

RAJASTHAN ELECTRICITY REGULATORY COMMISSION JAIPUR

Petition No. RERC-786-799/16, & 812-815, 847/16, 1164-1176/17 and 1196/17

In the matter of petitions filed under Section 33(4), 86(1) (e), (f) and (k) of the Electricity Act, 2003 read with Regulation 4.2 of the RERC (Rajasthan Electricity Grid Code) Regulations, 2008 and Regulation 72 of the RERC (Transaction of Business) Regulations, 2005 challenging the instructions issued by SLDC for backing down of generation of electricity.

Coram:

Shri Vishvanath Hiremath, Chairman
Shri R.P. Barwar, Member
Shri S.C. Dinkar, Member

Petitioners :

1. M/s Renew Wind Energy (AP 3) Pvt. Ltd. (786/16)
2. M/s Orange DND Wind Pvt. Ltd. (787/16)
3. M/s Renew Wind Energy (Rajasthan 3) Pvt. Ltd. (788/16)
4. M/s Orange Jaisalmer Wind Energy Pvt. Ltd. (789/16)
5. M/s Renew Wind Energy (Rajasthan One) Pvt. Ltd. (790/16)
6. M/s Ostro Renewables Pvt. Ltd. (791/16)
7. M/s Renew Wind Energy (Jadeswar) Pvt. Ltd. (792/16)
8. M/s Orange Renewable Power Pvt. Ltd. (793/16)
9. M/s Ostro Jaisalmer Pvt. Ltd. (794/16)
10. M/s Clean Wind Power (Devgarh) Pvt. Ltd. (795/16)
11. M/s Clean Wind Power (Devgarh) Pvt. Ltd. (796/16)
12. M/s CLP Wind Farms (India) Pvt. Ltd. (797/16)
13. M/s CLP Wind Farms (India) Pvt. Ltd. (798/16)
14. M/s CLP Wind Farms (India) Pvt. Ltd. (799/16)
15. M/s Mytrah Vayu (Indravati) Pvt. Ltd. (812/16)

16. M/s Mytrah Vayu (Som) Pvt. Ltd.	(813/16)
17. M/s Mytrah Vayu Urja Pvt. Ltd.	(814/16)
18. M/s Bindu Vayu Urja Pvt. Ltd.	(815/16)
19. M/s Tanot Wind Power Venture Pvt. Ltd.	(847/16)

Respondents :

1. Rajasthan State Load Despatch Center
2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.
3. Jaipur Vidyut Vitran Nigam Ltd.
4. Ajmer Vidyut Vitran Nigam Ltd.
5. Jodhpur Vidyut Vitran Nigam Ltd.

And

In the matter of Petitions filed under Sections 142 of the Electricity Act, 2003 for non-compliance of Commission's order dt. 08.09.2017.

Petitioners :

1. M/s Clean Wind Power (Devgarh) Pvt. Ltd.	(1164/17)
2. M/s Clean Wind Power (Devgarh) Pvt. Ltd.	(1165/17)
3. M/s Ostro Renewables Pvt. Ltd.	(1166/17)
4. M/s Ostro Jaisalmer Pvt. Ltd.	(1167/17)
5. M/s Renew Wind Energy (Rajasthan One) Pvt. Ltd.	(1168/17)
6. M/s Renew Wind Energy (Jadeswar) Pvt. Ltd.	(1169/17)
7. M/s Renew Wind Energy (Rajasthan 3) Pvt. Ltd.	(1170/17)
8. M/s Renew Wind Energy (AP 3) Pvt. Ltd.	(1171/17)
9. M/s Mytrah Vayu (Indravati) Pvt. Ltd.	(1172/17)
10. M/s Bindu Vayu Urja Pvt. Ltd.	(1173/17)
11. M/s Mytrah Vayu (Som) Pvt. Ltd.	(1174/17)

12. M/s Mytrah Vayu Urja Pvt. Ltd. (1175/17)
13. M/s Orange Jaisalmer Wind Energy Pvt. Ltd. (1176/17)
14. M/s Tanot Wind Power Venture Pvt. Ltd. (1196/17)

Respondents : 1. Rajasthan State Load Despatch Center
2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.

Date of hearings : 04.08.2016, 11.08.2016, 23.08.2016, 08.09.2016, 20.10.2016,
17.11.2016, 01.12.2016, 12.01.2017, 18.05.2017, 10.08.2017,
07.09.2017 and 05.10.2017

Present :
1. Sh. Hemant Sahai, Advocate for Petitioners
2. Sh. M.G. Ramachandran, Advocate for RVPN & SLDC
3. Sh. Bipin Gupta, Advocate for Discoms

Order Date : **29.11.2017**

ORDER

1. M/s Renew Wind Energy (AP 3) Pvt. Ltd. and Ors (herein after referred to as Petitioners), had filed these petitions on 08.07.2016 under Sections 33(4), 86(1) (e), (f) and (k) of the Electricity Act, 2003 read with Regulations 4.2 of the RERC (Rajasthan Electricity Grid Code) Regulations, 2008 and Regulation 72 of the RERC (Transaction of Business) Regulations, 2005 challenging the arbitrary and unlawful instructions issued by SLDC for backing down of generation of electricity.

