

APTEL grants Deemed Generation Compensation for Arbitrary Backdown Instructions

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1 Introduction

In a recent landmark decision, the Appellate Tribunal of Electricity (APTEL) has granted deemed generation compensation to the solar power generators (SPGs) in Tamil Nadu for arbitrary back down and curtailment by Tamil Nadu Generation and Distribution Corporation (TANGEDCO) and the Tamil Nadu State Load Despatch Centre (TNSLDC). The order dated 2 August 2021 (APTEL Order) is unique, as the APTEL has held that deemed generation compensation is to be calculated basis the tariff set out in the power purchase agreement (PPA), even when an underlying provision providing for such compensation is absent in the PPA.

2 Background

Owing to arbitrary curtailment of power by TANGEDCO and the TNSLDC, the National Solar Energy Federation of India (NSEFI) on 10 August 2016 filed a petition before the Tamil Nadu Electricity Regulatory Commission (TNERC), seeking directions to be issued to TANGEDCO, TNSLDC, Tamil Nadu Transmission Corporation Limited (TANTRANSCO) and the Ministry of New and Renewable Energy, Government of India (Respondents) to observe the 'Must Run' status of solar power plants and to pay deemed generation charges to the SPGs for the capacity that the SPGs could not generate and supply due to the frequent backing down instructions.

In a first, the Appellate Tribunal of Electricity has granted solar power generators in Tamil Nadu, deemed generation compensation for arbitrary back down and curtailment based on the tariff set out in the power purchase agreement, even though there was no underlying provision providing for such compensation.

The TNERC, in its order dated 25 March 2019, expressed concerns regarding the backing down instructions (**TNERC Order**). It however, did not grant any deemed generation compensation to the SPGs, owing to the absence of a corresponding provision under the PPAs executed by the SPGs and TANGEDCO. Aggrieved by the TNERC Order, the NSEFI filed an appeal before the APTEL.

The APTEL issued a direction on 26 August 2020 to Power System Operation Corporation Limited (**POSOCO**) to submit a report to the APTEL to assess whether the curtailment was legitimate. POSOCO submitted its independent report¹ (for the period between 1 March 2017 and 30 June 2017).

3 Decision of the APTEL

Following the POSOCO report, the APTEL issued an order holding that the back-down instructions of the Respondents were arbitrary, not on account of grid security reasons, contrary to the terms of the PPAs and a breach of applicable laws. The Respondents were directed to compensate the SPGs for the 'wilful loss' caused to the SPGs, within 60 days of the APTEL Order, irrespective of the fact that the underlying PPAs did not contain an enabling provision to make such payments. The key findings of the APTEL Order are:

3.1 TNERC's failure to provide adequate relief

The APTEL held that the TNERC failed to make appropriate inquiries into the matter and to grant relief to the SPGs for the arbitrary and unlawful verbal and email instructions issued by TNSLDC. APTEL observed that the arbitrary instructions were issued by TNSLDC in order to protect the commercial interests of TANGEDCO. It further held that TNERC also failed to take into account that the relevant PPAs approved by it confer a 'Must Run' status on the power plants of the SPGs and any deviation from this position is a breach of the PPA.

3.2 Reliance on POSOCO's report

The APTEL held that POSOCO's analysis was based on parameters that are adequate to assess the reason behind the back down instructions. It was evident from the report that the back down instructions were issued for reasons other than grid security and that the TNSLDC (being a statutory body) and TANGEDCO have acted hand in hand to control the scheduling of cheaper power, in breach of their obligations and statutory powers.

3.3 Obligation to pay compensation

The APTEL held that TANGEDCO had violated the terms of the PPAs by issuing arbitrary instructions and is hence, liable to compensate for the loss caused to the SPGs. The APTEL emphasized that the SPG's ability to claim compensation (given the above facts) was not dependent on existence of a deemed generation provision in the PPA. For the period 1 March 2017 to 30 June 2017 (during which curtailment instructions were issued for reasons other than grid security), the Respondents will be required to pay compensation (*along with interest at 9% for the entire period*) for the 1080 blocks considered by POSOCO, at 75% of the PPA tariff per unit. The compensation payable is to be computed separately for individual SPGs. POSOCO was also directed to undertake a similar exercise for analysing the reasons for curtailment for the period up to 31 October 2020 and submit a report to TNERC within 3 months (of the APTEL Order). Based on such report, the TNERC will allow compensation for the backed down energy at 75% of the PPA tariff per unit.

While explaining the way forward with regard to curtailment of power, the APTEL stated that instructions for curtailment will not be considered as meant for grid security if:

¹ Available at <https://posoco.in/wp-content/uploads/2021/08/Report-in-APTEL-by-POSOCO-in-Appeal-No-197-of-2019.pdf>

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- a. the system frequency is within 49.90Hz-50.05Hz;
- b. voltage level is between 380 kV to 420 kV (for 400 kV systems) and 198 kV to 245 kV (for 220 kV systems);
- c. there are no network over loading issues or transmission constraints;
- d. margins are available for backing down from conventional energy sources; or
- e. a state is overdrawing from the grid or is drawing from grid on short-term basis from the power exchange or other sources, while simultaneously backing down power from intrastate conventional or non-conventional sources.

The APTEL also clarified that the replacement of solar power by purchase of cheaper power from short term power markets will be treated as an unauthorized activity.

The APTEL Order further stated that to curb such arbitrary practices in future, the curtailment of renewable energy for reasons other than grid security will have to be compensated at the PPA tariff and such compensation will be based on the methodology adopted in the POSOCO report. It directed the State Load Despatch Centres to submit a monthly report to the relevant State Electricity Regulatory Commission with detailed reasons for any backing down instructions issued to solar power plants. The APTEL held that the guiding factors in the APTEL Order will be applicable until the Forum of Regulators or the Government of India formulates guidelines in relation to curtailment of renewable energy.

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