

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 77 of 2023

Case filed by Sai Wardha Power Generation Private Ltd seeking adjudication of dispute under Power Purchase Agreement dated 2 July 2020 for unilateral deduction of energy charges

Coram

**Sanjay Kumar, Chairperson
Anand M. Limaye, Member
Surendra J. Biyani, Member**

Sai Wardha Power Generation Private Ltd: -	Petitioner
Vs	
Maharashtra State Electricity Distribution Company Ltd.: -	Respondent No. 1
Maharashtra State Load Despatch Centre: -	Respondent No. 2

Appearance

For Petitioner: -	Shri. Anand Ganesan (Adv.)
For Respondent No. 1: -	Shri. Ravi Prakash (Adv.)
For Respondent No. 2: -	Shri. Abhishek Bhat (Adv.)

ORDER

Date: 14 December, 2023

1. Sai Wardha Power Generation Private Ltd (**SWPGPL**) has filed this Petition on 15 April, 2023 under Section 86(1)(f) of Electricity Act, 2003 (**EA, 2003**) seeking adjudication of dispute under Power Purchase Agreement dated 2 July 2020 for unilateral deduction of energy charges for the months from July, 2020 to February, 2021 by Maharashtra State Electricity Distribution Company Ltd (**MSEDCL**) .
2. **SWPGPL's main prayers are as under:**

- a. *Hold and direct that the unilateral deductions made by MSEDCL against the monthly invoices of the Petitioner from July, 2020 to February, 2021 are erroneous, contrary to the PPA and also the implemented schedule;*
- b. *Direct MSEDCL to pay the Energy Charges deducted being a principal sum of Rs. 2,46,49,959/- (Para 24) to the Petitioner;*
- c. *Hold and direct that the Petitioner is liable to pay interest in terms of Article 8.3.5 of the PPA on the above principle amount payable, computed from the date when the respective invoices became due till the actual date of payment by the Petitioner in terms of prayer (b) above;*
- d. *Award costs of the present proceedings in favour of the Petitioner and against MSEDCL;*

3. SWPGPL in its Petition has stated as follows:

- 3.1 SWPGPL is a generating company having 4 units of 135 MW each at Warora in the State of Maharashtra. SWPGPL is currently supplying power within the state under the following PPAs:
 - (a) 100MW under PPA dated 04 September 2019 to Brihanmumbai Electric Supply & Transport (BEST through Manikaran Power Limited);
 - (b) 240MW under PPA dated 02 July 2020 to MSEDCL;
 - (c) 16MW under PPA dated 06 September 2022 to Maharashtra Airport Development Company Ltd. (MADC through Manikaran Power Limited).
- 3.2 The supply of power to MSEDCL under the above PPA commenced on 05 July 2020. SWPGPL has been supplying energy under the terms and conditions of the PPA and raising monthly invoices to MSEDCL for the said supplies.
- 3.3 The supplies to MSEDCL, BEST and MADC under the terms and conditions of the respective PPAs were being done from 4 x 135 MW Power Station. The supply by SWPGPL to MSEDCL is from the Power Station and not from any specific Unit(s) of the 4 x 135 MW Power Station. SWPGPL was allocating the total availability of the Power Station on daily basis to the MSEDCL, BEST and MADC in proportion to the Contracted Capacity under the PPA.
- 3.4 SWPGPL has declared to Maharashtra State Load Despatch Centre (MSLDC) that the Technical Minimum Capability for each of the Unit is 67 MW and the same has been reflecting on the website of MSLDC. There is no dispute on the same.
- 3.5 MSLDC based on the Merit Order Despatch (MoD) principle under the applicable regulations has been issuing back down instructions to SWPGPL and SWPGPL as per the instructions of MSLDC has been adhering to the Back down Instructions.
- 3.6 For the month of July 2020, based on the back down instructions, Energy has been despatched to MSEDCL and BEST and monthly invoices were raised on the buyers under the terms and conditions of the PPA.