2. As the questions that arise for consideration in all petitions are substantially similar, all the petitions referred to in cause title are clubbed and heard together and are being disposed of by this common order.
3. Notices were issued to Respondents on 08.08.2016 for filing the reply to the petitions.
4. On 11.08.2016 and 23.08.2016, Counsels for the Respondent Discoms and RVPN requested for time to file reply to the petitions. Commission directed Respondents to file the reply by 05.09. 2016 duly serving a copy to Petitioners and directed to post the matter on 08.09.2016.
5. Respondent RVPN and SLDC have filed their common reply on 07.09.2016.
6. Matter was heard on 08.09.2016. Sh. Sanjay Sen, Advocate appeared for Petitioners. Sh. Bipin Gupta, Advocate appeared for Discoms. Sh. L.S. Shekhawat, Advocate appeared for RVPN. Commission directed RVPN to submit all the facts and data in the matter. Commission also directs SLDC to follow the provisions of RERC (Rajasthan Electricity Grid Code) Regulations, 2008 (RERC Grid Code).
7. Accordingly RVPN has furnished the same on 28.09.2016.
8. Matter was again listed on 20.10.2016 for hearing. Counsel for the Petitioners requested for time to file rejoinder to the reply filed by Respondents. Commission allowed Petitioners to file the same.
9. Petitioners have filed rejoinder to the reply and additional information on 16.11.2016.
10. On 17.11.2016, Counsel for the Petitioners requested time to file additional information in support of the petitions. Commission allowed Petitioners to file the same and directed to serve the copy to the Respondents by 25.11.2016 and directed to post the matter on 01.12.2016.

11. On 01.12.2016, Counsel for Respondent RVPN submitted that they will file the reply to the rejoinder filed by the Petitioners during the course of the day and a copy of reply has already been delivered to the Petitioner's counsel. Counsel for Petitioners sought time to file rejoinder on the reply submitted by RVPN. Commission allowed the Petitioners to file the same and directed to post the matter on 12.01.2017.
12. Matter was listed on 12.01.2017. Counsel for the Petitioners requested for an adjournment. The case was adjourned for two weeks.
13. Petitioners on 20.02.2017 have submitted their response to the sur-rejoinder filed by Respondents on 01.12.2016.
14. Subsequently, some of the Petitioners filed an Interlocutory Application on 06.12.2016 wherein it is submitted that through an application filed under Right to Information Act, Petitioners got the SLDC log book record of load shedding instructions from the Respondents but the Respondents have deliberately provided the incomplete information therefore, it is prayed to direct SLDC to bring on record the complete log book and corresponding messages received from RDPPC for issuance of backing down instructions. It was also prayed to appoint an independent expert to analyze the log book of SLDC.
15. RVPN filed its reply to aforesaid Interlocutory Application on 07.02.2017 and Petitioners also filed their rejoinder to the same on 10.04.2017.
16. Further, Respondent RVPN, on 08.08.2017, has filed its detailed reply to the petitions.
17. In the meanwhile, some of the Petitioners have filed petitions before this Commission on 15.05.2017 under Section 142 of the Electricity Act, 2003 against the same Respondents RVPN and SLDC for non-compliance of directions issued by the Commission in the proceeding held on 08.09.2016 wherein Commission directed SLDC to follow the provisions of RERC Grid Code.

18. Notices were issued to Respondents on 22.05.2017 for filing the reply on these petitions. Accordingly, Respondent RVPN and SLDC have submitted their common reply on 10.08.2017.
19. The matter was heard on 10.08.2017 and 07.09.2017. The Counsel of the Petitioners requested for time to file rejoinder to the reply filed by Respondents. Commission granted time to file the same. Accordingly, Petitioners have filed their rejoinder to both the reply of Respondent RVPN and SLDC on 29.09.2017.
20. The matter was finally heard on 05.10.2017. Sh. Hemant Sahai, Advocate appeared for Petitioners. Sh. M.G. Ramachandran, Advocate appeared for Respondents. Sh. Bipin Gupta, Advocate appeared for Discoms. After hearing, Commission has reserved the order.
21. Sh. Hemant Sahai, Advocate on behalf of Petitioners in petitions, rejoinders, affidavit and interlocutory applications and during hearing mainly contended as under:
- (a) Petitioners are aggrieved by the arbitrary and discriminatory instructions issued by the Respondent No. 1, i.e. SLDC, for backing down generation of the Petitioners' wind power projects situated in the State of Rajasthan, in complete violation of the mandate of the Electricity Act, 2003 and the extant Regulations issued by this Commission including but not limited to the Wind Policy, RERC Grid Code, the RERC (Terms and Conditions for Determination of Tariff for Renewable Energy Sources - Wind and Solar Energy) Regulations, 2014 (RE Tariff Regulations, 2014) as per which all wind and solar energy plants have been accorded a 'Must-Run' status.
 - (b) The Government of Rajasthan (GoR) on 18.07.2012 has notified the "Policy for Promoting Generation of Electricity from Wind, 2012" (Wind Policy) to promote generation of electricity from wind sources. Under this policy, the GoR extended various incentives to the developer of wind energy with a view to promote installation of wind power plants in the State for sale of

power to the Discoms of Rajasthan on preferential tariff determined by this Commission. Under the Wind Policy (Clause 6.4), Respondents RVPN and Discom were also made responsible for augmentation of the transmission/distribution systems within mutually agreed time frame to ensure evacuation of power.

