCL has not cited any provision of the Punjab Grid Code that vests the SGCRC to deliberate and decide on objections raised against Monthly State Energy Accounts published by the PSLDC. The SGCRC's Order dated 11.05.2017 is without jurisdiction and ex facie contrary to the statutory scheme under the Punjab Grid Code.

7.2 Under Regulation 2.7.6 (v) read with Regulation 14.1.6 of the Punjab Grid Code, it is only the CMC which is vested with the jurisdiction to deliberate and decide on objections to the Monthly State Energy

Accounts published by the PSLDC. Further, PSPCL has failed to point to any provision of the Punjab State Grid Code, which empowers the SGCRC to decide on objections to Monthly State Energy Accounts itself or usurp the power of any of its functional committees.

- 7.3 PSPCL has wrongly conflated the terms 'gaming' and 'mis-declaration'. The provisions as regards gaming are set out in Regulation 11.3.12 of the Punjab State Grid Code whereas mis-declaration is dealt with under Regulation 11.3.13. While accusing the Petitioner of engaging in gaming, PSPCL has alleged that the Petitioner has contravened Regulation 11.3.13 and imposed the penalty for mis-declaration.
- 7.4 The margin of 12% available under the DSM Regulations is measured on the basis of a generating station's 'Actual Injection' as defined under Regulation 2(1)(c) of the DSM Regulations. In this regard, the 'Deviation' as defined under Regulation 2(1)(h) of the DSM Regulations is measured against the said 'Actual Injection'. Pertinently, DC is also to be demonstrated by a generating station's 'Actual Injection' viz-a-viz its DC. Actual injection is the touchstone for measuring deviation under the DSM Regulations and for measuring any mis-declaration under the Punjab Grid State Code. The margin of 12% would apply with full force and vigour to the demonstration of DC under the Punjab State Grid Code.
- 7.5 The aforesaid $\pm 12\%$ margin of deviation is provided to generating companies because it is technically impossible for any thermal power plant to operate for sustained periods at a consistent and constant output on a minute to minute basis without fluctuations. Consequently, the DSM Regulations recognise that it is not possible to accurately estimate electricity injection levels with numerical exactitude and therefore recognizes that deviation from the schedule is inevitable within specified limits subject to the payment of deviation charges.
- 7.6 PSPCL's reliance on Regulation 11.5.11 of the Punjab State Grid Code in support of the argument that any revision in time schedule operates from the 4th time block including the one in which it is issued and thus

DC has to be demonstrated in the 4th time block is wholly misplaced. A bare perusal of the aforesaid provision indicates that it deals with the revision of schedules which come into operation from the 4th time block in which they are issued. Nowhere does Regulation 11.5.11 lay down the time block in which DC has to be demonstrated. This being the case, the aforesaid provision has no bearing on the issue at hand.

7.7 Regarding calculation of Capacity Charges as penalty for mis-declaration, the petitioner reiterated submission as brought out in para 1.19.& 1.20 above. Regulation 11.3.13 envisages the penalty being in the shape of reduction of capacity charges. This being so, the formula for calculating capacity charges under Clause 1.2.2 of the 7th schedule is crucial. This is borne out by use of the phrase “due to the generator” in Regulation 11.3.13. The only mechanism on the basis of which the Petitioner is due any capacity charges is the mechanism envisaged under the PPA. Hence, any penalty computation must also adhere to be very same mechanism, if at all any penalty is leviable. PSPCL calculated the penalty amount in clear contravention of this formula and assumed the availability of the generating station as 100%, which is in accordance with law.

7.8 PSPCL’s said deductions are in contravention of Article 11.3.2 of the PPA, which limits the maximum possible deduction in a Contract Year to ₹ 46,03,50,000/- and no more and is also subject to the following:

- a) Invoice to be issued by Procurer duly acknowledged by the Seller,
- b) The said Invoice not disputed by the Seller within 30 days of receipt,

The Commission had earlier also directed PSPCL vide order dated 12.06.2015 to follow the terms of PPA including article 11.3.2.

7.9 PSPCL argues that establishing intentional wrongdoing is not essential for arriving at a finding of mis-declaration and disputes the Petitioner’s assertion on this count. Contrary to PSPCL’s argument, establishing intention is a fundamental precondition for imposing a penalty of the

scale and magnitude that has been imposed on TSPL. This being the case, the Respondents have not been able to establish that TSPL intentionally mis-declared its DC, which is the sine qua non for the imposition of any penalty or for arriving at a finding that has obvious penal consequences.

7.10 TSPL's actual injection on 24.01.2017 and 31.01.2017 was within the 12% margin permissible under the DSM Regulations and TSPL was able to reach up to the DC within a reasonable time span after receiving the DC demonstration notices. In light of the foregoing, it is reiterated that the findings of misdeclaration and consequent penalty amount were wrongly arrived at in clear violation of the Punjab State Grid Code and principles of natural justice.

7.11 PSPCL has not offered any cogent explanation for why it suddenly decided to deduct a penalty in respect of an alleged misdeclaration on 10.08.2015 almost 2 years later. It is submitted that PSPCL's deduction in respect of 10.08.2015 is time barred and PSPCL ought not to be permitted to effect deductions as per its whims and fancies. PSPCL is put to strict proof of the same.

8.0 In response to Commission's order dated 01.01.2018, the petitioner filed the rejoinder to the reply of PSLDC vide letter no.TSPL/PSERC/AK/JAN-18/07 dated 08.01.2018 and submitted as under;

8.1 PSLDC has wrongly conflated the terms 'gaming' and mis-declaration'. The provisions as regards gaming are set out in Regulation 11.3.12 of the Punjab State Grid Code whereas mis-declaration is dealt with under Regulation 11.3.13. While accusing the Petitioner of engaging in gaming, PSLDC has alleged that the Petitioner has contravened Regulation 11.3.13. This is clearly an attempt by PSLDC to mislead the Commission and is legally unsustainable. The gaming and mis-declaration are distinct legal concepts and the present proceedings are restricted solely to mis-declaration. No proceedings regarding gaming have been initiated against the Petitioner, and the entirety of the

PSLDC's submissions regarding gaming is wholly irrelevant to the instant proceedings.

- 8.2 The PSLDC has completely disregarded the 12% margin of deviation built into the Injection by the DSM Regulations factoring the nature of power plants. The 12% deviation margin under the DSM Regulations is a material consideration and any evaluation of the demonstration of DC by the PSLDC necessarily has to take such deviation margin into consideration. The DSM Regulations permit a deviation of $\pm 12\%$ from the schedule because power plants by their very nature are complex by virtue of the multitude of operating components, and cannot generate electricity at a sustained level with minute to minute accuracy. Even for commissioning test purposes of the Unit under the PPA, the Unit(s) need to inject power (continuously for 72 hours) at 95% level of the contracted capacity of the Unit (i.e. 95% of 613.8 MW) post which capacity charges payments gets started.
- 8.3 PSLDC has not been able to establish that TSPL intentionally mis-declared its DC, which is the sine qua non for the imposition of any penalty or for arriving at a finding that has obvious penal consequences, such as in TSPL's case.
- 8.4 TSPL repeatedly expressed its objections against the finding of mis-declaration for 10.08.2015. More specifically, the Petitioner submitted its objection to PSLDC and PSPCL vide e-mail dated 10.08.2015 at 23.33 hrs and letter nos. TSPL/PSPCL/PPR/AM/AUG-15/186 dated 24.09.2015, TSPL/CE-SLDC/AM/ /SEP-15/179 dated 16.09.2015 and TSPL/PSPCL/PPR/AM/SEP-15/186 dated 24.09.2015, after which no penalty was deducted by PSPCL. Despite TSPL raising multiple objections, PSLDC and PSPCL did not deliberate on or consider the objections raised by TSPL in any shape or form for a period of almost two years and thereafter abruptly imposed a penalty on TSPL. This being the case, it is submitted that TSPL promptly registered its objection against the actions of PSLDC and PSPCL within the time-frame stipulated under Regulation 14.1.6.

- 8.5 PSLDC argues that TSPL was bound to raise its objections as regards the findings of 4 mis-declarations for January, 2017 before the CMC as regards the energy accounts and imposition of penalty. Instead of doing so, PSLDC argues, TSPL directly approached the High Court vide W.P.No.5269 of 2017 on 14.03.2017. In this regard, the onus was on the PSLDC to refer the Petitioner's objections to the CMC. However, in light of the PSLDC's failure to refer these objections to the CMC, the Petitioner was compelled to approach the High Court to avoid the imposition of penalty in contravention of fundamental principles of natural justice.
- 8.6 PSLDC argues that DC had to be demonstrated in the 4th time block including the one in which notices were issued. Further relying on TSPL's letter dated 31.01.2017, PSLDC argues that TSPL was cognizant of the time blocks in which DC had to be demonstrated, as evidenced by the fact that it indicated that it was able to successfully demonstrate DC on 10.01.2017, 15.01.2017 and 30.01.2017 and the deviation for 24.01.2017 and 31.01.2017 was within the 12% margin. PSLDC's argument that the provisions of Regulation 11 and 13 constitute 2 separate statutory schemes and cannot be read in a harmonious fashion is wholly untenable, in light of the fact that it is a well settled principle that a code has to be read in a harmonious fashion to ensure that its provisions are not at odds with each other. Further, in light of the fact that Regulation 11 does not stipulate the time period in which DC has to be demonstrated, Regulation 13.3.3 would govern the time period in which DC must be demonstrated. Regulation 11.5.11 deals with the revision of schedules and does not lay down the timelines in which DC has to be demonstrated.
- 8.7 DC is declared on an ex-power plant basis for an entire day i.e. 96 time blocks. In the context, if the Petitioner is able to achieve its DC at any point within the said 96 time blocks, it would be sufficient to establish that the Petitioner was not unfaithful in its declaration.

- 8.8 It is denied that petitioner has not objected to the findings of mis-declaration in its letter dated 24.08.2015. No DC demonstration notice was given to the Petitioner in respect of the DC of 10.08.2015, and therefore any findings of mis-declaration are void being contrary to Regulation 11.3.13. The PSLDC must be put to strict proof to establish that it issued a DC demonstration notice to the Petitioner on 10.08.2015.
- 8.9 Under Regulation 11.6.1 of the Punjab State Grid Code, generating stations are exempted of the obligation to comply with dispatch instructions in case the same puts into jeopardy the safety of the plant or personnel associated with the plant. The justification offered by TSPL was merely aimed at explaining that the finding of mis-declaration was on account of bona fide uncontrollable factors beyond TSPL's control. This being the case, TSPL merely complied with its legally prescribed obligation and explained why it was of the view that the finding of mis-declaration was incorrect.
- 8.10 Regarding mis-declaration on 17.01.2017, PSLDC argues that it considered the DC only for one unit that was running at that time viz 309 MW. PSLDC did not permit the Petitioner to run all its 3 units in order to demonstrate DC. On account of the PSLDC's instructions, the Petitioner was compelled to keep 1 of its units under shutdown, totaling 613.8 MW. This being so, the Petitioner was left with no choice but to demonstrate DC only for one of the three units. The penalty imposed on it should have been confined to one unit and imposed on a pro rata basis. The imposition of penalty for mis-declaration for the entire plant when only one unit was in operation is grossly unjust and ought to be set aside.
- 8.11 PSLDC did not refer the objections raised by the Petitioner to the CMC as mandated under Regulation 14.1.6 of the Punjab Grid Code. In light of the fact that deliberation by the CMC is a mandatory precondition to the imposition of a penalty under the Punjab Grid Code, it is submitted that the CMC was the appropriate authority tasked with the

responsibility of considering TSPL's objections. Since this was not done, TSPL was not given a proper and meaningful hearing before adverse findings were passed against it.