- 3.7 The invoice has been raised based on the implemented schedule and the backing down instructions issued by MSLDC.
- 3.8 However, MSEDCL while making the payment towards Energy Charges against the invoice raised by SWPGPL for the month of July 2020, had unilaterally deducted an amount of Rs. 46,61,515/- with respect to the Energy Charges. However, there was no communication or reason given by MSEDCL for the above unilateral deduction.
- 3.9 The PPA in Article 8.6.1 provides for a bill dispute notice to be issued by MSEDCL in case there is any dispute over the invoice raised by SWPGPL, failing which the invoice is to be treated as conclusive. Any dispute is to be raised within 30 days in accordance with Article 8.6.2. Further, in terms of Article 8.6.9, MSEDCL is, even if there is a dispute to the invoice, under an obligation to pay the average of the past 3 months or the Disputed Invoice, whichever is lower.
- 3.10 In the present case, there was firstly no dispute raised by MSEDCL, which results in the invoice being treated as conclusive. Further, even if there is a dispute, the payment is to be made in terms of Article 8.6.9 of the PPA, which MSEDCL has failed to pay.
- 3.11 Further, in terms of Article 8.3.2 of the PPA, MSEDCL has no right to make any unilateral deductions in the PPA, unless such deductions are as required by Law or against an invoice raised by MSEDCL and not disputed by SWPGPL within 30 days.
- 3.12 In view of the unilateral deduction by MSEDCL, SWPGPL sought for clarification from MSEDCL on the deduction in Energy Charges, to which MSEDCL informed SWPGPL that the backing down instructions issued by MSLDC was not in adherence to the MoD principles.
- 3.13 Thereafter MSEDCL in the month of August 2020 wrote a letter dated 28 August, 2020 to MSLDC, with copy to SWPGPL, intimating that MSLDC has considered back down towards SWPGPL's PPA with BEST, while same has to be considered against MSEDCL's PPA only. Accordingly, MSEDCL requested MSLDC to issue revised backing down certificate.
- 3.14 SWPGPL is bound to operate the generating station as per the instructions of MSLDC, which is a statutory authority under the Electricity Act, 2003. There can be no question of any penalty being imposed on SWPGPL for following the backing down instructions issued by MSLDC.
- 3.15 However, similar to the unilateral deductions effected by MSEDCL for the month of July 2020, unilateral deductions were also effected by MSEDCL for the months of August, 2020 to February, 2021, as under:

Month	Invoice Date	kWh not considered for back down towards MSEDCL PPA (As per MSEDCL)	Amount deducted towards energy charges (Rs)
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Jul-20	05-Aug-20	17,86,500.00	46,61,515.00
Aug-20	01-Sep-20	10,52,000.00	27,44,984.00
Sep-20		-	-
Oct-20	02-Nov-20	13,70,000.00	35,74,741.00
Nov-20	02-Dec-20	7,82,750.00	20,42,431.00
Dec-20	02-Jan-21	2,28,750.00	5,96,877.00
Jan-21	01-Feb-21	1,47,250.00	3,84,220.00
Feb-21	01-Mar-21	4,73,000.00	12,34,199.00
Mar-21		-	-
Apr-21		-	-
May-21	01-Jun-21	11,48,375.00	29,62,922.00
Jun-21		-	-
Jul-21	02-Aug-21	5,12,000.00	13,21,728.00
Aug-21		-	-
Sep-21	01-Oct-21	19,000.00	49,077.00
Oct-21	01-Nov-21	1,77,404.00	4,58,359.00
Nov-21	01-Dec-21	7,38,413.00	19,08,355.00
Dec-21	03-Jan-22	10,48,488.00	27,10,551.00
Total			2,46,49,959.00

- 3.16 The above action of MSEDCL is erroneous and is liable to be set aside. Such deductions made by MSEDCL are contrary to the provisions of the PPA, as SWPGPL has generated energy as per the instructions of MSLDC and same has been consumed by MSEDCL.
- 3.17 Under Section 33 of the Electricity Act, 2003, even if there is a dispute on any of the directions of the MSLDC, the directions are required to be complied with pending resolution of such disputes.
- 3.18 The very nature of grid operations and the generation and supply of electricity is that it is on real time basis. SWPGPL operates the generating station as per the instructions given on real time basis. Thereafter, when the electricity has been generated and supplied, which is also consumed by MSEDCL, there cannot be any unilateral deductions against the energy charges payable to SWPGPL. This is particularly when the issue raised by MSEDCL is not even with SWPGPL, but against MSDLC.
- 3.19 SWPGPL has PPAs with MSEDCL for 240 MW and BEST for 100 MW. The Variable Charge for MoD purposes were Rs.2.6093/kWh and Rs.1.9875/kWh for MSEDCL and BEST respectively. As per the principles of Merit Order Despatch the highest variable charge is required to be backed down till the Technical Minimum generation before proceeding to the next highest variable charge. The Merit Order Despatch principle has to be followed separately for each discom.
- 3.20 MSLDC while applying Merit Order Despatch for MSEDCL will consider only PPA capacity of 240 MW of SWPGPL for issuing back down and will limit back down up