- (c) Commission, on 24.02.2014, has notified the RERC (Terms and Conditions for Determination of Tariff for Renewable Energy Sources - Wind and Solar Energy) Regulations, 2014 (RE Tariff Regulations, 2014). As per Regulation 7(1) of the RE Tariff Regulations, 2014, this Commission determines generic tariff on suo-motu basis at the beginning of each year of the control period for wind power plants for which principles and norms have been specified under the said Regulations. Further, Regulation 10(1) of the RE Tariff Regulations unequivocally provides that all wind and solar energy plants shall be treated as 'Must-Run' power plants and shall not be subjected to 'Merit Order Despatch' principles.
- (d) In pursuance of the aforesaid Wind Policy, the Rajasthan Renewable Energy Corporation permitted the Petitioners to set up wind energy based power projects and forwarded draft Power Purchase Agreement under preferential tariff to respective Discom.
- (e) Thereafter, Power Purchase Agreements (PPAs) were signed between the Petitioners and the respective Discoms for sale of 100% of the power generated by the Petitioners from their Projects to the relevant Discom. Further, under Clause 4.1 of the said PPAs, it was reassured that power generated by the Petitioners from their Projects will get priority over the power generated from other conventional sources as that the power plants commissioned under the Wind Policy would not be subject to merit order dispatch principles. It is pertinent to note that keeping the generation through wind sources out of the purview of merit order dispatch establishes

the intention of the parties to ensure that these plants are a Must-Run as has also been recognised under the RERC Grid Code, RE Tariff Regulations and the RERC (Power Purchase & Procurement Process of Distribution Licensee) Regulations. 2004.

- (f) The projects of Petitioners were commissioned on different dates for each Wind Turbine Generator. As per the PPAs, each Petitioner has been supplying power to concerned Discom since its COD. Petitioners have been forecasting energy and submitting their schedule of generation on day ahead basis regularly. This forecasting is diligently being undertaken by the Petitioners with a view to evacuate the power from the respective project in full and to enable Respondents to plan their demand side management. Despite such being the position, the supply from Petitioners' Projects have been materially interrupted as a result of unlawful, arbitrary and discriminatory backing down instructions being issued by the Respondent SLDC from time to time. SLDC has been regularly issuing instructions to the Petitioners to back down generation from the Projects without according any reasons for such backing down.

- (g) As per various Regulations issued by the Commission, namely, RERC Grid Code, RE Tariff Regulations and RERC (Power Purchase & Procurement Process of Distribution Licensee) Regulations, 2004, the wind power plants are Must-Run stations and the generation from wind power can be curtailed only for the reasons specified in Regulation 7.8.1 of the RERC Grid Code and not otherwise. As per Regulation 7.8.1 of the RERC Grid Code, SLDC is required to make all efforts to evacuate the wind power and to treat the wind power projects as a must run station. Further, Regulation 10(1) RE Tariff Regulations also mandate that the wind energy plants be treated as must run power plants. Such a course of Respondent is on face

of it, in contravention of the Regulations issued by the Commission and, therefore, illegal.

- (h) The SLDC by way of the Electricity Act is mandated to monitor grid operations and be responsible for optimum scheduling and despatch of electricity within the State. In furtherance of the above functions and to carry out real time operations for grid control and despatch of electricity, SLDC is mandated to act in accordance with the grid standards and the State Grid Code. The aforesaid would clearly establish that the SLDC in discharge of its statutory functions under Section 32 of the Act is required to comply with provisions of RERC Grid Code.
- (i) Further, Section 32 of the Electricity Act, 2003 empowers the SLDC to issue directions and exercise such supervision and control as may be required for ensuring integrated grid operations and for achieving maximum economy and efficiency in the operation of power system in a particular State. Section 32 empowers the SLDC to issue directions, whereas the RERC Grid Code provides the framework within which such directions can be issued to renewable generators for backing down of generation. In addition to this, the RERC Grid Code by way of Regulation 4.9.1 (vii) read with Section 33(4) of the Act provides that the jurisdiction of this Commission can be invoked in the event there is non-compliance of any provisions of the RERC Grid Code by SLDC including provisions with respect to backing down instructions.
- (j) However, in the present cases, instructions being issued by SLDC for backing down generations are not a one-off incident but have become a regular practice where SLDC is instructing the must-run renewable energy power plants to back down their generation without there being any cogent reasons for the same. The arbitrariness of the said SLDC instructions is also evidenced by the fact that these instructions are almost issued

routinely to the wind power plants. It is further noteworthy that during the same time when wind power plants are being asked to back down generation despite them having a must-run status, the conventional energy based power plants are not impacted to such extent.

(k) The backing down instructions issued by the SLDC is contradicting the unequivocal mandate of Regulation 10.3 of the RERC Grid Code. The said Regulation prescribes that the SLDC shall maintain the record of schedule from renewable power generating stations based on type of renewable energy sources i.e. wind or solar from the point of view of grid security and while scheduling generation stations in a region, system operator shall aim at utilizing available wind and solar energy fully as per the provisions of the latest IEGC. However, in the present cases, Respondent SLDC has given a complete go by to this legal mandate in so far as the Petitioners herein, are regularly being backed down by SLDC without assigning or disclosing any reason for the same.