8.12 Regarding mis-declaration on 15.01.2017, PSLDC argues that, in light of the fact that most of its officials were on election duty up to 11.3.2017, it did not immediately arrive at a finding of misdeclaration for 15.01.2017. After verifying the difference of 4 MW on the basis of SEM data published on 17.02.2017, PSLDC arrived at a finding of mis-declaration against the petitioner. PSLDC was always aware of the fact that there was a deviation of 4 MW for 15.01.2017. The quantum of the deviation did not change even after it obtained the SEM data. This being so, the Petitioner is at a loss to understand how the same deviation of 4 MW which did not constitute a misdeclaration as per the energy accounts released on 14.02.2017 suddenly constituted a mis-declaration as per the revised energy accounts. Further, the Punjab Grid Code does not create election duty as a valid justification for the revision of energy accounts.

8.13 PSPCL has computed mis-declaration penalty in an arbitrary and wrongful manner to levy a grossly inflated sum from the Petitioner. PSPCL has not followed the capacity charges formula under the PPA. More specifically, while applying the formula for Monthly Capacity Charge Payment set out in Clause 1.2.2 of Schedule 7 of the PPA, PSPCL has assumed the generating station's availability to be 100% whilst computing capacity charges and has therefore arrived at a significantly higher penalty than is contemplated under Punjab Grid Code.

8.14 Further, instead of imposing a pro-rated penalty for the units whose DC was allegedly mis-declared, PSLDC imposed penalty on a wholesale basis for all units (including for units that were under reserve shutdown at the PSLDC's instruction) for the five alleged events of mis-declaration in August, 2015 and January, 2017.

9.0 In compliance to the Commission's order dated 01.01.2018 wherein PSPCL was directed to file an affidavit giving reasons for not recovering the penalty on account of mis-declaration of August, 2015 for almost two years and also explain the methodology used to calculate the penalty for mis-declaration for the month of January, 2017, PSPCL vide CE/ARR&TR Memo No. 6145 dated 10.01.2018 filed the affidavit and submitted the information is as under:

9.1 penalty of ₹ 3.59 crore as fixed charges for 2 days due to mis-declaration in the month of August, 2015 as per SEA of PSLDC, Punjab could not be recovered inadvertently as this was first instance of recovery due to mis-declaration of Declared Capacity. Later on this was deducted from the Monthly bill for January, 2017.

9.2 the penalty for 4 occasions of mis-declaration of DC during the month of January 2017 has been calculated as per regulation 11.3.13 of the State Grid Code.

9.3 the detailed calculation of the above said penalty for mis-declaration of the declared capacity is as under:-

$$3 \times 613.8 (2+4+8+16) \times 1.2004 \times 1000 = \text{Rs. } 159.156 \text{ Cr.}$$

$$(\text{Ex-Bus Plant Capacity} * (\text{Days of Penalty}) * \text{Fixed Charges Per unit})$$

9.4 TSPL would have been paid the capacity charges amounting to ₹ 120.56 crore against the Declared Capacity had there been no mis-declaration, after adjustment of Mega Status benefits for the month of January 2017.

9.5 PSPCL vide CE/ARR&TR Memo no. 6148 dated 10.01.2018 re-submitted the detailed calculations of the penalty amount due to typographic error in the earlier submission and submitted as under; $3 \times 613.8 \times 24 \times (2+4+8+16) \times 1.2004 \times 1000 = \text{Rs. } 159.156 \text{ Cr.}$

$$(\text{Ex-Bus Plant Capacity} * 24 * (\text{Days of Penalty}) * \text{Fixed Charges Per unit})$$

10.0 As per the order of the Commission dated 01.01.2018 wherein PSLDC was directed to file 15 minute time block-wise detail of Declared Capability (DC), Schedule Generation, under/over injection along with detail of the events relevant to the dispute during 09.12.2016, 16.12.2016, 20.12.2016,

30.12.2016, 05.01.2017, 06.01.2017, 10.01.2017, 15.01.2017, 17.01.2017, 24.01.2017, 30.01.2017 and 31.01.2017, PSLDC vide CE/PSLDC memo no. 448 dated 05.01.2018 filed the affidavit placing on record the data and other information desired by the Commission.

11.0 During hearing on 12.01.2018, the learned counsels for the parties were heard at length. Ld. Counsel for the petitioner desired to file some judgments in support of his case. The Commission directed that same shall be filed within 3 days with copy to the respondents and respondents may file reply, if any, within next three days. The order was reserved.

12.0 The petitioner filed the note on arguments with supporting case law on 17.01.2018 and submitted as under:

12.1 On the issue that '*A penalty will not be imposed if intention is not made out, and merely because it is lawful to do so where the breach is venial*', the petitioner cited the case of Hindustan Steel Ltd V/s State of Orissa [(1969) 2 SCC 627] the Hon'ble Supreme Court of India wherein it has been held as follows:

"8. Under the Act penalty may be imposed for failure to register as a dealer: s.9(1) read with s. 25.1(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the

manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out.”

Petitioner's DC declarations were bona fide and based on a best estimate of the capability of its power plant. It is submitted that none of the Respondents have produced any evidence to establish the Petitioner's intention to mis-declare its DC. On the contrary, it is stated on 15.01.2017, the Petitioner injected within 4 MW of the DC in the 42nd time block, which was initially accepted by the PSLDC itself as being satisfactory. Indeed, within 4 time blocks of receiving the DC demonstration notice, the Petitioner demonstrated the DC in the 43rd time block by over-injecting. Further, on 24.01.2017, the Petitioner injected within 7 MW of the DC within 7 time-blocks (67th time block) of receiving the DC demonstration notice, and on 31.01.2017, the Petitioner demonstrated the DC within 6 time blocks (40th time block) of receiving the DC demonstration notice.

The Petitioner's power plant was capable of achieving the DC on 15.01.2017, 24.01.2017 and 31.01.2017, and the Petitioner was not unfaithful in its DC declarations. Thus, as is evident from the injection data, the Petitioner was under the bona fide belief that its power plant would achieve the DC, which it did as a matter of fact. Therefore, the breach is merely hyper-technical and venial and ought not be considered as deserving of a crippling penalty amounting to ₹ 162 crore by this Commission.

- 12.2 The PSLDC could not have revised its finding of mis-declaration regarding 15.01.2017 without following the procedure prescribed by law under Regulation 14.1.6 of the Punjab Grid Code.

In respect of 15.01.2017, the PSLDC arrived at a firm finding vide its Final State Energy Account dated 14.02.2017 that the deviation of 4 MW was merely marginal and was not being considered a deviation. No objections in this regard were received from PSPCL, indeed, PSPCL acted on the PSLDC's first finding of 3 instances of mis-

declaration in January, 2017 set out in the Final State Energy Account dated 14.02.2017 and deducted a penalty of ₹ 74,27,27,159/- vide its Memo No.239/ISB-468 dated 02.03.2017. PSLDC did not have the power or jurisdiction to revise the Final State Energy Account for January, 2017 by subsequently considering 15.01.2017 as a mis-declaration vide its revised Final State Energy Account dated 01.03.2017. PSLDC was bound to follow the procedure for revising the State Energy Accounts laid down in Regulation 14.1.6 of the Punjab Grid Code by referring the matter to the Commercial and Metering Committee, which was admittedly not done as no objections were received from PSPCL and the Commercial and Metering Committee was not even convened to consider the State Energy Account of January, 2017.

On the provision that the PSLDC does not have the power to revise or modify or review its first decision that 15.01.2017 was not a mis-declaration, reference may be had to the Hon'ble Supreme Court of India Judgement in Kalabharati Advertising V/s Hemant Vimalnath Narichania & Others [(2010) 9 SCC 437].

It is a well settled legal proposition that where a statutory procedure is prescribed, then it has to be mandatorily followed. When Regulation 14.1.6 clearly provides the mechanism through which a Final State Energy Account can be revised, the PSLDC cannot arbitrarily disregard the same and whimsically add 15.01.2017 as a mis-declaration that too without ever offering the Petitioner an opportunity to be heard. PSPCL never objected to or questioned the PSLDC's first Final State Energy Account dated 14.02.2017. On the contrary, PSPCL accepted the PSLDC's initial finding that 15.01.2017 was not a mis-declaration, which is evident from the fact that PSPCL had initially deducted only an amount of ₹ 74,27,27,159/- equivalent to 3 instance of Penalty i.e. 16 days' worth of Penalty as calculated by them. In the regard, reference was made to the Hon'ble Supreme Court of India's Judgement in Dipak Babaria & Anr. V. State of Gujarat & Ors. [(2014) 3 SCC 502].

13.0 PSLDC vide CE/SLDC memo No. 16 dated 19.01.2018 filed the submission in response to note on arguments of the petitioner and reiterated most of the comments already brought out under para 5 above and are thus not reproduced here again. However, the specific replies to the issues raised by the petitioner in its written note submitted on 17.01.2018 (para 12 above) are as under:

13.1 As per Regulation 11.3.12 of the Punjab State Grid Code, the Petitioner has to declare the plant capabilities faithfully and if it is suspected that the Petitioner has deliberately over/under declared the plant capability contemplating to deviate from the schedule given on the basis of their capability declaration, PSLDC may serve a notice on the Generating Company to explain the situation. The Petitioner should not make such wrong declaration because the higher capacity declared will result in higher capacity charges payable by PSPCL to the Petitioner. Therefore, by declaring the capacity at a higher level, the Petitioner would make unfair gains at the expense of consumers in the State of Punjab.

13.2 The Petitioner was issued several warning notices of wrong declaration in the month of December 2016 and January 2017. Further it was found that the Petitioner had not delivered required generation in 387 time blocks when required by PSLDC. Despite such warning notices, the default had continued as the Petitioner did not ramp up the Generation to the level of the declared capacity and instead started revising the declared availability, establishing clearly the act of mis-declaration on the part of the Petitioner.

13.3 The Petitioner failed to demonstrate its Declared Capacity against messages conveyed by PSLDC on 15.01.2017, 17.01.2017, 24.01.2017 and 31.01.2017. The mis-declaration is therefore clearly established and the penal consequences provided in the Punjab Grid Code became applicable.

13.4 In addition to the above, there was one more mis-declaration made in the month of August, 2015 which was conveyed to the Petitioner

through Energy Account of August, 2015. This was not challenged by Petitioner at the relevant time.

13.5 The mis-declaration was for the deliberate purpose of having an unfair financial gain at the cost of the PSPCL and the consumers of the State.

13.6 In regard to the mis-declaration in August 2015, the declared capacity was revised/reduced by the Petitioner in response to telephonic instructions regarding demonstration of declared capacity (as per prevailing practices at that time and stated on affidavit) and mis-declaration letter No. 1996/3/SLDC dated 10.08.2015. The issue of non-receipt of declared capacity demonstration instructions was never raised by the Petitioner through any of its e-mail/ correspondence at the relevant time. The contention of the Petitioner regarding verbal or written instructions regarding demonstration of capacity after one and a half year regarding non-receipt of declared capacity demonstration instructions is incorrect. This is also demonstrated by the fact that the Petitioner itself on 24.08.2015 had sought to explain the failure to demonstrate the declared capacity and stated that it was not a case of mis-declaration. In the said letter dated 24.08.2015 or any other letters in the months of August & September 2015, the Petitioner does not raise any objection about the non-receipt of instructions for demonstration of capacity. Therefore the objection now taken by the Petitioner is clearly an afterthought.

13.7 As per Clause 14.1.6 of the Punjab State Grid Code, any objections to the State Energy Accounts (SEA) can be raised within 15 days from the date of issuance of State Energy Account, which was issued on 07.09.2015. The Petitioner had not raised the issue of mis-declaration after issuance of State Energy Accounts for the month of August, 2015 as per the above. The letters referred to by the Petitioner in the Rejoinder do not raise any objection to the State Energy Accounts on mis-declaration. The letters in August 2015 are prior to the State Energy Accounts and therefore cannot be considered as objections to the same. Further the letters dated 16.09.2015 and 24.09.2015 also do

not make any objections on the finding of mis-declaration but only in relation to ramp rates and resynchronization of the unit under reserve shut down. The Petitioner has now raised this issue after one and a half year on 13.04.2017 as an afterthought.