to technical minimum of 240 MW (132 MW). Similarly, MSLDC applies different MoD for BEST and considers 100 MW PPA capacity for issuing back downs to BEST.

- 3.21 MSLDC in a particular day issued back down against MSEDCL PPA up to 70% of the Contracted Capacity i.e. 72 MW before proceeding to back down against BEST PPA. This procedure was objected by MSEDCL at the end of the month instead of bringing to the notice of MSLDC at the time of the first back down.
- 3.22 There is no other role of SWPGPL whatsoever on the issue of Back downs other than following the instructions of MSLDC. SWPGPL cannot be subject to deductions by MSEDCL post supply of energy and submission of Invoices by SWPGPL.
- 3.23 SWPGPL is entitled to receive the Energy Charges deducted by MSEDCL as it was merely following the Back down instructions of MSLDC.

4. MSLDC in its reply dated 25 August 2023 has stated as follows:

- 4.1 As per the provision in the Commission's Order in Case No 42 of 2006 dated 17 May, 2007 in the matter of Introduction of Availability Based Tariff Regime at State level within Maharashtra and other related issues (ABT Order) regarding least-cost despatch, Minutes of Meeting (MoM) of extraordinary Maharashtra State Power Committee (MPSC) meeting held on 9 May, 2011 and the Commission's Daily order in Case No 125 of 2016 dated 27 October, 2016, the State-wise Merit Order Stack was prepared by MSLDC and MoD was being implemented by MSLDC on real time basis considering the requirement of the State as a whole and the available capacity declaration. As per ABT Order and as per the State Merit Order Stack, backing down was carried out as per State MOD
- 4.2 The Commission on 25 September 2020 had issued notification of operationalization of principles for merit order stack and provisions of technical minimum of 55% along with compensation mechanism as specified under State Grid Code Regulations, 2020. MSLDC had prepared merit order stack considering this notification effective from 16 October 2020 onwards.
- 4.3 For scheduling the powers of various utilities, MSLDC prepares monthly MoD stack based on Variable rates of the Generators/ PPA. In the extraordinary MSPC meeting held on 9 May, 2011, the issue of treatment of Short Term Open Access (STOA) transactions in MoD was decided. The relevant para 2(B) (ii) is reproduced below:
 - *"All intra-state STOA transactions shall be viewed as 'virtual generators' equivalent to contracted capacity.*
 - *These transactions will be taken in MOS according to their rate of contract.*
 - *Each STOA contract should clearly mention the rate & source of power.*
 - *However, the future contracts shall be made with minimum 'Take or Pay' of 70%.*
 - *The contracts which are at tendering stage as of now shall incorporate the clause of minimum 'Take or Pay' of 70%."*

- 4.4 MSLDC is preparing MoD stack according to above cited principle for all intra-state bilateral transactions. Accordingly, MoD stack for July-2020 was prepared based on the variable rate of SWPGL for MSEDCL contract of 240 MW is 2.6094 Rs/kWh & SWPGL for BEST contract of 100 MW is 2.0328 Rs/KWh. Subsequently, MSLDC issued certification towards final implemented schedules of SWPGPL to MSEDCL considering 70 % of contracted capacity/PPA.
- 4.5 MSLDC issued certificates for final implemented schedules of SWPGPL to MSEDCL for the month of July, 2020, August, 2020 and subsequent months thereof.
- 4.6 The issue raised by MSEDCL for backing down of SWPGPL plant to technical minimum for all units is not possible as PPA between MSEDCL and SWPGPL are not unit specific. Hence SLDC had backdown the generation of SWPGPL up to 70% of PPA quantum as per MoM of extraordinary MSPC meeting dated 9 May, 2011.
- 4.7 The PPA between seller and buyer are signed for particular capacity from the station/plant. These PPA are not units specific and hence MSLDC cannot back down PPA quantum up to unit's technical minimum. In such cases PPA quantum is treated similar as Unit Ex-bus capacity and hence back down to 70% of PPA (prior to implementation of MoD Guidelines) in order to achieve the economic despatch by considering the variable charges of such bilateral transaction.