(l) It appears that SLDC is under the misconception that being a statutory body, it can proceed to issue backing down instructions for reasons other than what have been specified in the RERC Grid Code and also such exercise can be justified in the name of it having complete autonomy, as it is the statutory authority to monitor the grid operations. In effect, the SLDC's contention is that it can issue backing down instructions based on its discretion which should be unguided in any manner whatsoever and no questions should be raised. Such contentions of the Respondents are utterly misconceived, whimsical and devoid of any merit.

(m) Since wind power plants are must-run stations and out of the purview of merit order dispatch principles, hence, any curtailment should first be levied on the conventional power plants. It is only when the grid security is at threat even after fully curtailing the generation from conventional energy

sources then backing down instructions can be given to the wind power plants. In the present cases, SLDC has not disclosed if such an emergency situation exists which warrants backing down of wind plant. As a matter of fact, SLDC is not instructing backing down of conventional plant to the same extent as it is affecting the wind generators. Such a conduct of SLDC is highly discriminatory and unlawful.

(n) The Respondents are bound by the provisions of the RERC Grid Code issued by the Commission and cannot be permitted to exercise arbitrariness in performing their functions. RERC Grid Code is a delegated legislation issued by the Commission in exercise of its powers under Section 181 of the Act and has the force of law. It is well settled that such delegated legislation is provided to fill the objectives of the principal statute and the conduct to be followed by the authorities for whom such delegated legislation is issued. In this regard reliance is made on judgment of the Hon'ble Supreme Court passed in the matter of St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Anr. [(2003)3SCC321].

(o) The Respondents, by way of data submitted, have wrongly contended that there were multiple instances where there was no backing down instructions given to Petitioners and that SLDC as its first option had directed thermal power stations to back down. The Respondents have tried to mislead the Commission by providing incomplete and selective data which is evident from the submission of the Petitioners which clearly demonstrates that there are various instances of backing down, wherein the Petitioners were issued backing down instruction which are not mentioned in the data provided by the Respondents.

(p) By way of illustration of data provided by Respondents, it is submitted that there have been many instances where in the backing down instructions

were issued to these IPPs despite the State thermal generating stations operating at a level substantially higher than the technical minimum limit as specified in IEGC (i.e. 55% of the MCR loading or installed capacity of such unit(s)) and there being no grid security issue prevailing during such time periods.

- (q) Petitioner by way of data supplied with rejoinder clearly demonstrated that backing down instructions was imposed on wind generators when grid frequency was in the range of 49.85 – 50.04 Hz. Hence, SLDC's own conduct in issuing backing down instructions to wind generators while grid frequency was lower i.e., 49.85 Hz, was in fact creating a situation where the grid security was at threat and could potentially cause grid disturbance or failure. In addition to the above submissions, this is also confirmed by RVPN's reply, where the Respondents have stated that to avoid deviation charges SLDC maintains the grid frequency. Such conduct by the SLDC is in clear violation of its operating procedure, RERC Grid Code and evidently amounts to gross misuse of powers by SLDC.
- (r) It is contended by the Respondents that SLDC being a statutory functionary is entitled to act in the larger public interest while dealing with the scheduling and despatch of electricity. It is completely irrelevant and out of context in view of its clearly defined role under the Electricity Act read with the RERC Grid Code. It is submitted that the SLDC being a statutory body is required to act within the framework of law i.e., the Act and RERC Regulations. In any event, each statutory body is always expected to work in public interest, however, such public interest cannot allow such authorities to override the specific provisions in the Acts and Regulations. Therefore, the Respondents cannot be allowed to issue arbitrary backing down instructions under the garb of public interest in the present cases. In this regard reliance is made on the order passed by the Hon'ble Supreme

Court in the case of Bhavnagar University v. Palitana Sugar Mill (P) Ltd. [(2003)2 SCC 111] wherein it has been observed that the statutory authority being a creature of statute, must act within the four corners thereof.

- (s) In view of the it is apparent that during high power demand of Rajasthan, with considerable margin in own/state generation, when there was deviation in NR schedule i.e., under drawl conditions, SLDC has proceeded to back down generation from wind power generators in place of thermal power plants including gas fire plants, to reduce the NR schedule deviation so as to minimize the imposition of penalty charges on them and therefore, this can only be termed as a commercial reason for backing down wind power plants.
- (t) The impact of the backing down instructions on the wind power plants is more severe as compared to conventional power plants. While backing down leads to complete generation and financial losses of the wind power plants, the conventional power plants are better placed as they are still entitled to fixed charges despite the curtailment in generation. Being fully aware of such scenario, the Commission has offered protection to the wind power plants under its Regulations by imparting wind generators a must-run status. However, the said objective is being frustrated as the Respondent SLDC is continuously issuing backing down instructions to the wind power plants. Despite the fact that as a result of such backing down instructions, the power supply under the PPA is severely getting impacted, the Discoms are silent on the issue and is not raising any concerns with the SLDC to resolve this sectoral issue.
- (u) Since backing down instructions are continuously being received by the Petitioners from the Respondent SLDC and that too without specifying any reasons for the same, Petitioners wrote letters to the Principal Secretary (Energy), Government of Rajasthan/Chief Engineer, RLDC/ Chairman

Discoms to explain the precarious position it was in and to seek intervention in the matter.