13.8 The allegation made by the Petitioner that the PSLDC revisited its finding on mis-declaration on 15.1.2017 is misleading and wrong. In the letter-dated 31.01.2017 sent by the Petitioner, it was claimed that the Petitioner demonstrated the Declared Capacity on 15.01.2017 whereas there was still a difference of 4MW to demonstrate its Declared Capacity. The State Energy Account, supposed to be published by the 7th of each month as per Regulation 14.1.6 of the Punjab State Grid Code, was delayed by 7 days (i.e. 07.02.17 to 14.02.17) as most of the staff of PSLDC was on election duty (Elections were held in Punjab on 04.02.2017) and this has been stated on Affidavit in the Reply. It is submitted that some of PSLDC staff remained busy with their election duty till counting of vote on 11.03.2017. Accordingly, State Energy Account was published on 14.02.2017 without taking into account mis-declaration dated 15.01.2017 in the first instance. The difference of 4MW was required to be verified / confirmed with other sources of data. The Petitioner was informed on 16.02.2017, after publishing State Energy Account on 14.02.2017, through an e-mail that the issue regarding mis-declaration on 15.01.2017 was under review. After receipt of data from other sources i.e. SEM data on 17.02.17, the difference of 4MW was verified and confirmed from SEM data and hence the account was revised by considering mis-declaration on 15.01.2017.

13.9 There was, therefore, a clear finding in the initial stage itself that there was a wrong declaration to the extent of 4 MW by the Petitioner. It is not that the PSLDC decided to ignore or waive such mis-declaration on the basis that the deviation was marginal. There is no default on the part of PSLDC in regard to waiting for verification with the metered data to ensure that there was in fact a difference of 4 MW.

13.10 The plea of the Petitioner that there was a review or revising by the PSLDC in February 2017 of the decision already taken by the PSLDC is contrary to records and is wrong. The decision of the Hon'ble Supreme Court in (2010) 9 SCC 437 is out of context and has no application to the present case. It was a case of concluded judicial decision being sought to be reviewed by the authority subsequently when there existed no power to review. At that outset, PSLDC is not a judicial or quasi-judicial authority but is a statutory authority entrusted with carrying out various functions, including consideration of mis-declaration by the generators. The word 'review' in the communication by the PSLDC was in the context of the finalisation to be done after the metered accounts are available and not in the context of a review under Order 47 Rule 1 of the Code of Civil Procedure, 1908 or Section 94 of the Electricity Act, 2003 applicable to judicial or quasi judicial proceedings. In the present case, there was no decision taken in January 2017 that there was no mis-declaration on the part of the Petitioner. Factually it was found that the deviation was 4 MW. The time taken to verify the SEA data cannot be said to be reviewing or revisiting. Further there is no requirement of opportunity of hearing to be granted to the Petitioner for SEA. In case the Petitioner has any objections, the same can be raised after the preparation of the SEA and decision of mis-declaration. The reliance placed by the Petitioner in the above decision is misplaced. Even as per the judgment, there was sufficient reasons for the PSLDC to hold that there was misdeclaration on 15.01.2017 based on the verification of data, which confirmed the deviation of 4 MW. There is no provision in the Grid Code for any deviation in cases of demonstration of capacity, even by 1 MW. The Petitioner had four time blocks to achieve the capacity as declared by it and in fact the said time was more that required as per the ramp rate also declared by the Petitioner. Therefore the Petitioner cannot claim that the deviation was minimal or trifling.

13.11 The capacity demonstration was as per ramping up/down time is specified by the Petitioner itself (i.e. 1% increase in

generation/min./Unit) while declaring the capacity. The Petitioner was asked to demonstrate declared capacity as per time specified by the Petitioner.

13.12 The reliance placed by the Petitioner on the decision in Dipak Babaria & Anr v. State of Gujarat and Ors (2014) 3 SCC 502 is out of context and has no application to the present case. The Petitioner is referring to the decisions of the Apex Court without laying the factual foundation of their application to the case in hand.

13.13 The contention of the Petitioner that the matter of mis-declaration raised by the PSLDC is trifling or immaterial in nature is wrong. The Punjab Grid Code provides for declaration of availability to be faithful. The Petitioner cannot make declaration of availability in deviation to the actual capability to generate and thereby make unlawful gains in capacity charges. The Regulations are intended to enable the PSLDC to seek demonstration of capacity at any time they consider appropriate. The said methodology is the only check to ensure that the generators do not mis-declare the capacity. The monetary consequences in un-escapable manner have been specifically provided to keep a check on gaming or on intentional mis-declaration. In the circumstances, it is irrational on the part of the Petitioner to term the deviation or inability to demonstrate the capacity declared by the Petitioner as trifling or immaterial. The Regulations do not relate the quantum of mis-declaration to the penalty applicable for mis-declaration. The reliance placed by the Petitioner on the decision in Umesh Chand Gandhi v. 1st Addl Dist. & Sessions Judge and Another (1994) 1 SCC 747 in this regard is misplaced. The decision has no application to the present case. Further in the present case, the Petitioner has not demonstrated any bona fide mistake. As stated hereinbefore, the Petitioner cannot claim that it was not aware of its own plant's capability, particularly, when the Petitioner is claiming capacity charges on such capability. In any event, the Petitioner had received warning notices in December 2016 and was aware that it had not been able to generate to the capacity declared and even in January

2017, the Petitioner was under-injecting prior to the issuance of the demonstration notices by PSLDC.

13.14 The Petitioner's contention is that the penalty cannot be imposed without establishing that the Petitioner had the intention to mis-declare. The fact that the Petitioner has indulged in the mis-declaration is clear beyond any dispute upon the Petitioner failing to demonstrate the declared capacity. The Punjab Grid Code itself has provided the statutory scheme for deciding on the mis-declaration. There is no requirement of intention to mis-declare in the Grid Code. In any event, the failure on the part of the Petitioner to demonstrate the capacity it had declared that the generating unit is capable of generating the previous day and the claim for fixed charges being made based thereon is a factor establish the intention of the Petitioner to mis-declare. There has been no explanation whatsoever as to why the Petitioner declared available the capacity in excess of what it was capable of generating. Further, the fact is that the Petitioner had been consistently under-injecting as compared to its schedule and sought to revise its capacity only after receiving the Warning Notices or Notice for demonstration of capacity. If the Petitioner had made a bona fide mistake in declaration of capacity, it would have immediately revised the same once the Petitioner realized that it was under-injecting. In the context of the above the reliance placed by the Petitioner in the decision in *Hindustan Steel Limited v. State of Orissa* (1969) 2 SCC 627 is misplaced and has no application to the present case. Quite apart from the above, the decision relied on by the Petitioner is in the context of a provision involving a proceeding which may lead to imprisonment besides fine. It is well settled that in criminal jurisprudence or in a matter which may lead to imprisonment, the nature of proof is heavy, the fact has to be established beyond reasonable doubt and mens rea or intention to commit the offence is an essential ingredient. The same cannot be applied to a penalty imposed in an adjudicatory proceeding of a civil nature and not by way of fine as a result of prosecution of an accused for commission of an offence in a

criminal proceeding. The respondent quoted Hon'ble Supreme Court Judgment in SEBI –v- Shriram Mutual Fund (2006) 5 SCC 361= AIR 2006 SC 2287 wherein it has been held that

“34. The Tribunal has erroneously relied on the judgment in Hindustan Steel Ltd. v. State of Orissa [(1969) 2 SCC 627 : AIR 1970 SC 253] which pertained to criminal/quasi-criminal proceedings. That Section 25 of the Orissa Sales Tax Act which was in question in the said case imposed a punishment of imprisonment up to six months and fine for the offences under the Act. The said case has no application in the present case which relates to imposition of civil liabilities under the SEBI Act and the Regulations and is not a criminal/quasi-criminal proceeding.

35. In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15-D(b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow.

36. *In our view, the impugned judgment of the Securities Appellate Tribunal has set a serious wrong precedent and the powers of the SEBI to impose penalty under Chapter VI-A are severely curtailed against the plain language of the statute which mandatorily imposes penalties on the contravention of the Act/Regulations without any requirement of the contravention having been deliberate or contumacious. The impugned*

order sets the stage for various market players to violate statutory regulations with impunity and subsequently plead ignorance of law or lack of mens rea to escape the imposition of penalty. The imputing of mens rea into the provisions of Chapter VI-A is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VI-A to give teeth to the SEBI to secure strict compliance with the Act and the Regulations”.

In Para 34, the Hon'ble Supreme Court has distinguished the Hindustan Steel Limited (supra) referred to in the Written Submission of the Petitioner.

13.15 Without prejudice to the above and in any event, even assuming the applicability of the decision, the burden is on the Petitioner which has not been discharged by the Petitioner. In the present case, the Petitioner cannot be said to be unaware of its obligation to declare capacity faithfully as provided in the Punjab Grid Code and PPA and this is particularly in view of the multiple warning notices received by it. The Petitioner cannot claim that it was not aware of its own plant's capability and had overestimated the capability by mistake.

14.0 COMMISSION'S FINDINGS AND ORDER

14.1 The petitioner (TSPL) is a generating company which owns a 1980 MW (3x660 MW) thermal plant situated in district Mansa of Punjab and supplying its entire power to PSPCL through intra-state transmission system. The brief history of the dispute resulting in to the present petition is that PSLDC imposed penalty on the petitioner on account of mis-declaration of Declared Capacity (DC) as per the provisions of SGC. PSLDC directed the petitioner to demonstrate DC on six occasions during the month of Jan. 2017 i.e on 10.1.2017, 15.01.2017, 17.01.2017, 24.01.2017, 30.01.2017 and 31.01.2017 as per regulation 11.3.13 of the State Grid Code. PSLDC declared that the petitioner has failed to demonstrate DC on four occasions in the month of January, 2017 i.e on 15.01.2017, 17.01.2017, 24.01.2017 and 31.01.2017 and asked PSPCL to deduct Capacity Charges for 30 days as per regulation 11.3.13 of the State Grid Code resulting in a penalty

of ₹ 159.155 crore PSLDC had also declared mis- declaration of DC on 10.08.2015 and issued the Energy Account accordingly on 07.09.2015 but penalty on account of mis-declaration amounting to ₹ 3,59,14,666/- was reflected by PSPCL in the energy bill of TSPL for the month of February, 2017. So total penalty of ₹ 162,74,72,865/- was imposed on TSPL out of which ₹ 74,27,27,159/- has already been recovered by PSPCL.

The petitioner then approached Hon'ble Punjab and Haryana High Court by filing CWP 5269 of 2017 challenging PSLDC final Energy Account and findings on mis-declaration. Hon'ble High Court in its Order dated 06.04.2017 directed Commercial Metering Committee (CMC) to consider the objections of TSPL after affording an opportunity of hearing to TSPL. The recovery of balance amount of ₹ 84,88,31,039/- out of total amount of ₹ 162,74,72,865/- was stayed till the matter is decided by CMC. Accordingly, the petitioner filed objections before CMC on 13.04.2017 against PSLDC's final State Energy Account. A meeting of CMC was fixed for 25.04.2017 for giving personal hearing to TSPL but the petitioner vide letter dated 22.04.2017 expressed its inability to attend CMC and again approached Hon'ble Court in CWP 8492 of 2017 challenging the constitution of CMC. The petitioner objected that two out of three member of the Committee i.e Chief Engineer/SLDC and Chief Engineer/PPR are those officers who have filed written statement in CWP 5269 of 2017 before Hon'ble High Court.