5. **MSEDCL in its reply dated 27 September 2023 has stated as follows: -**

- 5.1 MSEDCL has entered into a long term PPA with SWPGPL dated 2 July, 2020 for 240MW capacity at levelized rate of Rs. 3.280 per unit from its plant and not from any specific unit in terms of the Order dated 15 June 2020 passed by the Commission in Case No. 91 of 2020. The power supply to MSEDCL was commenced from 5 July 2020.
- 5.2 MSEDCL while scrutinizing the energy bill submitted by SWPGPL on 5 August, 2020 for the month of July 2020, and considering scheduling and backing down data for the Month of July, 2020 as provided by MSLDC, observed that SWPGPL has considered only 78 MW backdown against 102 MW of the total allowable back down capacity during backing down against MSEDCL (having a higher MoD rate) and 20 MW against BEST PPA (having cheaper MoD rate). It was further observed that the balance allowable Back down (considering Technical Minimum) of capacity 5-6 MW was not done against MSEDCL which was contrary to Merit order Despatch (Economical Despatch) principle. MSLDC was not justified in splitting up the backdown between MSEDCL and BEST i.e. in contradiction to the terms of MoD principles. MSLDC should have backed down against the PPA of MSEDCL first to the extent of complete allowable back down capacity.

- 5.3 In the month of July-2020, SWPGL has shown the schedule of MSEDCL from unit 2,3 and 4 as 115 MW,115 MW and balance 10 MW respectively totalling to 240 MW and during backdown, instead of backing down the complete capacity of MSEDCL which is a costlier PPA than BEST, backed down and considered only 72MW instead of 103 MW for billing. Further also adjusted the 20 % backdown capacity i.e. 20 MW against BEST PPA which is cheaper than MSEDCL as illustrated in the following table.

SWPGL	U-2	U-3	U-4	Station Total
Unit Declared Capacity	119	113	108	340
MSEDCL Declared Capacity	119	113	8	240
BEST Declared Capacity	-	-	100	100
Unit Schedule	84	84	80	248
MSEDCL Schedule	84	84	0	168
BEST Schedule	-	-	80	80
Unit Back Down	35	29	28	92
MSEDCL Back Down	35	29	8	72
BEST Back Down	-	-	20	20
Unit Technical Minimum	81	81	80	242
Scope for Additional Back down	3	3	0	6

- 5.4 During the month of July 2020, the power from SWPGL plant was scheduled only under long term & Medium term PPA hence for the month the status of SWPGL is non-SPP as per FBSM and any deviations during the month is settled on account of contracted Discoms and actual injection is allocated to contracted Discom on pro-rata basis of its schedules. Impact of the scheduling done by MSLDC in July-2020 is tabulated as follows, wherein backdown of 72 MW was done by MSLDC against actual applicable backdown of 98 MW for MSEDCL PPA:

Impact of scheduling done by MSLDC			
	MSEDCL	BEST	Remarks
Present Back down done by SLDC	72	20	With this methodology High-cost contracted power of station is picked up & low cost power is backdown in central MoD
Expected total BD as per central MoD i.e. high cost power of station shall be reduced to tech min of station	98	-	
Expected additional back down	26	-	

- 5.5 Further financial impact due to erroneous backing down done by MSLDC during 05 July, 2020 to 31 July, 2020 is as follows:

Particulars	Original			Revised Sch by considering Station BD against High Mod Rate i.e MSEDCL	
	Declared Capacity	Schedule	Backed Down	Schedule	Backed Down
BEST (MU)	62.90	61.11	1.79	62.90	0.00
MSEDCL (MU)	153.25	132.06	21.19	130.27	22.98
Station (MU)	216.14	193.17	22.98	193.17	22.98
MSEDCL Invoice (MU)		132.06		130.27	