- (v) Thereafter not having received any response from the above mentioned authorities, Petitioners herein, again wrote to the SLDC informing that backing down of generation instructions are arbitrarily being issued by the concerned SLDC, without due regard to the 'Must-Run' status of Wind power plants and sought their intervention. The Petitioner, in the said letter, enumerated the revenue and generation losses being suffered by the Petitioners due to arbitrary backing down of generation instructions being issued by the SLDC without any cogent reasons for such generation curtailment
- (w) Further, Commission during its proceedings dt. 08.09.2016 directed to SLDC to follow the provisions of RERC (Grid Code) Regulations. But despite of such directions issued by Commission to follow the provisions of RERC (Grid Code) Regulations, SLDC has been issuing backing down instructions from December 2016 to April 2017 without any justifiable reasons for curtailment of generation from the Petitioners' projects. Therefore, Petitioners are also constrained to file petitions under Section 142 of the Electricity Act, 2003 seeking prayer to issue specific direction for enforcement of the order dated 08.09.2016 in the future and also direct imposition of penalty under Section 142 of the Act,
- (x) It is submitted that wind is a seasonal resource and almost 65% of the revenue is generated by the Petitioners during the high wind season from May to August. However, as a result of the backing down instructions issued by the Respondent SLDC, Petitioners have faced huge generation losses and revenue loss. The revenue loss during the high wind season is putting a huge financial strain on the Petitioners' balance sheet and is nudge the

project towards default to the lenders as the ability of the Petitioners to service the loan is severely impacted.

- (y) The Petitioners have sought to be compensated for the financial loss that has been incurred on account of the arbitrary and illegal instructions issued by the SLDC for backing down of generation from wind power plants and therefore, the Petitioners can be recompensed by way of even going beyond their respective PPAs. In the present cases, SLDC is liable for violating the Regulation 7.8.1 of the RERC Grid Code and therefore, on the basis of CERC's judgment passed in the case of Aarti Steel Ltd. v. Orissa State Load Despatch Centre (Petition No. 4/MP/2012), a claim of compensation can very well be granted against the Respondents.
- (z) This is well settled law that a statutory authority, being the creation of the statute has to act within the four corners of law and follow the statutory mandate. In this regard, reliance is made on the decision of the Hon'ble Supreme Court passed in the case of Bhavnagar University v. Pchitana Sugar Mill (P) Ltd. reported as (2003)2 SCC 111.
- (aa) SLDC, while issuing the backing down instructions to the Petitioners has completely disregarded the express mandate of the Electricity Act, 2003 to promote generation of electricity through renewable sources but also did not pay heed to the emphasis laid down by the various Regulations promulgated by this Commission to treat the wind power plants as 'must-run' stations.
- (bb) Aggrieved by the above, the Petitioners are constrained to file the present petitions and prayed to-
 - (i) Declare that the backing down instructions issued by the SLDC are arbitrary and illegal;

- (ii) Direct the SLDC including its officers, servants, agent and representatives to comply with Regulation 7.8.1 of the RERC Grid Code and Regulation 10(1) of the RE Tariff Regulations, 2014 and not to issue directions for backing down generation of the Petitioner's wind power Project as it is a Must-Run plant;
- (iii) Direct the Respondent RVPN to expedite the bay interconnection work for running the line used for evacuation of wind energy and thermal energy in parallel and also to ensure optimum utilization of the transmission assets.

22. Sh. M.G. Ramchandran, Advocate on behalf of Respondents RVPN and SLDC during hearing and in common reply mainly contended as under:

- (i) SLDC is a statutory functionary under Section 32 of the Electricity Act and in the discharge of its functions, SLDC is entitled to act in the larger public interest while dealing with the scheduling and dispatch. There has been no violation on the part of the Respondents of either Regulation 7.8.1 of the RERC Grid Code or Regulation 10 (1) of the RE Tariff Regulation, 2014.
- (ii) In exercise of the powers under Section 79 [1][h] of the Electricity Act, 2003, the Central Electricity Regulatory Commission has notified the Indian Electricity Grid Code ('IEGC'). Further, in exercise of the powers under Section 86 (1) (h) of the Electricity Act, 2003, the Commission has notified the Rajasthan Grid Code which is to be read consistent with the IEGC.
- (iii) As per Section 32 of the Electricity Act, 2003, the SLDC is responsible for the optimum scheduling and despatch of electricity within the State of Rajasthan. The SLDC has the statutory duty to exercise supervision and control over the Intra State Transmission System. The SLDC has to ensure integrated operation of the power system in the State. For the above purpose, SLDC is responsible for carrying out the real time operation for grid control and despatch of electricity within the State through secured

and economic operation of the State Grid in accordance with the Grid Standard and State Grid Code. These have been reiterated in Clause 2.7 of the IEGC and also in Clause 4.2 of the RERC Grid Code.

(iv) In terms of Clause 11.2 of the RERC Grid Code, the SLDC is required to monitor the actual drawl against the scheduled drawl and to regulate the internal generation/demand and maintain the schedule. In addition, SLDC is also required to monitor the re-active power drawl and available capacitors. The State Generating Stations are required to follow the despatch instructions issued by the SLDC. The SLDC is also required to follow the instructions of NRLDC for backing down generation, regulating loads, drawl etc. to meet the objective of maintaining the State Transmission System, Voltage and Frequency within the acceptable limited.

(v) As per Clause 3 (8) of RERC Grid Code, backing down means SLDC instructions or NRLDC instructions conveyed through SLDC for reduction in generation from generating unit under abnormal conditions such as high frequency, low system demand or network constraints.