The Hon'ble High Court vide Order dated 25.04.2017 in CWP 8492 directed State Grid Code Review Committee (SGCRC) to consider the representation (Annexure P7, which was later clarified as P8 by Hon'ble High Court in its order dated 01.09.2017 in CM 10204) in context to the observation made above, within 15 days from the date of receipt of the copy of the order. Accordingly, SGCRC conducted a meeting on 11.05.2017 wherein representatives of TSPL also participated. TSPL pleaded that SGCRC was directed by the Hon'ble High Court vide Order dated 25.04.2017 to constitute the CMC with

members who had not pleaded in CWP 5269 and only CMC was empowered to address objections and not the SGCRC as per the provisions of SGC. After hearing TSPL, SGCRC passed the Order on 11.05.2017 rejecting objections of TSPL.

The petitioner filed CWP 10553 of 2017 challenging SGCRC Order dated 11.05.2017. The Hon'ble High Court vide Order dated 28.09.2017 disposed of the petition as the parties agree that the matter can be relegated to the Commission for taking appropriate decision on merits. The operative part of the order of the Hon'ble High Court is as under:

“The petition can be disposed of, as the parties agree that the matter can be relegated to PSERC, Respondent No.4, for taking appropriate decision on merits. Needless to observe that petitioner would be at liberty to refer objection, Annexure P-7 (Annexure P-9 in this petition) before respondent No.4, which shall be at liberty to take decision after affording opportunity of hearing to the parties. Ordered accordingly. This Court feels it necessary to observe that the Commission would not be unduly swayed by the findings arrived at by Respondent no. 1 and take independent decision in the matter.

Learned counsel appearing for Respondent No.3 submits that amount as contemplated by Division Bench in its Order, shall not be charged till decision is taken by Respondent No.4. This Court hopes and trust that the matter shall be decided expeditiously, in no case later than three months.”

Pursuant to the orders of the Hon'ble High Court, the petitioner filed the present petition under section 86(1)(f) of the Act read with regulation 1.10.2 of the SGC before the Commission. One of the objections of the petitioner has been that as per regulation 14.1.6 of SGC, the objections raised were required to be considered by CMC before declaring mis-declaration of DC. Firstly, objections have to be filed by the generator after publication of the Monthly State Energy Account within 15 days. Secondly, composition of the CMC has been specified under regulation

2.7.6 of the SGC and accordingly the members are nominated by SGCRC. However, we will not go into the constitution of the CMC or the competency/ merits of the order passed by SGCRC or the grounds for the refusal of the petitioner to get the matter examined by CMC since all these issues have been considered in various petitions by the Hon'ble Punjab & Haryana High Court. After hearing the parties, the Hon'ble High Court has relegated the matter to the Commission for appropriate decision on merits. So, we will confine ourselves to the question as to whether PSLDC's findings of mis-declaration on various occasion and the penalty imposed on the petitioner on this account is in accordance with State Grid Code or not.

14.2 The levy of the penalty has been challenged by the petitioner mainly on the following grounds:

- i. PSLDC has not established that petitioner has intentionally mis-declared the DC, which is the basic condition for imposition of penalty. The deviations were due to bona fide uncontrollable technical reasons.
- ii. SLDC ignored that 12% margin for deviation is available as per CERC (Deviation Settlement Mechanism) Regulations, 2014.
- iii. No time period for demonstration of DC was specified by PSLDC and also the period during which the petitioner is to demonstrate the DC.
- iv. Regulation 13.3.3 of the State Grid Code provides that DC is to be demonstrated by a generating station at a time specified by the generator.
- v. Final State Energy Account is erroneous. The revision of Final State Energy Account for the month of January 2017 is in violation of Grid Code.
- vi. The DC is declared for the whole plant and not unit wise. So demonstration of DC has to be done for all units including unit under shut down on the instruction of SLDC.
- vii. No demonstration notice was served on 10.08.2015.

viii. Assuming penalty is leviable, the computation is wrong. PSPCL computed payable Capacity Charges on the basis of availability (73.313% during the month) but for computing penalty under regulation 11.3.13 of the Grid Code, 100% availability has been considered resulting in excess penalty of ₹ 43.41 crore.

14.3 Before we examine the date-wise events resulting in levy of penalty on the petitioner, it is important to first answer the issues raised by the parties regarding interpretation of the various provisions of the Electricity Act, 2003 (Act) and the State Grid Code (SGC) governing grid operation, demonstration of DC, penalty due to mis-declaration, which are relevant to the dispute in hand. As per regulation 2.3.1 of the State Grid Code read with section 32 of the Act, SLDC is the apex body to ensure integrated operation of the power system in the State. As envisaged in the Act & SGC, SLDC shall

- a. be responsible for optimum scheduling and despatch of electricity within the State in accordance with the contracts entered into with the licensees or the generating companies operating in the 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 state transmission system;
- 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 CEA Grid Standards and the SGC/IEGC.

Further, section 33 of the Act empowers SLDC to issue such directions and exercise such supervision & control as may be required for ensuring integrated grid operation and for achieving the maximum economy & efficiency in the operation of the power system in the State. Sub-section (2) to section 33 of the Act provides that all the concerned licensees/generators and other users shall comply with the directions of the SLDC failing which

penalty can be imposed as per section 33(5) of the Act. Thus SLDC has been made responsible by the Act and the SGC to ensure grid discipline/security and also to keep an account of the quantity of electricity transmitted through the State grid, for which some powers have also been vested in the body.

To operate and maintain country wide interconnected grid system to transmit power across the country, the Act provides for implementation of Grid Code in a uniform manner throughout the country. Accordingly, it has been provided in section 79(1)(h) of the Electricity Act, 2003, that the Central Commission (CERC) shall specify Grid Code having regard to Grid Standards. Section 86(1)(h) of the Electricity Act, 2003, further provides that the State Commission (SERC) shall specify State Grid Code consistent with the Grid Code specified by CERC under section 79(1)(h) of the Act. Accordingly CERC notified CERC(Indian Electricity Grid Code) Regulations, 2010 (IEGC) and this Commission specified PSERC (Punjab State Grid Code) Regulations, 2013 (SGC).

Now let us examine various provisions of SGC which govern scheduling, despatch, and energy accounting. As per regulation 11.3.5 of the SGC, if a generating station is connected to the State Transmission network only, as is the case of the petitioner, then SLDC shall coordinate scheduling. Regulation 11.3.4 of the SGC provides the functions of SLDC w.r.t scheduling & despatch, which reads as under:

“11.3.4 The State Load Despatch Centre is responsible for coordinating the scheduling of a generating station within the State, real-time monitoring of the station’s operation, checking that there is no gaming (gaming is an intentional mis-declaration of a parameter related to commercial mechanism in vogue, in order to make an undue commercial gain) in its availability declaration, or in any other way revision of availability declaration and injection schedule, switching instructions, meter data processing, collections/disbursement of UI payments, outage planning etc. SLDC shall check that there is no gaming in scheduling by the open access consumers / licensees. In case, gaming is suspected, SLDC shall disallow

the energy corresponding to suspected gaming from UI account till final decision.”

In this regulation, various functions of SLDC have been enumerated and one of the functions relevant to the present dispute is ‘*checking that there is no gaming (gaming is an intentional mis-declaration of a parameter related to commercial mechanism in vogue, in order to make an undue commercial gain) in its availability declaration or in any other way revision of availability declaration and injection schedule*’. Gaming has been elaborated as an intentional mis-declaration of a parameter related to commercial mechanism in vogue. In this regulation, both mis-declaration of availability or revision of DC and injection schedule which may be used by a generator to make undue commercial gain have been covered under the term ‘Gaming’. In two part tariff, the commercial parameters are fixed charges on the basis of DC and energy charges on the basis of injection. In the present dispute, it is the ‘availability declaration’ which will be under examination.

Further sub-regulation 11.3.10 of the SGC casts a responsibility on the generator to declare ex-power plant MW and MWh capabilities for the next day in 96 time blocks starting from 00:00 to 24:00 hrs along with possible ramp up/ramp down in a block. The relevant regulation is as under;

*“11.3.10 The SGS shall make an advance declaration of ex-power plant MW and MWh capabilities foreseen for the next day, i.e., from 0000 hrs to 2400 hrs. During fuel shortage condition, in case of thermal stations, they may specify minimum MW, maximum MW, MWh capability and declaration of fuel shortage. **The generating stations shall also declare the possible ramping up / ramping down in a block.** -----”[emphasis added]*

So the generator has to declare the plant capability and also provide ramp up/ramp down rate to SLDC. Further regulation 11.3.12 of SGC is very important to understand the present issue. The regulation reads as under:

“11.3.12 It shall be incumbent upon the SGS to declare the plant capabilities faithfully, i.e., according to their best assessment. In case, it is suspected that they have deliberately over/under declared the plant

capability contemplating to deviate from the schedules given on the basis of their capability declarations (and thus make money either as undue capacity charge or as the charge for deviations from schedule), the SLDC may serve the notice of gaming and ask the SGS to explain the situation with necessary backup data.”

So a generator has to declare his plant capabilities according to his best assessment and if it is suspected that he has deliberately declared his capability wrongly to make undue capacity charges or to earn through deviation charges by manipulating his injection according to system parameters then these acts of the generator shall be covered under gaming and notice may be issued by SLDC. So the act of the generator must be to make money which is otherwise not due to him if he has declared the commercial parameters faithfully. Here again the responsibility to check any gaming or undue enrichment of the generator has been put on SLDC.

Further, regulation 11.3.13 of SGC specify the methodology to be used by SLDC to check mis-declaration of DC in case it is suspected that generator has not declared his plant capability faithfully. The regulation also provides for the quantum of penalty to be imposed in case mis-declaration during any duration or time block is established. The relevant regulation 11.3.13 of SGC is as under;

*“11.3.13 The SGS shall be required to demonstrate the declared capability of its generating station **as and when asked by the SLDC**. In the event of the SGS failing to demonstrate the declared capability, the capacity charges due to the generator shall be reduced as a measure of penalty. The quantum of penalty for the first mis-declaration for **any duration/block in a day** shall be the charges corresponding to two days fixed charges. For the second mis-declaration the penalty shall be equivalent to fixed charges for four days and for subsequent mis-declarations, the penalty shall be multiplied in the geometrical progression over a period of a month.” [emphasis added]*

Thus the generator has to demonstrate DC as & when asked by SLDC and it is not open to the generator to choose his timing to implement the directions

of SLDC. Secondly, mis-declaration for any duration or time block is liable for penalty as provided in regulation 11.3.13 of SGC. A cogent reading of all these regulations will show that firstly the generator has to declare his DC faithfully to his best assessment and also declare the possible ramp up/down in a block. Now during the day of the actual operation, some unforeseen events may happen which prevents the generator to deliver required power as per his schedule. Keeping such scenario in view, regulation 11.5(vii) of SGC read with regulation 6.5(18) of IEGC provides that revision of DC of a generator having two part tariff with capacity charges and energy charges, shall be permitted with advance notice and revised schedule/DC shall be effective from the 4th time block counting the time block in which the request for revision has been received in SLDC as first time block. Thus, in case due to some circumstances beyond the control of the generator, he is not able to deliver the required power then he is supposed to revise his schedule failing which it shall be considered as gaming for making undue commercial gains at the expense of the consumers. Any excess declaration of available capacity means extra capacity charges which are otherwise not due to the generator. Secondly, if it is suspected that he has not declared his DC faithfully then SLDC can direct the generator to demonstrate his DC as and when asked by SLDC. Thirdly, the quantum of penalty is for mis-declaration for any duration/time block in a day i.e. if mis-declaration is established for even one time block in a day, the generator shall be liable to pay penalty correspondence to the two days Fixed Charges for the 1st offence. Thus we conclude that:

- i) The generator shall have to demonstrate its DC as and when asked by SLDC i.e. immediately after the notice is served on the generator as per the ramp up/ ramp down rate declared by the generator under regulation 11.3.10 of SGC, provided no specific time block has been mentioned in the demonstration notice.
- ii) In case the generator fails to reach the desired level of generation in the time period required as per his ramp up/ramp down rate or as may be allowed by SLDC and fails to sustain the generation level, the generator shall be liable to pay penalty for mis-declaration. However,

since in the present case, PSLDC had allowed the petitioner to implement its directions from 4th time block by counting the time block in which demonstration notice was issued as 1st time block, so we will go with the liberal interpretation of PSLDC to examine the events.

iii) The words “gaming in regulation 11.3.4 and ‘deliberate over/under declaration of plant availability’ in regulation 11.3.12 has the same connotation i.e. any act of the generator to make undue money either by mis-declaration of DC (thus earn extra capacity charges) or manipulate injection to earn through deviation charges (which is frequency based commercial mechanism). Regulation 11.3.13 of SGC provides the procedure to deal with mis-declaration of availability declaration and quantum of penalty if mis-declaration is established.

iv) Thus the act of the generator has to be deliberate or intentional and the motive should be to make money either as undue capacity charges or charges due to deviation as per DSM regulation.