MSEDCL MoD Rate (Rs/unit)		2.6094		2.6094	
MSEDCL Energy Charge Amt (Rs. Cr.)		34.46		33.99	
MSEDCL (-) Savings /(+) addn. (Rs. Cr.)				-0.47	
BEST MoD Rate (Rs/unit)		2.0328		2.0328	
BEST Energy Charge Amt (Rs. Cr.)		12.42		12.79	
BEST (-)Savings /(+) addn. (Rs. Cr.)				0.36	

- 5.6 MSEDCL has categorically raised an objection regarding the backing down certificate issued by MSLDC and requested to correct the same in terms of the MoD principle of economical dispatch vide letter dated 28 August 2020. However, in this case SWPGL was not at fault and rectification of backing down was only attributed with MSLDC and hence SWPGPL was not directly addressed. SWPGPL was also marked to the said letter dated 28 August 2020 and thus, a dispute was raised in reference to the energy bill issued by SWPGPL.
- 5.7 MSLDC is wrongly relying on the MoM of MPSC Committee dated 9 November, 2011 which is specifically for STOA.
- 5.8 Assuming if the said MSPC had taken a policy decision in its above-mentioned clause, then also in terms of Electricity Act, 2003, the same will only have force of law when it is adopted by the Commission through a direction or a guideline. However, in the present case the same has not been done by the Commission. Hence, today the said clause cannot be said to have a force of law.
- 5.9 The issue of treatment of intrastate STOA Transactions is totally different than the issue of scheduling and backing down of Long Term and Medium term contracted power from same station as per MoD wherein there is no take or pay clause. The incorrect reliance of MSLDC on the minutes regarding STOA transactions while backing down of SWPGCL generation has resulted in higher costs for MSEDCL and for the state as whole which is totally defeating the purpose of MoD.
- 5.10 MSLDC as per Section 32 of EA, 2003, as per ABT Order in Case Nos. 42 of 2006 dated 17 May, 2007 and as per State Grid Code, 2020 is responsible for ensuring economic operation of the state grid and MSLDC is expected to supervise the operations for achieving maximum economy within the State.
- 5.11 MSLDC in a similar case, has issued the backdown certificate for APML, Tiroda PPAs following the principle of economical despatch i.e. providing backing down against the 440 MW (higher variable charges) PPA.

- 5.12 MSLDC cannot have a different stand for different generators and thus, same treatment must also be passed upon the answering Respondent by revising the Back down certificate for the disputed period in the present Petition.
- 5.13 MSEDCL has paid the amount of Rs 854.35 Cr against the claimed amount of Rs 841.39 Cr for the period from July, 20 to December, 21.
- 5.14 MSEDCL has requested the Commission to direct MSLDC to issue corrected backing down certificate and issue specific directives to facilitate smooth and expeditious billing and avoid unnecessary litigations.
6. MSEDCL in its additional submission dated 9 November, 2023 has corrected the table at para18 page 30 of their reply. Thereby MSEDCL has paid the amount of Rs 839.25 Cr against the claimed amount of Rs 841.39 Cr for the period from July, 20 to December, 21
7. **During the E-hearing held on 10 November 2023, Petitioner and Respondents reiterated their submissions made in the Petition.**

Commission's Analysis and Ruling:

8. SWPGPL has filed this Petition on the limited issue of unilateral deduction in the Energy Charges by MSEDCL for the energy supplied and consumed by MSEDCL for the period from July 2020 to February 2021. SWPGPL in its Petition has stated that MSEDCL has not raised any dispute about energy bills submitted by it but on contention of wrong backdown certificate issued by MSLDC, MSEDCL has unilaterally deducted amount from SWPGPL's energy bills.
9. While opposing these contentions, MSEDCL has stated that it has raised objection vide letter dated 28 August, 2020 on the backing down certificates issued by MSLDC in relation to the SWPGPL bills submitted for the month of July, 2020 and the copy of that letter was marked to SWPGPL showing that the dispute has been raised. MSEDCL stated that instead of backing down costlier power as per MoD principles, MSLDC wrongly relied on MoM of MPSC Committee dated 9 November 2011 thereby burdening MSEDCL with costly power. MSEDCL requested MSLDC to correct the backing down certificates issued to SWPGPL in this regard.
10. MSLDC stated that as the PPA between MSEDCL and SWPGPL is not unit specific, depending on the contracted capacity under the PPA, it has issued instructions for backing down in accordance with the ABT Order, MoM of MPSC Committee dated 9 November, 2011 and State Grid Code Regulations 2020. The same has been communicated to MSEDCL in response to its letters received from MSEDCL requesting revision in the backdown certificates of SWPGPL.