(vi) Clause 7.13 specifically provides for the State Generating System to follow instructions of SLDC for backing down as under:

"7.0 Chapter-VII SYSTEM SECURITY ASPECTS

*.....
7.13 SGS shall follow the SLDC instructions for backing down/ boxing up and shutting down the generating unit(s). SLDC shall certify the period of backing down/ boxing up or shutting down for computing the deemed generation, if so required in the PPA.*

7.14 To ensure system security, proper steps shall be taken for voltage, frequency management and protection coordination as provided under REGC.

....."

- (vii) In terms of Section 32 of the Electricity Act, 2003, the scheduling and despatch functions exercised by SLDC are in accordance with the contract entered into by the generating company and the licensees. In accordance with the PPA signed between the Petitioners and the respective Discom, though the Petitioner will have a must-run status and efforts would be made to evacuate all the delivered energy but the same will be subject to backing down in specified circumstances as quoted above. It is, therefore, wrong on the part of the Petitioners to assume that the wind power developers having a must-run status can never be backed down and should always be allowed injection of power into the Grid System irrespective of its effect on the Grid.
- (viii) The backing down decisions has been taken by the SLDC in a non-discriminatory and appropriate manner. The implementation of backing down is a dynamic concept. There are energy security issues with regard to the large Thermal Power Stations in the State and they are paramount. There are issues of Technical Minimum below which the Thermal Power Station cannot operate. If the Thermal Power Station is to be backed down below the Technical Minimum, there will be a significant gestation period for the station to come again into operation and may significantly affect the efficiency of the machines.
- (ix) As against the above, the availability of power from the non-conventional energy sources such as wind or solar is not constant and not even certain for the entire day. There may be wide variation in the availability of power. By reason of giving must-run status and taking power from the wind power generators, the SLDC cannot afford to direct the Thermal Power Stations to operate much below the Technical Minimum resulting in non-availability of power in case the wind power projects are not able to operate on account of the low velocity. There has to be a pragmatic and optimum planning which is consistent with the functions of SLDC

under section 32 of the Electricity Act, 2003 read with the IEGC and the Rajasthan Grid Code.

- (x) The SLDC cannot operate the Grid System in a manner of not backing down the wind power generation even when the circumstances require it to be done. If such a course of action were to be adopted then the SLDC will be failing in its functions. In this regard, Respondents made reliance on the order dated 1.07.2015 passed in petition No.14 of 2012 and Ors. by the Tamil Nadu Electricity Regulatory Commission, relating to the must run status of wind generators and the backing down instructions issued by the Tamil Nadu State Load Dispatch Centre. In the aforesaid order, one of the Member of the Tamil Nadu Electricity Regulatory Commission held that when the question of grid security surfaces, it attains the superior position as compared to all other aspects including the issue of absorption of renewable power. It was further observed that the issue of " Must Run Status' cannot be viewed in isolation and has to be viewed from the point of view of the stability of the grid and securing the safety of the same as well. In view of the grid security, SLDC must have the freedom to operate it without undue interference.
- (xi) SLDC has been implementing backing down in a systematic manner and directing the thermal power stations as first option to back down and only when it is considered that the thermal power stations cannot be backed down further and central generating station power is also surrendered, then instructions are issued for backing down the wind power projects. Similarly, as and when the instructions are to be issued for increasing the drawl, after backing down, the first priority is given to non-conventional energy such as the wind power. In this regard, the Respondents have submitted the details of backing down of wind power generation qua other generations for the period March-2016 – June, 2017 along with its reply. A perusal of the same would show that on a number of days where

the Petitioners have alleged that there has been backing down, there was, in fact, no such backing down. The details in regard to the backing down during other periods have been given with respect to the time and percentage of backing down of conventional generating stations. These conventional generating stations have been backed down before the wind power was backed down.

- (xii) The matter relating to the deemed fixed charges for the period of the backing down is to be considered in the light of the PPAs between the Petitioners and the Rajasthan Discoms. It has nothing to do with the exercise of statutory functions by the SLDC. In this regard reliance is made on the order passed by Gujarat Electricity Regulatory Commission in its order No. 2 of 2016 wherein it was held that wind generation cannot be treated as deemed generation and no payment will be made by the distribution utilities for this generation.
- (xiii) Petitioners and other wind power developers have not been fulfilling their part of the obligation of undertaking the forecasting that would be available from the wind power projects and thereby, seriously affecting the ability of SLDC to optimise the scheduling and despatch. This is in spite of the provision in the Wind Power Policy notified by the Government of Rajasthan, namely, Clause 6.4.8.
- (xiv) There has been no violation on the part of the Respondents of the order dated 8.09.2016 passed by the State Commission or Regulation 7.8.1 of the Rajasthan Grid Code or Regulation 10 (1) of the RE Tariff Regulation
- (xv) in view of above submissions, it is also submitted that there has been no violation on the part of the Respondents of the order dated 8.09.2016 passed by the State Commission or Regulation 7.8.1 of the RERC Grid Code or Regulation 10 (1) of the RE Tariff Regulations, 2014.

(xvi) Therefore, there is no merit in the petitions filed by the Petitioners and are liable to be dismissed.