14.4 The petitioner has argued that a generator can demonstrate his DC within the time specified by the generator as per regulation 13.3.3 of the SGC. The relevant regulations read as under:

13.3 Monitoring Procedure

13.3.1 *For effective operation of the State Transmission System, it is important that a SGS's declared availability is realistic and that any departures are continually and invariably fed back to the Generator to help effect improvement.*

13.3.2 *The SLDC shall continuously monitor Generating Unit outputs and Bus voltages. More stringent monitoring may be performed at any time when there is reason to believe that a SGS's declared availability may not match the actual availability or declared output does not match the actual output.*

13.3.3 *SLDC can ask for putting a generating station to demonstrate the declared availability by instructing the generating station to*

come up to the declared availability within time specified by generators.

The regulation 13.3.3 comes under the section 13 of the SGC which has the heading “Monitoring of Generation & Drawal” and the objective of this section has been mentioned in regulation 13.2 which reads as under:

“ to define the responsibilities of all SGS in the monitoring of Generating Unit reliability and performance, and STU’s/ Distribution Licensees’ compliance with the scheduled drawal to assist SLDC in managing voltage and frequency”.

This section deals only with monitoring and evaluation of the performance of the generating plants. On the other hand regulations 11.3.12 and 11.3.13 of the SGC are specific regulations under section 11 of the SGC dealing with Schedule and Despatch. The objective of section 11 has been defined in regulation 11.2 which states that

“State Grid Code deals with the procedures to be adopted for scheduling of the net injection / drawals of State Entities on a day ahead basis with the modality of the flow of information between the SLDC/ ALDCs/ Power Exchange and State Entities. The procedure for submission of capability declaration by each SGS/CPPs/IPPs and submission of requisition/ drawal schedule by other State Entities is intended to enable SLDC to prepare the despatch schedule for each SGS/CPPs/IPPs and drawal schedule for each beneficiary/ Distribution Licensee. It also provides methodology of issuing real time despatch/drawal instructions and rescheduling, if required, to State Entities along with the commercial arrangement for the deviations from schedules, as well as, mechanism for reactive power pricing.”

Thus, section 11 of the SGC, deals specifically with scheduling, declaration of availability, revisions of schedules and procedure for dealing with gaming by the users. So whereas demonstration of DC is concerned only regulation 11.3.12 & 11.3.13 of the SGC are applicable. We agree with PSLDC that reference to ‘*within the time specified by the generator*’ in regulation 13.3.3 only refers to the ramp up/ramp down rate specified by

the generator under regulation 11.3.10 of SGC. In case interpretation of the petitioner is accepted then it will totally jeopardize the security of the power system. In the schedule given by TSPL for the concerned dates, he had also indicated the ramp up rate as 1% per minute and he had to achieve the declared capacity as per the ramp rate given by him for the next day/time blocks in the day.

- 14.5 The petitioner has argued that his deviations were within 12% margin permitted by Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 so there was no mis-declaration of DC. The objective of DSM regulations is to maintain grid discipline and grid security as envisaged under the Grid Code. As per these regulations, 'Deviation' in a time-block for a Seller means its total actual injection minus its total scheduled generation and for a Buyer means its total actual drawal minus its total scheduled drawal. Thus deviation for a generator is difference between actual injection and generation schedule. It has nothing to do with DC since deviation is measured with respect to schedule generation. Deviation charges are payable by a seller for any under-injection and are receivable for over injection as per deviation charges specified against different frequency bands in the DSM regulations. The DSM regulations are complete set of commercial arrangements and no sub-regulation can be read or interpreted in isolation. Regulation 5 of the DSM Regulations specifies the charges for deviation against different frequencies whereas regulation 7 specifies limits on deviation volume and penalties for its violation. The heading of regulation 7 i.e **"Limits on Deviation volume and consequences of crossing limits"** is as important as the regulation itself. It clearly indicates that in case a seller or buyer crosses the limits on deviation volume set out in this regulation while deviating from the schedule then he will be liable for consequences in addition to normal deviation charges specified in regulation 5 of the DSM regulations. The sub-regulation 7(2)(a) specify only the volume limit in a particular frequency band of "49.70 Hz or above and below 50.10 Hz", which is 12% of scheduled injection or 150 MW whichever is less. The demonstration of DC has nothing to do with

frequency prevailing in the grid at a particular time whereas the deviation mechanism is framed on the basis of frequency of the power system. The consequences of violation are further specified in sub-regulation 7(3), 7(4) & 7(6) and other clauses of regulation 7 of DSM Regulations including introduction of stringent penalty through levy of Additional Charge for deviation over and above the Charges for deviation as stipulated in regulation 5 of DSM regulations. The intention of providing Deviation Volume limit is to curb tendency of users to deviate drastically from schedule by paying deviation charges thus endangering the security of the grid. A generator, like the petitioner, is being paid in two parts. One is capacity/fixed charges which are based on self Declared Capability of the plant. It has nothing to do with the frequency prevailing in the system. **Thus CERC (DSM) Regulations, 2014 is not applicable in the case of demonstration of DC which is governed by various provisions of SGC.**

14.6 Now we will examine the events resulting in the findings of mis-declaration of DC by PSLDC. In its written submissions, PSLDC has highlighted that the petitioner was indulging in mis-declaration of DC during the months of December, 2016 and January, 2017 and six warning notices on 09.12.2016, 16.12.2016, 20.12.2016, 30.12.2016, 05.01.2017 and 06.01.2017 were issued to the petitioner.

On 09.12.2016, the DC during time block of 09.00 to 09.15 hrs. was 963.8 MW and SG was 708 MW which was raised to 1058 MW against DC of 1113.8 MW during time block of 10.00 - 10.15 hrs. During this time block the under-injection was to the tune of 27%. The deviation in the relevant time blocks is depicted in the following table;

Sr. No.	Time Block		Declared Capacity (DC) MW	Schedule Generation (MW)	Actual injection (MW)	Under-injection (MW)	% Under-injection
1	09.00	09.15	963.8	708	608.14	99.86	14.104
2	09.15	09.30	963.8	758	644.80	113.2	14.934
3	09.30	09.45	1013.8	858	637.89	220.11	25.654

4	09.45	10.00	1063.8	958	669.16	288.84	30.15
5	10.00	10.15	1113.8	1058	771.93	286.07	27.039
6	10.15	10.30	913.8	908	885.24	22.76	2.507

Accordingly, as per PSLDC, the petitioner was telephonically requested to adhere to the schedule followed by warning letter at 10.23 hrs. The warning letter reads as under:

“IN CONTINUATION TO EMAIL DATED 29-09-2016 attached herewith, it is intimated that it has become regular feature on your part not to maintain generation as per DC, even today the generation of TSPL UNIT 2 is 460 MW against the schedule of 613.8 MW . Once again you are requested to maintain generation AS PER SCHEDULE otherwise it will tantamount to mis-declaration of Declared Capacity and is a Grid Code violation. PSPCL is facing problem for scheduling of load to its consumers. It is again reminded that TSPL must avoid mis-declaration and frequent changes in DC and Maintain the generation strictly as per SCHEDULE otherwise penalty/action will be levied/taken as per PPA/Grid Code and responsibility of same will lie with you.”

The petitioner was warned of the consequences of deviations. Thereafter, the petitioner instead of achieving its schedule generation, lowered its DC to 908 MW from 10.15 hrs to 10.30 hrs. Thus it is clear that DC of the petitioner's plant on 09.12.2016 was suspect. Similar events have been observed on 30.12.2016.

On 30.12.2016, the petitioner raised its DC from 1076 MW in the time block of 10.00 to 10.15 hrs to 1587.6 MW in time block of 11.30 to 11.45 hrs and there was corresponding increase in SG from 716 MW to 1227.6 MW. In all these 7 time blocks, the petitioner under injected with maximum under-injection of 27% recorded during the time block of 11.15 to 11.30 hrs. An abstract of the deviation data of relevant blocks is as under:

Sr. No.	Time Block		Declared Capacity (DC) MW	Schedule Generation (MW)	Actual injection (MW)	Under-injection (MW)	% Under-injection
1	10.00	10.15	1076	716	660.0721	55.93	7.81
2	10.15	10.30	1176	816	743.272	72.73	8.91
3	10.30	10.45	1276	916	836.7264	79.27	8.65
4	10.45	11.00	1376	1016	873.8173	142.18	13.99
5	11.00	11.15	1476	1116	879.1991	236.8	21.22
6	11.15	11.30	1576	1216	887.2718	328.73	27.03
7	11.30	11.45	1587.6	1227.6	941.1627	286.44	23.33
8	11.45	12:00	1487.6	1127.6	985.8899	141.71	12.57

PSLDC telephonically conveyed it to the petitioner followed by warning notice, similar to the one reproduced above, through email at 11.36 hrs. Again instead of increasing its generation, the petitioner lowered its DC from 11.45 hrs. Thus again it is established that the DC of the petitioner's plant on 30.12.2016 was suspect.

PSLDC in its reply has submitted an analysis of the December 2016 injection data (para 5.5 of this order) wherein it has been shown that petitioner could not deliver the requisite generation in 387 time blocks out of 459 time blocks (84.13%) when the SG was corresponding to DC. These facts have not been denied by the petitioner in his reply or written submissions. The above data creates an impression that the petitioner was not declaring its DC faithfully to make undue capacity charges. Similar warning notices were also issued to the petitioner on 05.01.2017 and 06.01.2017 but no improvement in the injection pattern of the petitioner was observed resulting in issue of demonstration notices by PSLDC under regulation 11.3.13 of SGC on subsequent dates.

- 14.7 Now we will go through the events of 10.01.2017 and 30.01.2017 when PSLDC declared that demonstration of DC by the petitioner was successful. On 10.01.2017, one unit was under reserve shut down and thus petitioner was generating power from two units. The DC for the entire day was 1400 MW. From 00.00 to 07.15 hrs., the generation schedule was 616 MW and during

these 29 blocks, the petitioner under injected in 27 time blocks and over injected for the remaining 2 time blocks. The generation schedule was revised to 1086.2 MW from the time block of 08.15 to 08.30 hrs. The petitioner under injected upto 10.82% in the time blocks from 07.15 to 08.30 hrs. PSLDC issued memo. No. 162 stating that at 08.39 hrs., the petitioner's plant generation was 1000 MW in time block of 08.30 to 08.45 hrs against required scheduled generation of 1086.2 MW and directed it to demonstrate DC.