11. Considering the material placed on record and the submission made at the time of hearing, the Commission considers following issues to be addressed in the Petition.

Issue A: - Whether MSEDCL letter dated 28 August 2020 addressed to MSLDC can be considered as Bill Dispute Notice under the PPA?

Issue B: - Whether act of MSEDCL for unilateral deduction of energy charges is correct?

The Commission is addressing these issues in the following paragraphs.

12. **Issue A: - Whether MSEDCL letter dated 28 August 2020 addressed to MSLDC can be considered as Bill Dispute Notice under the PPA ?**

- 12.1 The Commission notes that MSEDCL and SWPGPL has executed PPA dated 2 July 2020 for supply of 240 MW capacity at a levelized tariff of Rs 3.280 per unit and the power supply under the PPA was commenced from 5 July 2020. Said PPA has following provisions stipulating procedure to be adopted for raising any dispute in respect of Energy Bill raised by the generator:

8.6 Disputed Bill

8.6.1 If a party does not dispute a Monthly Bill, Provisional Bill or a Supplementary Bill raised by the other party by the Due Date, such bill shall be taken conclusive.

8.6.2 If a party disputes the amount payable under Monthly Bill, Provisional Bill or a Supplementary Bill, as the case may be, that party shall within thirty (30) days of receiving such bill issue a notice (“Bill Dispute Notice”) to the invoicing party setting out

i) the details of the disputed amount

ii) its estimate of what the correct amount should be and

iii) all written material in support of its claim.

*8.6.7 In case of Disputed Bills, it shall be open to the aggrieved party to approach the appropriate Commission for Dispute resolution in accordance with Article 14 and also for interim orders protecting its interest including for the orders for interim payment pending Dispute resolution and the parties shall be bound by the decision of the Appropriate Commission including in regards to the interest or late payment surcharge if any directed to be paid by the Appropriate Commission
(Emphasis added)*

Thus, for any dispute in the energy bills, Bill dispute Notice is required to be issued by MSEDCL within 30 days from the receipt of the bill.

- 12.2 In the present case SWPGPL has raised the invoice dated 5 August 2020 for energy supplied during the month of July, 2020. On this invoice, MSEDCL has not issued any Bill Dispute Notice to SWPGPL but wrote a letter to MSLDC on 28 August, 2020 for clarification on backdown certificates and marked the copy to SWPGPL. Relevant extract of the letter is as follows: -

.....

Hence, according to the Merit order Despatch Principle (Economical Despatch Principle), to maintain the LGB in real time operation, backing down of costlier power as per the MoD rates is to be carried out till the technical minimum level of the unit/station and on exhaustion of all the back down capacity from the plant ,if required, the next costlier unit on bar is back down. Hence as per this principle, being MSEDCL's PPA is not unit specific with SWPGL, it is necessary that during backing down of power from SWPGL, all on bar units shall be backdown till its technical minimum and the backing down power to be considered for costlier PPA.

However, it is observed from the scheduling and Backing down data for the Month of Jul 2020 provided by MSLDC that SWPGL has considered only 78 MW backdown against 102 MW of the total allowable back down capacity during backing down against MSEDCL(having higher MoD rate) and 20 MW against BEST PPA(having cheaper MoD rate). Further the balance allowable Back down (considering Technical Minimum) of capacity 5-6 MW was not done. This is contrary to Merit order Despatch (Economical Despatch) principle

.....

*In view of above observations, it is requested to issue **the revise backing down certificate of SWPGL, Warora for the Month of July 2020. Further, it is also requested to kindly monitor the backing down of SWPGL as per Merit order Despatch (Economical Despatch Principle) and also issue the certificate accordingly in future.***

From the letter it is observed that MSEDCL had a grievance with backdown certificates issued by MSLDC and did not have any issue with bill raised by SWPGPL.