23. Sh. Bipin Gupta, Advocate on behalf of Discoms reiterated the submissions made on behalf of RVPN and SLDC.

Commission's view

24. We have carefully considered the submissions made by the Petitioners and the Respondents in petitions, replies and rejoinders, all relevant documents and oral submissions made by the Petitioners and Respondents and the provisions of Electricity Act, 2003, agreement executed by Petitioners and Respondents, relevant provisions of the RERC Regulations besides the judgments cited.

25. To decide the present petitions, it is necessary to notice the relevant provisions of the Electricity Act, 2003, Grid Code and terms of PPAs which are extracted below:

Section 31 (1) of the Electricity Act read as under:

"Section 31. (Constitution of State Load Despatch Centres): ---

(1) The State Government shall establish a Centre to be known as the State Load Despatch Centre for the purposes of exercising the powers and discharging the functions under this Part."

Section 32 (1) and (2) of the Electricity Act read as under:

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

(1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.

(2) The State Load Despatch Centre shall -

(a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;

(b) monitor grid operations;

(c) keep accounts of the quantity of electricity transmitted through the State grid;

- (d) exercise supervision and control over the intra-State transmission system;*
- (e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code."*

Section 33 (1), (2), (3), (4) and (5) read as under:

Section 33. (Compliance of directions): ---

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

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

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

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

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

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

Clause 7.8.1 of RERC Grid Code read as under:

"7.8.1 The SLDC shall make all efforts to evacuate the available solar and wind power and treat as a must-run station after taking into consideration the storage capacity. However, SLDC may instruct the solar /wind generator to back down generation on consideration of grid security or safety of any equipment or personnel is endangered and Solar/ wind generator shall comply with the same.

i) SLDC may direct a wind farm to curtail its VAr drawl / injection in case the security of grid or safety of any equipment or personnel is endangered."

Clause 4.1 of the PPAs read as under:

"4. Interconnection, Delivery Point, Metering & Other Charges

4.1 Grid Interfacing

.....

XV) RVPN /Discom(s) shall evacuate all the delivered energy. However, the State Load Dispatch Centre of RVPN looking to system requirement may direct the power Producer to temporarily curtall or stop its electricity generation without any liability on account of:

- a. Inspection/repair/maintenance of RVPN and/or Discom Grid System and associated equipment or under forced outage conditions:*
- b. Safety of equipment and personnel of the RVPN and/or Discom(s).*
- c. Any other technical requirement to maintain the Grid discipline and security.*

XVI) In the event of abnormal voltage conditions, RVPN/Discom will have right to ask to the Power Producer/Developer for regulating the reactive power generated by the Wind Generator as per system requirement.

XVII) RVPN/Discom shall disconnect the interconnection of Power Plant from State Grid/Distribution System in case of default of the Power Producer to comply with any of the provisions of PPA including technical parameters of supply as prescribed in Annexure 'A' of the PPA and such disconnection will continue till default continues.

Merit Order Dispatch

The power plants commissioned under the policy would not be subject to Merit Order Dispatch regulations."

26. Commission has considered the arguments of both the parties in the back drop of above provisions to check whether SLDC has acted as per the role assigned to it and the relevant provisions of Grid Code and the terms of PPAs.

27. It is vehemently submitted by Sh. Hemant Sahai, Counsel appearing for the Petitioners that their plants cannot be asked to back down for reasons other

than the one provided in RERC Grid Code and PPAs. It is submitted by him that Clause 7.8.1 of RERC Grid Code specifically directs SLDC to make all efforts to evacuate the solar and wind power available and treat them as Must Run. Further, as per the above provisions, SLDC may instruct to back down only on consideration of grid security or safety of personnel endangered. He further submitted that as per Clause 4.1 of PPAs the renewable energy plants commissioned under GoR policy shall not be governed by merit order principles. According to him SLDC is only instructing the RE stations to back down which enjoy Must-Run status and not the conventional power stations of the State

28. It is also submitted on behalf of Petitioners that SLDC in discharge of its statutory functions under Section 32 of the Act is required to comply with provisions of State Grid Code i.e. RERC Grid Code. It is contended by the Petitioner that the RERC Grid Code is a comprehensive set of Regulations which lays down the Rules, Guidelines and Standards to be followed by the users of the intra-state transmission network to operate and maintain an efficient and coordinated state transmission system. The principle objective of the RERC Grid Code is to provide certainty to the SLDC to understand their obligations in operating the state transmission system. Under Regulation 4.2 (v) of the RERC Grid Code, SLDC is responsible for carrying out real time operations for grid control and electricity despatch within the State through secure and economic operation of the State grid in accordance with the grid standards and RERC Grid Code.

29. It is submitted that Section 32 of the Electricity Act empowers the SLDC to issue directions and exercise such supervision and control as may be required for ensuring integrated grid operations and for achieving maximum economy and efficiency in the operation of power system in a particular State. Whereas the RERC Grid Code provides the framework within which such directions can be issued to renewable generators for backing down of generation. In addition to

this, the RERC Grid Code by way of Regulation 4.9.1 (vii) read with Section 33(4) of the Act provides that the jurisdiction of this Commission can be invoked in the event there is non-compliance of any provisions of the RERC Grid Code by SLDC including provisions with respect to backing down instructions.