Date	Time block	Injection MW	Schedule Generation MW	Deviation MW (+) under injection (-) over-injection MW	DC in MW
10-Jan-17	08.15-08.30	987.854	1086.2	98.346	1400
10-Jan-17	08.30-08.45	1000.726	1086.2	85.474	1400
10-Jan-17	08.45-09.00	997.963	1086.2	88.237	1400
10-Jan-17	09.00-09.15	1078.035	1086.2	8.165	1400
10-Jan-17	09.15-09:30	1101.599	1086.2	-15.399	1400
10-Jan-17	09.30-09:45	1108.29	1086.2	-22.09	1400
10-Jan-17	09.45-10:00	1112.435	1086.2	-26.235	1400
10-Jan-17	10.00-10:15	1116.944	1086.2	-30.744	1400
10-Jan-17	10.15-10:30	1114.108	1086.2	-27.908	1400
10-Jan-17	10.30-10:45	1063.344	986.2	-77.144	1400
10-Jan-17	10.45-11:00	972.144	886.2	-85.944	1400
10-Jan-17	11.00-11:15	850.981	786.2	-64.781	1400
10-Jan-17	11.15-11:30	787.199	786.2	-0.999	1400
10-Jan-17	11.30-11:45	790.981	786.2	-4.781	1400

The table above shows that if we consider the time block of 08.30-08.45 as 1st time block when demonstration notice was issued, the petitioner under

injected about 88 MW in the 2nd time block of 08.45 to 09.00 hrs, about 8 MW in the 3rd time block of 09.00 to 09.15 hrs but over injected by about 15 MW in the 4th time block i.e. from 09.15 to 09.30 hrs. This over injection continued for the next few time blocks. According, PSLDC declared that the petitioner has successfully demonstrated the DC and no action was taken. It is pertinent to note that on 10.01.2017, one unit was under reserve shut down and both the parties knew that the DC is to demonstrated only of the operational units & that too with respect to the generation schedule given to the petitioner. The petitioner achieved the injection of over 1100 MW against SG of 1086.2 MW although DC was 1400 MW and PSLDC declared that demonstration of DC was successful. Thus, it cannot be believed that on the subsequent dates, the petitioner was not aware that DC demonstration required by PSLDC is only with respect to the running units.

Similarly on 30.01.2017, the DC of the petitioner was 1657.26 MW and generation schedule was 924 MW from 00.00 to 06.15 hrs. The actual injection was matching with the schedule generation during this period except in few time blocks. The generation schedule was revised to 1524 MW from the time block of 08.45 to 09.00 hrs. During this time block, the petitioner under-injected by about 78 MW. A notice for demonstration of DC was issued by PSLDC in the time block of 08.45 to 09.00 hrs. In the very next time block, there was over injection of about 12 MW and the over injection continued in the next few time blocks. Accordingly, SLDC considered it to be a successful demonstration of the DC.

Date	Time block	Injection MW	Schedule Generation MW	Deviation MW (+) under injection (-) over-injection MW	DC in MW
30-Jan-17	08.30-08:45	1321.671	1374	52.329	1657.26
30-Jan-17	08.45-09:00	1445.235	1524	78.765	1657.26
30-Jan-17	09.00-09:15	1536.653	1524	-12.653	1657.26
30-Jan-17	09.15-09:30	*	1657.26	#VALUE!*	1657.26
30-Jan-17	09.30-09:45	1722.544	1657.26	-65.284	1657.26
30-Jan-17	09.45-10:00	1660.435	1657.26	-3.175	1657.26

30-Jan-17	10.00-10:15	1669.017	1657.26	-11.757	1657.26
30-Jan-17	10.15-10:30	1661.162	1657.26	-3.902	1657.26
30-Jan-17	10.30-10:45	1624.798	1524	-100.798	1657.26
30-Jan-17	10.45-11:00	1547.271	1524	-23.271	1657.26

Note: * Data not provided by PSLDC

- 14.8 On 10.08.2015, due to the technical problems prevailing at the plant, the petitioner revised the Declared Capability (DC) from 613.8 MW to 285 MW from 10.00-12.00 hrs vide revision R (1). The DC was ramped up to 613.8 MW from time block of 13.15 to 13.30 hrs. The generation schedule from 10.00 hrs up to 12.00 hrs was 285 MW and thereafter it was 308 MW up to 15.45 hrs. Thereafter, PSLDC revised its generation schedule through R (8) & R(9) from 15.45 hrs with ramp up rate of 50 MW in next three time block and SG was 558 MW during time block of 17:15-17:30 hrs. In these 7 time blocks from 15:45 to 17:30 hrs, the petitioner's plant under-injected in all these time blocks. The under-injection varied from 19.67 MW against SG of 458 MW i.e 4.58% to 124.76 MW against SG of 558 MW i.e 22.36%. The deviations in the relevant time blocks are as under:

Date	Time Block	DC in MW	SG in MW	Injection MW	Deviation (+) under injection (-) over-injection MW	Remarks
10-Aug-15	15.30-15:45	613.8	308	301.09	6.91	
10-Aug-15	15.45-16:00	613.8	358	274.98	83.02	Revision in SG R 8
10-Aug-15	16.00-16:15	613.8	408	326.69	81.31	
10-Aug-15	16.15-16:30	613.8	458	385.6	72.4	
10-Aug-15	16.30-16:45	613.8	458	427.2	30.8	
10-Aug-15	16.45-17:00	613.8	458	438.33	19.67	Email by PSLDC at 16:56 hrs
10-Aug-15	17.00-17:15	613.8	508	448	60	Revision in SG R 8
10-Aug-15	17.15-17:30	613.8	558	433.24	124.76	
10-Aug-15	17.30-17:45	450	450	433.6	16.4	revision of DC
10-Aug-15	17.45-18:00	450	450	445.53	4.47	
10-Aug-15	18.00-18:15	450	450	445.45	4.55	
10-Aug-15	18.15-18:30	450	450	447.93	2.07	

According to PSLDC, the petitioner was directed telephonically to demonstrate DC. Subsequently, SLDC vide letter no.1996/3/SLDC dated 10.08.2015 through email at 16:56 hrs. stated as under:

“Subject:-Misdeclaration of DC for dated 10.08.2015

In the above context it is to bring into your kind notice that vide revision No.8 & 9 dated 10.08.2015 e-mailed at 14.46 Hrs & 15.30 Hrs respectively the load was to be increased from 308 MW to full load but load came down to 290 MW from 320 MW. In spite of repeated phone calls the load could not be increased from 290 MW whereas the DC of 10.08.2015 was of full load. It resulted into great mismatch of power control by SLDC.

It clearly shows that the DC of 10.08.2015 is suspected/doubtful and not correct.”[emphasis added]

However, instead of increasing its generation to match SG, the petitioner revised the DC from 613.8 MW to 450 MW from 17.30 hrs. From the submissions of the petitioner, it is clear that despite technical problems persisting at the plant, the DC was revised from 285 MW to 613.8 MW but once PSLDC revised its generation schedule upwards, the petitioner failed to match the schedule and could not deliver the desired generation. Thus these were sufficient reasons to suspect the DC of the petitioner’s plant. Ultimately, the petitioner revised its DC from 613.8 MW to 450 MW from 17.30 hrs.

In the Final State Energy Account (SEA) for the month of August, 2015 issued by PSLDC on 07.09.2015, one mis-declaration of DC on 10.08.015 has been indicated and it has also been mentioned that the same was intimated to TSPL vide letter No.1996/3/SLDC dated 10.08.2015 and 1997 of even no. dated 10.08.2015. It has also been mentioned that fixed charges for two days are deductible. However, from the bare reading of the PSLDC’s email dated 10.08.2015, it appears that although the subject matter is ‘mis-declaration of DC on 10.8.2015 but in the e-mail itself it has been mentioned that ‘DC of 10.8.2015 is suspect/doubtful and not correct’. It cannot be treated as final finding of the PSLDC regarding mis-declaration of DC on 10.8.2015. The petitioner argued that he has submitted his

response vide e-mail dated 10.08.2015 at 02.33 hrs followed by letters dated 24.08.2015, 16.09.2015 and 24.09.2015. From the scrutiny of the letters, it has been observed that in its letter dated 24.08.2015, TSPL had submitted its justification for deviation from schedule on account of wet coal problem and pleaded that it was not a case of mis-declaration. PSLDC stand is that the pleadings of TSPL was considered before issuance of Energy Account. The letter dated 16.09.2015 of TSPL was written after issue of SEA by PSLDC and in this letter the issue of ramp-up for 10.08.2015 was raised. Similarly TSPL in letter dated 24.09.2015 raised the issue of declaration of correct DC during restart/re-synchronization of unit under reserve shut down and requested SLDC to revise DC for 09.08.2015.

As per PSLDC's submissions, the petitioner was instructed telephonically to demonstrate its DC and further mentioned that the issue of non-receipt of demonstration notice was never raised by the petitioner through any of its e-mail/correspondence. The mis-declaration on 10.08.2015 was clearly indicated in the monthly State Energy Account and the petitioner was required to raise objections, if any, within 15 days from the date of issue of SEA. However, the petitioner never raised the issue of mis-declaration after issuance of SEA. On the other hand, the petitioner denied that any demonstration notice was received by him and further pointed out that in its e-mail dated 24.08.2015, he had replied to observations of PSLDC received vide e-mail dated 10.08.2015 wherein the technical reasons for mis-match between generation with schedule were explained. **To settle this issue, we may again refer to regulation 11.3.12, which provides that in case DC is suspected, PSLDC may serve a notice of gaming to the generator. Further, regulation 11.3.13 of SGC provides that generator shall be required to demonstrate DC. Thus, the suspicion of DC is the 1st step and the 2nd step is to issue a formal notice to the generator to demonstrate its DC. PSLDC has failed to place on record any material evidence to substantiate its claim that a telephone message was conveyed to the petitioner on 10.08.2015 to demonstrate its DC as per SGC. The e-mail dated 10.08.2015 at 16.56 hours only indicates that DC of 10.08.2015 was suspect/ doubtful and not correct.**

It cannot be taken as demonstration notice, which is required as per regulation 11.3.12 and 11.3.13. Since no formal demonstration notice was issued to the petitioner on 10.08.2015 as required under regulation 11.3.12 and 11.3.13 of SGC, so the Commission does not agree with the findings of PSLDC regarding mis-declaration of DC by the petitioner on 10.08.2015.

Further, the petitioner was not charged any penalty by PSPCL on this account till 2017. It would have led the petitioner to believe that subsequent to his replies/objections, the matter was settled. PSPCL was bound to issue monthly bill to TSPL as per SEA issued by PSLDC or file objections, if any but the concerned office failed to act in this case without any plausible reasons,. On specific query by the Commission, PSPCL offered a lame excuse that penalty could not be recovered inadvertently as this was the first instance of such recovery. **The matter needs to be investigated by PSPCL to fix the responsibility of delinquent official/officer(s) for not performing their duty under intimation to the Commission.**

- 14.9 On 15.01.2017, one unit was under reserve shut down and two units were running. The Declared Capability (DC) of the petitioner's plant from 00.00-06.45 hrs, was 1563.8 MW and the generation schedule during this period was 616 MW. During these 27 time blocks, the petitioner over injected in 23 blocks and under injected in the remaining 4 blocks. The Declared Capability was revised to 1841.4 MW by the petitioner from 07.15 hrs. It is necessary to reproduce the events of the relevant time blocks here to comprehend the situation on that particular date.