- 12.3 As per PPA, there is a set out procedure/ format for issuing Bill dispute Notice. Letter dated 28 August 2020 issued by MSEDCL does not include the details necessitated as per PPA. Also, said letter was addressed to MSLDC and just marked as copy to SWPGPL for information. Therefore, the said letter issued by MSEDCL could not be considered as a dispute notice under the PPA.
- 12.4 In view of above, the Commission notes that in absence of any Bill Dispute notice in specified format, bill raised by SWPGPL became conclusive.

13. **Issue B: - Whether act of MSEDCL for unilateral deduction of energy charges is correct?**

14. The Commission notes that PPA has following provisions related payment of monthly bill and disputed bills:

8.3 Payment of Monthly Bills

8.3.3 All payments required to be made under this Agreement shall only include any deduction or set off for:

i) deductions required by the Law; and

ii) amounts claimed by the Procurer from the Seller, through an Invoice duly acknowledged by the Seller, to be payable by the Seller, and not disputed by the Seller within thirty (30) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that the Procurer shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) Days period

8.6 Disputed Bill

8.6.9. For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Procurer shall, without prejudice to its/their right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Months Invoices (being the undisputed portion of such three Months' invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Bill has been raised based on the REA and in accordance with this Agreement

(Emphasis Added)

Thus, as per provisions of PPA, no deductions in the energy bills are allowed unless such deductions are required by Law or energy bill is disputed by the seller within 30 days. Further even if there is a dispute with respect to energy bill, MSEDCL is under an obligation to pay the average of the past 3 months or the disputed energy bill, whichever is lower.

14.1 In the present case, SWPGPL backdown its generators on the real time basis as per the instructions received from MSLDC which is the statutory authority under the Electricity Act, 2003. As per Section 33 of the Electricity Act, 2003, MSLDC is authorised to give directions and exercise supervision and control for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in the State. Also, as per ABT Order of the Commission in Case No. 42 of 2006 dated 17 May 2007 and as per MERC State Grid Code Regulations, 2020 MSLDC is responsible for optimum scheduling and despatch of electricity within the State. MSLDC is responsible for preparing the separate Merit Order Stack for each Buyer considering the contracts of respective Buyer and least cost MoD principles as specified in the State Grid Code Regulations, 2020.

14.2 Further the State grid Code Regulations, 2020 provides that the all the generators connected to the Gird shall follow the instructions of MSLDC for backing down. Relevant extract of the same is as follows: -

30.12 All generating stations connected to the Grid shall follow the instructions of SLDC for backing down/ramping down/shutting down the generating unit(s). SLDC shall provide a Certificate for the period of the backing down/ramping down/shutting down for the purpose of computing the deemed generation if required.

Accordingly, SWPGPL acted as per the instructions of MSLDC and raised the bills upon MSEDCL as per the backing down certificates provided by MSLDC.

14.3 The Commission notes that MSEDCL has deducted the amount from SWPGPL's energy bill based on the premise that MSLDC has issued backdown certificates to SWPGPL without following merit order despatch principle. MSEDCL in its submission has accepted the fact that SWPGPL was not at fault and MSLDC has to rectify backing down certificate. Thus, MSEDCL is aggrieved by procedure adopted by MSLDC for backing down and for that MSEDCL could have filed appropriate Petition before the Commission. But without doing that MSEDCL has unilaterally deducted amount from Energy Bills of SWPGPL for complying with backing down instruction of MSLDC. Hence, such unilateral deduction cannot be allowed. Therefore, the Commission directs MSEDCL to pay the deducted amount along with applicable late payment surcharge under the PPA to SWPGPL within one month from the date of this Order.

15. Hence, following Order:


ORDER

- 1. The Petition in Case No 77 of 2023 is allowed.**
- 2. MSEDCL to pay the deducted amount for the months from July 2020 to February 2021 along with applicable late payment surcharge under the PPA to SWPGPL within one month from the date of this Order.**

Sd/-
(Surendra J. Biyani)
Member

Sd/-
(Anand M. Limaye)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Dr. Rajendra G. Ambekar)
Secretary