30. Counsel for the Petitioners submitted that it is not contended on behalf of Petitioners that RE stations never be backed down in any circumstances as assumed by the Respondents. Petitioners agree that Must Run status do not mean that no back down at all but backing down instructions even though could be issued on the basis of the reasons specified in the RERC Grid Code. Petitioners have contended that SLDC is only instructing the RE stations to back down which enjoy Must-Run status and not the conventional power stations of the State

31. It is submitted that at several occasions it has been noticed that the gas thermal power station (GTPP) is running at significantly higher PLF while wind generators were being curtailed.

32. It is submitted that there have been ample occasions where backing down instructions have been issued to the Petitioners when thermal power stations were operating at more than 55% of their respective installed capacity i.e., the respective technical minimum limit as specified in IEGC and there being no grid security issue prevailing during such time periods. However, RERC Grid Code or any other RERC Regulations do not stipulate the technical minimum limit for thermal power plants.

33. Petitioner's Counsel relying on the documents produced by him tried to demonstrate that back down instructions issued are not in accordance with RERC Grid Code and PPAs. According to him, the instructions of SLDC are arbitrary and not based on the proper reasons. Further according to him, the instructions were merely on economic consideration which is contrary to what has been agreed in PPAs.

34. He further submitted that on account of arbitrary instructions of SLDC, the Petitioners are suffering financial losses and is upsetting their financial calculations assumed before setting up the plant.
35. Petitioner's Counsel strongly urged that the Commission should direct SLDC to strictly adhere to the provisions of law in letter and spirit.
36. Sh. Ramchandran, Advocate appearing for Respondents has submitted that SLDC is performing its role dispassionately and in accordance with law. It is submitted by him that if the material produced by both the parties is looked into, it is clear that backing down instructions are not for economic consideration and arbitrary and are only for maintaining the grid operation safe and in order to meet the situation arising from time to time. As per the PPA, Petitioners though have been given a must-run status and efforts would be made to evacuate all the delivered energy by them but the same will be subject to backing down in specified circumstances as quoted in Grid Code and PPAs. It is, therefore, wrong on the part of the Petitioners to assume that the wind power developers having a must-run status can never be backed down and should always be allowed injection of power into the Grid System irrespective of its effect on the Grid.
37. He further submitted that SLDC is implementing backing down policy in a systematic manner and directs Thermal Power Stations as first option to back down and only when it is considered that Thermal Power Stations backed down alone will not suffice due to technical limits, then instruction are given to RE power generating plants to back down. He further submitted that as and when there is need to increase the generation, the first priority is given to RE generators and not to the conventional plants.
38. Sh. Ramchandran also submitted that the information produced by the Petitioners is not being read in a proper way. He further submitted that SLDC is implementing backing down policy in a systematic manner and not arbitrarily.

39. Commission has considered the submissions of both the parties and also looked into material placed before it. Commission is of the view that the instructions given by SLDC are not arbitrary as alleged and on account of economic consideration. The instructions given by SLDC appear to be merely for operational reasons and keeping in view the principles enunciated in Section 32 of the Act read with RERC Grid Code. SLDC being a real time operator shall have to take decision depending on the demand, generation and grid sustainability of particular time slot. Commission unless considers instructions of SLDC are patently arbitrary or for extraneous reasons cannot find fault with. SLDC as a system operator shall legally enjoy this freedom in the interest of system.

40. The Petitioners have fairly submitted that it is not their argument that their generation plants having Must Run status cannot be ordered to be back down for any reason. It is their submission that on economic consideration backing down cannot be compelled. Commission agrees with their view. Petitioners' plants shall not be back down for commercial considerations and they can be back down only on the grounds stated in Grid Code and PPAs executed.

41. Commission has looked into the assertion SLDC is instructing the RE stations to back down which enjoy Must-Run status but allowing conventional power stations to generate. From the material produced, it is observed that SLDC is also backing down conventional thermal power stations to the extent possible as otherwise it will have general impact on power supply of the State.

42. In the considered opinion of the Commission the back down instructions whenever given by SLDC shall record reason for back down in their records. This will make the working of SLDC more transparent and avoid allegations as have come up in this case.

43. Commission, after looking the material produced on behalf of Respondents, is of the view that SLDC has not acted in the arbitrary manner or directed back

down for commercial reasons as SLDC has no commercial interest and is only a system operator. Even RVPN, under whom presently SLDC works, being only a Transmission company, has no interest leave alone commercial interest in issuing instructions to SLDC. Petitioners have also not produced any material whatsoever against RVPN/SLDC. The said decision by SLDC is therefore not contrary to law.

44. In view of above discussions and facts placed in this case, Commission comes to conclusion that there is no merit in the petitions and therefore, are liable to be dismissed. Accordingly, the petitions stand dismissed.

45. Since the petitions filed by the Petitioners are being dismissed by Commission, the petitions filed u/s 142 complaining non-compliance of the interim order of this Commission shall also have to be dismissed as interim order merges with the final order. Accordingly, they also stand dismissed.

46. Commission before parting with these cases desires to record that in future SLDC shall while issuing back down instruction to RE generators bear in mind that RE generation being benign to the environment and based on natural resources shall be evacuated on priority basis and shall be back down strictly only as per the Grid Code. Further, SLDC should maintain proper record of reasons of back down instructions to maintain transparency.

47. With the above observation all these petitions stand disposed of.

(S.C. Dinkar)
Member

(R.P. Barwar)
Member

(Vishvanath Hiremath)
Chairman