Date	Time block	Injection MW	Schedule Generation MW	Deviation (+) under injection (-) over-injection MW	DC in MW	Remarks
15-Jan-17	07.15-07.30	636.436	616	-20.436	1841.4	
15-Jan-17	07.30-07.45	633.672	616	-17.672	1841.4	
15-Jan-17	07.45-08.00	639.054	616	-23.054	1841.4	

15-Jan-17	08.00-08.15	665.963	616	-49.963	1841.4	
15-Jan-17	08.15-08.30	751.563	750	-1.563	1841.4	SG revised (R2)
15-Jan-17	08.30-08.45	884.29	900	15.71	1841.4	
15-Jan-17	08.45-09.00	1004.654	1000	-4.654	1841.4	
15-Jan-17	09.00-09.15	1097.235	1150	52.765	1841.4	
15-Jan-17	09.15-09.30	1172.217	1227.6	55.383	1841.4	SG (R3)
15-Jan-17	09.30-09.45	1175.781	1227.6	51.819	1841.4	Notice issued at 09.32 hrs
15-Jan-17	09.45-10.00	1210.617	1227.6	16.983	1841.4	
15-Jan-17	10.00-10.15	1220.362	1227.6	7.238	1841.4	
15-Jan-17	10.15-10.30	1222.253	1227.6	5.347	1841.4	
15-Jan-17	10.30-10.45	1228.872	1227.6	-1.272	1841.4	
15-Jan-17	10.45-11.00	1226.181	1227.6	1.419	1841.4	
15-Jan-17	11.00-11.15	1221.817	1100	-121.817	1841.4	SG revised from 11.00 hrs (R4)

The above table shows that the generation schedule was revised through revision no R2 from 08.15 hrs. time block to touch 1000 MW in the time block of 08.45 to 9.00 hrs. The SG was further revised through revision R3 to 1227.6 MW from 09.15 hrs. Since one unit was under reserve shut down so 1227.6 MW was the maximum capacity of two running units on 15.01.2017. In time blocks from 09.00 to 09.30 hrs., the petitioner under injected by more than 50 MW in both the time blocks. Accordingly, PSLDC issued memo no. 170 stating that at 09.32 hrs. the petitioner's plant was generating 1193 MW against the required 1227.6 MW and directed it to demonstrate DC. If we consider a ramp up rate of 1% per minute as declared by the petitioner, the DC/generation schedule should have been achieved in the very next time block but in the present case we will stick to the liberal interpretation of PSLDC that generator should be able to demonstrate DC from 4th time block considering the time block when demonstration notice was issued as the 1st time block. The petitioner under injected in 2nd time block of 09.45 to 10.00 hrs by 16.983 MW, 7.238

MW during 3rd time block of 10.00 to 10.15 hrs., 5.347 MW during 4th time block of 10.15 hrs to 10.30 hrs., over-injected by 1.272 MW in the time slot of 10.30 to 10.45 hrs (5th time block) and again under-injected 1.419 MW in the time block of 10.45 to 11.00 hrs.(6th time block). **The petitioner failed to submit any credible specific technical reason for not achieving the DC on sustained basis after demonstration notice was issued by PSLDC. As per regulation 5.3.8 of SGC read with regulation 5.2(h) of IEGC, all thermal generating stations of 200 MW and above and operating at or upto 100% of their Maximum Continuous Rating (MCR) shall normally be capable of instantaneously picking up to 105% of their MCR. The petitioner plant might have over-injected 1.272 MW in the time block of 10.30 to 10.45 hrs but again under-injected in next time block. The petitioner pleaded that since he was able to demonstrate DC in the time block of 10.30 to 10.45 hrs so plant was capable of delivering the required generation and thus he had demonstrated the DC. This argument has no basis. The DC is declared for specific time blocks and the generator is expected to show the capability in all these time blocks. Once demonstration notice is served by SLDC, the generator should be able to deliver required generation in accordance with its declared capability. Thus, the petitioner failed to demonstrate DC of 1227.6 MW within four time blocks on 15.01.2017.**

The petitioner pointed out that in the Final State Energy account for January 2017 issued on 14.02.2017, it has been mentioned that event of 15.01.2017 has not been considered as mis-declaration but in the revised energy account of January 2017 issued on 02.03.2017, it was considered as mis-declaration. PSLDC on the other hand argued that it was not considered as mis-declaration due to marginal difference of 4 MW (as per SCADA data) which they wanted to confirm from SEM data, according to which the under-injection was 5.347 MW. During hearing the Ld. Counsel for PSLDC admitted that note in SEA issued on 14.02.2017 was not properly worded but added that PSLDC through email dated 16.02.2017 to

TSPL has made it clear that the data regarding mis-declaration of DC for 15.01.2017 is under review.

Let us see the wording of the note mentioned in SEA issued by PSPCL on 14.02.2017 which states that

“TSPL has demonstrated declared capacity as 1223 MW against the required 1227 MW in response to message No.170 dated 15.01.2017. The same has not been considered as misdeclaration due to marginal difference. The PSPCL may give their comments or raise their objections in this regard, if any”.

Although it has been mentioned that due to marginal difference in the required injection and actual, it is not considered as mis-declaration but PSPCL was also asked to give their comments or raise objections which shows that matter was still open for further consideration. This position is further fortified in the e-mail dated 16.02.2017 written by PSLDC to TSPL wherein it has been mentioned that data regarding mis-declaration of DC for 15.01.2017 against message no. 170 is under review. So we do not agree with the argument of the petitioner that PSLDC has re-opened a decided issue to declare that there was mis-declaration of DC on 15.01.2017. The Judgments quoted by the petitioner have no application to the present case. Thus the Commission finds no infirmity in the action of PSLDC in revising the State Energy Account for January 2017 after due diligence of the events. **Thus, the Commission is of the view that finding of PSLDC regarding mis-declaration of DC by the petitioner on 15.01.2017 as per regulation 11.3.13 of SGC is in order. It shall be considered as 1st mis-declaration for the month of January, 2017.**

- 14.10 During 17.01.2017, one unit of the petitioner was running, 2nd unit was under reserve shutdown and the 3rd unit was under shut down due to fault at the plant. The DC was 1229.8 MW from 00.00 hrs. which was revised by the petitioner to 922.8 MW from 03.30 hrs through revision no R4. Thus from 03.30 hrs., the full available capacity of the running unit was 309 MW. From 03.30 to 08.00 hrs, the Declared Capability was 922.8 MW and the generation schedule was 309 MW. During these 18 time blocks, the

petitioner under injected in 14 blocks. The under injection was up to 63.037 MW against the generation schedule of just 309 MW i.e. by more than 20%. Due to persistent under-injection, PSLDC issued memo no. 172 stating that at 09.10 hrs., the petitioner's plant was under-injecting and directed it to Demonstrate DC. Despite the notice, the petitioner continued to under-inject in the next 4 time blocks ranging from 51.98 MW (16.82%) to 61.437 MW (19.88%). The abstract of deviations in the relevant time blocks during 17.01.2017 is as under:

Date	Time block	Injection MW	Schedule Generation MW	Deviation (+) under injection (-) over-injection MW	DC in MW	Remarks
17-Jan-17	07.15-07:30	253.163	309	55.837	922.8	
17-Jan-17	07.30-07:45	260.8	309	48.2	922.8	
17-Jan-17	07.45-08:00	253.745	309	55.255	922.8	
17-Jan-17	08.00-08:15	246.182	309	62.818	922.8	Notice issued
17-Jan-17	08.15-08:30	248.727	309	60.273	922.8	
17-Jan-17	08.30-08:45	254.4	309	54.6	922.8	
17-Jan-17	08.45-09:00	257.018	309	51.982	922.8	
17-Jan-17	09.00-09:15	247.563	309	61.437	922.8	
17-Jan-17	09.15-09:30	238.909	250	11.091	250	DC revised
17-Jan-17	09.30-09:45	232.218	250	17.782	250	
17-Jan-17	09.45-10:00	244.436	250	5.564	250	
17-Jan-17	10.00-10:15	197.963	250	52.037	250	
17-Jan-17	10.15-10:30	153.891	250	96.109	250	
17-Jan-17	10.30-10:45	155.418	250	94.582	250	
17-Jan-17	10.45-11:00	150.763	150	-0.763	150	DC revised
17-Jan-17	11.00-11:15	150.473	150	-0.473	150	
17-Jan-17	11.15-11:30	154.545	150	-4.545	150	
17-Jan-17	11.30-11:45	155.782	200	44.218	200	

17-Jan-17	11.45-12:00	151.2	250	98.8	150	DC revised
17-Jan-17	12.00-12:15	150.327	150	-0.327	150	
17-Jan-17	12.15-12:30	148.873	150	1.127	150	
17-Jan-17	12.30-12:45	146.763	150	3.237	150	
17-Jan-17	12.45-13:00	157.527	150	-7.527	150	
17-Jan-17	13.00-13:15	90.473	0	-90.473	150	
17-Jan-17	13.15-13:30	0	0	0	0	DC revised

After failing to demonstrate the Declared Capability, the petitioner revised its Declared Capability to 250 MW through R2 from 09.15 hrs but petitioner's plant could not deliver even this generation in the next 6 time blocks forcing the petitioner to again revise its Declared Capability to 150 MW from 10.45 hrs. Ultimately from 13.30 hrs, Zero MW capacity was scheduled by the petitioner. Thus there is no doubt that the petitioner's plant was not in a position to demonstrate the declared capability and the petitioner had not declared his plant's availability faithfully. The petitioner failed to demonstrate the Declared Capability as required under regulation 11.3.13 of the State Grid Code. It was clearly intentional since the petitioner cited many technical problems including that of coal feeding system & poor quality of coal to justify the under injection on that day. In case technical problems were persisting at the plant, the petitioner should have revised its Declared Capability under regulation 11.5(vii) read with regulation 6.5(18) of IEGC before the demonstration notice was issued. The admission of issues relating to coal feeding system by the petitioner and consistent under- injection from 04.15 hrs to 08.00 hrs is sufficient to conclude that the petitioner had not declared DC faithfully as required under regulation 11.3.2 of SGC. **Thus, the Commission is of the view that finding of PSLDC regarding mis-declaration of DC by the petitioner on 17.01.2017 as per regulation 11.3.13 of SGC is in order. It shall be considered as 2nd mis-declaration for the month of January, 2017.**

14.11 On 24.01.2017, the Declared Capability from 00.00 hrs was 1650 MW. The generation schedule was revised by PSPCL to 1650 MW (equal to the

Declared Capability of 1650 MW) from 14.30 hrs through revision no R9 and the petitioner under injected by approximately 250 MW in this time block of 14.30 to 14.45 hrs. PSLDC issued memo no. 179 stating that at 14.41 hrs. the petitioner was injecting 1411 MW against SG of 1650 MW in the time block of 14.45 to 15.00 hrs and directed it to demonstrate DC. According to PSLDC, notice was issued in the time block of 14.45 to 15.00 hrs and petitioner was expected to demonstrate DC upto 4th time block of 15.30 to 15.45 hrs but continued to under-inject.

Date	Time block	Injection MW	Schedule Generation MW	Deviation (+) under injection (-) over-injection MW	DC in MW	Remarks
24-Jan-17	14:00	1364.435	1450	85.565	1650	
24-Jan-17	14:15	1452.362	1450	-2.362	1650	
24-Jan-17	14:30	1420.362	1450	29.638	1650	
24-Jan-17	14:45	1401.308	1650	248.692	1650	SG revised
24-Jan-17	15:00	1403.708	1650	246.292	1650	Notice issued
24-Jan-17	15:15	1414.689	1650	235.311	1650	
24-Jan-17	15:30	1441.308	1650	208.692	1650	
24-Jan-17	15:45	1496.58	1650	153.42	1650	
24-Jan-17	16:00	1549.817	1650	100.183	1650	
24-Jan-17	16:15	1579.998	1650	70.002	1650	
24-Jan-17	16:30	1633.162	1650	16.838	1650	
24-Jan-17	16:45	1642.544	1650	7.456	1650	
24-Jan-17	17:00	1618.107	1650	31.893	1650	
24-Jan-17	17:15	1600.871	1650	49.129	1650	
24-Jan-17	17:30	1586.835	1650	63.165	1650	
24-Jan-17	17:45	1445.235	1550	104.765	1650	
24-Jan-17	18:00	1396.58	1500	103.42	1650	
24-Jan-17	18:15	1322.471	1500	177.529	1650	

The petitioner objected that PSLDC revised the schedule from 1450 MW to 1650 MW at 14.21 hrs effective from time block of 14.30-14.45 hrs thus giving just 9 minutes for increasing the generation. PSLDC argued that the revision in schedule is reflected in 2nd block due to manual system (through email), the real time operators are issuing injection/drawal schedules after telephonic conversation and after getting the consent of the officer on duty at the plant. Moreover no objection in this regard was raised by the petitioner at that time. The Commission is of the view that the dispute in this case is not revision of schedule but demonstration of DC by the petitioner. Let us assume that revised SG of 1650 MW was effective from 4th time block of 15.00 to 15.15 hrs. The demonstration notice was issued in the time block of 14.45-15.00 hrs. and considering it as 1st time block, the petitioner was supposed to demonstrate its SG/DC of 1650 MW from the time block of 15.30 to 15.45 hrs. However from the data, it is evident that the petitioner failed to demonstrate its Declared Capability even in next 11 time blocks.

The petitioner's argument that deviation was within 12% margin has already been answered in para 14.5 above. **Thus the Commission is of the view that finding of PSLDC regarding mis-declaration of DC by the petitioner on 24.01.2017 is in accordance with State Grid Code. The petitioner has not declared his DC faithfully with clear intention of making undue capacity charges. It shall be considered as 3rd mis-declaration during January 2017.**

- 14.12 On 31.01.2017, the petitioner declared its DC from 00.00 hrs as 1473.12 MW for all 96 time blocks. The generation schedule was 924 MW upto 07.00 hrs which was revised by PSPCL through revision R-1 to full capacity of 1473.12 MW from 07.45 hrs. The petitioner under-injected about 54 MW in the time block of 07.45 to 08.00 hrs. PSLDC issued memo no.184 stating that at 08.13 hrs, the petitioner's plant was injecting 1451 MW against SG of 1473.12 MW and directed it to demonstrate DC. However, the petitioner continued to under- inject up to 09.45 hrs. Thus it was considered as mis-declaration. In the time block of 09.45 to 10.00 hrs, it over injected about 4.7 MW but could not sustain in the next time block where the under

injection was to the tune of 54.285 MW. PSPCL revised its schedule to 1400 MW from 11.30 hrs through revision R-3. It clearly shows that the petitioner's plant was not in a position to achieve its DC on sustained basis on 31.01.2017.

Date	Time block	Injection MW	Schedule Generation MW	Deviation (+) under injection (-) over-injection MW	DC in MW	Remarks
31-Jan-17	07.45-08:00	1418.835	1473.12	54.285	1473.12	SG revised R1
31-Jan-17	08.00-08:15	1456.362	1473.12	16.758	1473.12	
31-Jan-17	08.15-08:30	1457.599	1473.12	15.521	1473.12	Demonstration Notice issued
31-Jan-17	08.30-08:45	1444.726	1473.12	28.394	1473.12	
31-Jan-17	08.45-09:00	1417.38	1473.12	55.74	1473.12	
31-Jan-17	09.00-09:15	1407.49	1473.12	65.63	1473.12	
31-Jan-17	09.15-09:30	1396.58	1473.12	76.54	1473.12	2 nd Demonstration Notice issued
31-Jan-17	09.30-09:45	1446.835	1473.12	26.285	1473.12	
31-Jan-17	09.45-10.00	1447.889	1473.12	-4.769	1473.12	
31-Jan-17	10.00-10.15	1418.835	1473.12	54.285	1473.12	
31-Jan-17	10.15-10.30	1473.38	1473.12	-0.26	1473.12	
31-Jan-17	10.30-10.45	1461.671	1473.12	11.449	1473.12	
31-Jan-17	10.45-11.00	1463.56	1473.12	9.558	1473.12	
31-Jan-17	11.00-11.15	1471.926	1473.12	1.194	1473.12	
31-Jan-17	11.15-11.30	1453.744	1473.12	19.376	1473.12	

PSLDC issued another memo no. 185 stating that at 09.16 hrs, the petitioner plant is injecting 1397 MW in the time block of 9.15-9.30 hrs against required generation of 1473.12 MW and directed it to demonstrate DC. The petitioner claimed that PSLDC in its e-mail dated 16.02.2017 shared the injection data with TSPL wherein it has been shown that petitioner has demonstrated DC in the 6th time block after receiving the 1st demonstration notice. However it is

evident that in the very next time block, the under-injection was 54.285 MW. Thus the Commission is of the view that finding of PSLDC regarding mis-declaration of DC by the petitioner on 31.01.2017 is in accordance with State Grid Code. The petitioner has not declared his DC faithfully with clear intention of making undue capacity charges. It shall be considered as 4th mis-declaration during the month of January 2017.

14.13 The petitioner has also raised the issue of wrong calculation of penalty under regulation 11.3.13 of SGC. The main objection is that while calculating penalty, PSPCL has assumed 100% availability which is against clause 1.2.2 of Schedule 7 of the PPA. Accordingly to the petitioner, the actual availability for the relevant month should be considered while calculating the penalty. PSPCL has argued that clause 1.2.2 of schedule 7 of PPA relates to payment of monthly capacity charges and has no relation to calculation of penalty amount. The fixed charges are to be calculated irrespective of the cumulative availability in SEA or normative availability of 80%.

Let us examine the relevant clause of PPA, which is as under below;

“1.2.2 Monthly Capacity Charge Payment

The Monthly Capacity Charge Payment for any Month m in a Contract Year n shall be calculated as below:

$$\text{If } CAA \geq NA, FC_m = \sum j(NA \times AFC_{yn} \times CCXL) - \sum C(m-1)$$

Else:

$$FC_m = \sum j(AFC_{yn} \times AA \times CC \times L) - \sum C(m-1)$$

Where:

$\sum j$ is the summation of all the relevant values separately for each settlement period from the start of the contract year in which Month “m” occurs upto and including Month “m”

FC_m is the Capacity Charge payment for the Month m (in Rupees)

AFC_{yn} is the Capacity Charge and is sum of a) Payable Escalable Capacity Charges $A_{EFC_{yn}}$ and b) Payable Non Escalable Capacity Charges $A_{NEFC_{yn}}$ for the month in which the relevant settlement period occurs in the Contract Year n (in Rs per kWh) and computed as mentioned hereunder;

AEFCyn is the Payable Escalable Capacity Charges for the month in which the relevant settlement period occurs in the Contract Year “n”, expressed in Rupees/kWh and is equal to the Quoted Escalable Capacity Charges as provided in Schedule 11 for the first Contract Year and for subsequent Contract Years duly escalated by the following formula:

$$AEFCyn = QAEFCyn * p/q$$

Where;

QAEFCyn is the Quoted Escalable Capacity Charges (in Rs./kWh) in the first Contract Year as per Schedule 11.

p is the Escalation Index as per Schedule 9 at the beginning of the Month in which the relevant settlement period occurs, (expressed as a number)

q is the Escalation Index as per Schedule 9 applicable as at the beginning of the first Contract Year mentioned in Schedule 11 (expressed as a number)

ANEFCyn is the Payable Non Escalable Capacity Charges for the month in which the relevant settlement period occurs, expressed in Rupees/kWh and is equal to the Quoted Non Escalable Capacity Charges for the Contract Year in which such month occurs, as provided in Schedule 11.

CAA is the cumulative Availability, as per REA, from the first day of the Contract Year “n” in which month “m” occurs upto and including Month “m”;

AA is the Availability, as per REA, in the relevant Settlement Period (expressed as a percentage of Contracted Capacity in such Settlement Period);

CC is the Contracted Capacity in the relevant Settlement Period (expressed in kW);

L is the number of minutes in relevant Settlement Period, as divided by total number of minutes in one hour, (expressed as hours);

NA Normative Availability;

$\Sigma C (m-1)$ is the cumulative Capacity Charge payable from the first day of the Contract Year “n” in which month “m” occurs upto and including Month “m-1” but not including month “m”, (in Rupees);

Provided, no Capacity Charges shall be paid for the Settlement Period during which the RLDC has not allowed the operation of the Power Station due to Sellers failure to operate it as per the provisions of Grid Code.”

“**Normative Availability**’ has been defined in Article 1 as eighty per cent (80%) availability at the delivery point on contract year basis.

The petitioner submitted its calculations of penalty amount for 30 days for the month of January, 2017 which are as under:

$$3*613.8*24*1000*(2+4+8+16)*1.2004*0.733112 = 116,67,47,692/-$$

where 73.31% is the actual availability during the month of January, 2017.

On the other hand, PSPCL assumed availability as 100% to calculate capacity charges as under:

$$3*613.8*24*1000*(2+4+8+16)*1.2004 = \square 159.156 \text{ crore}$$

The regulation 11.3.13 provides that

‘----- In the event of the SGS failing to demonstrate the declared capability, the capacity charges due to the generator shall be reduced as a measure of penalty. The quantum of penalty for the first mis-declaration for any duration/block in a day shall be the charges corresponding to two days fixed charges. For the second mis-declaration the penalty shall be equivalent to fixed charges for four days and for subsequent mis-declarations, the penalty shall be multiplied in the geometrical progression over a period of a month.’

So whenever any mis-declaration occurs in a month then the capacity charges, which are payable to the generator as per the PPA, shall be reduced by the penalty for mis-declaration. As per regulation 11.3.13 of SGC, the penalty for 1st mis-declaration is two days capacity charges, which is multiplied in the geometrical progression during subsequent mis-declarations in a month.

As per clause 1.2.2 of the PPA, the Capacity Charges for a month is calculated by subtracting the cumulative capacity charges till the current month say 'm' minus cumulative capacity charges till the previous month say 'm-1'. The cumulative values cannot be used to calculate capacity charges as a penalty under regulation 11.3.13 of SGC. But at the same time, in no case, availability can be taken as 100% for calculating capacity charges as per provisions of the PPA. **As per regulation 11.3.13 of SGC read with clause 1.2.2 of schedule 7 of the PPA, the Commission holds that to calculate fixed charges as penalty under regulation 11.3.13 of SGC, normative availability factor of 80% shall be taken.**

The petitioner's claim that 2 days penalty for unit under reserve shut down on 15.01.2017 and 4 days penalty for unit under reserve shut down on 17.01.2017 may be deducted from overall penalty amount has no basis since penalty corresponding to number of days as per regulation 11.3.13 of SGC is to be calculated without any reference to the declared capability or SG for the particular day when mis-declaration was detected by SLDC. The plea of the petitioner that article 11.3.2 of the PPA limits maximum possible deduction in a contract year to Rs. 46,03,50,000/- is out of context since this proviso is not applicable for deduction required by law as is the present case.

Thus the Commission concludes that PSLDC's findings that petitioner has failed to demonstrate its DC on four occasions in the month of January 2017 i.e on 15.01.2017, 17.01.2017, 24.01.2017 and 31.01.2017 are in order and in accordance with various provisions of State Grid Code. Accordingly, penalty as per regulation 11.3.13 of SGC corresponding to fixed charges for 30 days for the month of January, 2017 shall be calculated in accordance with clause 1.2.2 of schedule 7 of the PPA by considering normative availability of 80%.

However, the Commission does not agree with the finding of mis-declaration of DC during the month of August, 2015 since no proper demonstration notice was served on the petitioner in accordance with SGC.

In view of above discussion, we direct PSPCL to calculate the penalty amount for four mis-declarations during the month of January, 2017 equivalent to fixed charges for 30 days as explained above within 15 days from the date of issue of this order and recover/refund the amount, as the case may be, in the next bill payable to the petitioner. No deduction of fixed charges shall be made from the capacity charges due to the petitioner for month of August, 2015.

The petition is disposed of accordingly.

Sd/-
(Anjuli Chandra)
Member

Sd/-
(S.S.Sarna)
Member

Sd/-
(Kusumjit Sidhu)
Chairperson.

Chandigarh

Dated: 26.02.2018

