

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Miscellaneous Petition No. 171/2012**

**Coram: Dr. Pramod Deo, Chairperson  
Shri S. Jayaraman, Member  
Shri V.S Verma, Member  
Shri M. Deena Dayalan, Member**

**Date of Hearing: 11.9.2012**

**Date of Order: 8.10.2012**

**In the matter of**

Petition for permission to allow extension of period for injection of infirm power for testing including full load testing for Unit-I (500 MW) of Vallur Thermal Power Project of NTPC-Tamil Nadu Energy Company Ltd beyond six months from the date of initial synchronization.

**And**

**In the matter of**

NTPC Tamil Nadu Energy Company Ltd, Chennai

..... **Petitioner**

**Parties Present:**

1. Shri Anand K Ganesan, Advocate, NTECL
2. Shri D. Varadarajan, NTECL/NTPC
3. Shri B S Rajput, NTECL/NTPC
4. Shri M. K. V. Ramarao, NTPC
5. Shri Guryog Singh, NTPC
6. Shri Rohit Chhabra, NTPC
7. Shri A. Mohanty, NTPC
8. Shri A. K. Juneja, NTPC
9. Shri D.G Salpekar, NTPC
10. Shri S. Maggu, NTPC

## ORDER

This petition has been filed by the petitioner NTPC-Tamil Nadu Energy Company Ltd (NTECL) under Clause (7) of Regulation 8 of the Central Electricity Regulatory Commission (Grant of connectivity, Long-term Access and Medium-term Open access in inter-state transmission and related matters) Regulations, 2009 and Central Electricity Regulatory Commission (Unscheduled interchange charges and related matters) Regulations, 2012 with the following prayers:

- (a) Allow the petitioner extension of injection of infirm power for testing including full load testing by the VTPP, Unit-I beyond 9.9.2012 (six months beyond initial synchronization upto COD of Unit-I; and*
- (b) Pass any other order as it may deem fit in the circumstances mentioned above.*

2. The petitioner is a joint venture company of NTPC Ltd and TANGEDCO with 50% each shareholding and is incorporated under the Companies Act, 1956. The petitioner is setting up its first power project namely, Vallur Thermal Power Project (hereinafter referred to as 'project') at Vallur village, Ponneri Taluk, Thirvallur District in the State of Tamil Nadu with an approved capacity of 1500 MW (3 x 500 MW).

3. The investment approval of the project was accorded by the Board of petitioner company at its 20<sup>th</sup> meeting held on 14.7.2007 in respect of Stage-I, Phase-I, (2x500 MW) and subsequently in respect of Stage-I, Phase-II (1 x 500 MW) in the 35<sup>th</sup> Board meeting held on 19.5.2009. In accordance with the capacity addition programme finalized by the Ministry of Power, Government of India, the commissioning of Unit-1 of the project was planned during the XI<sup>th</sup> plan period, to be commissioned during 2011-12

(i.e terminal year of 11<sup>th</sup> Five-year plan). In terms of this, Unit-I was synchronized on 9.3.2012 and achieved full load (commissioned) on 28.3.2012.

4. The petitioner has submitted that coal from Ennore port is transported through external Coal Handling Plant (CHP) to the project and part of the external CHP related to the project falls under North Chennai Thermal Power Station (NCTPS) area of TANGEDCO for which route clearance has been obtained by the petitioner. The petitioner has also submitted that external CHP work is being carried out by M/s FL Smidth Minerals Private Ltd for this project and M/s BHEL is carrying out internal CHP work for this project as well as for the areas of NCTPS. The petitioner has further submitted that though the contractors, M/s FL Smidth Minerals Private Ltd and M/s BHEL undertaking the external CHP and internal CHP had contemplated the completion of work within 6 months from the date of synchronization, there has been delays due to circumstances beyond the control of these executing agencies, mainly on account of disturbance by local people for works carried out by these executing agencies in NCTPS area including the theft of fabricated materials from time to time. It has also submitted that on 9.4.2012, one worker of M/s TRF (sub-agency of M/s BHEL) was murdered and total work of stacker reclaimer (internal CHP of the project) was stopped which resulted in de-mobilization of workers as they left the site after the incident. The petitioner has submitted that only by mobilization of workers after ensuring adequate protection, the work of stacker reclaimer was started on 7.5.2012. In this background, the petitioner has filed this petition under Clause (7) of Regulation 8 of the Central Electricity Regulatory

Commission (Grant of connectivity, Long-term Access and Medium-term Open access in inter-state transmission and related matters) Regulations, 2009 (hereinafter 'Connectivity Regulations') and Central Electricity Regulatory Commission (Unscheduled interchange charges and related matters) Regulations, 2012, seeking extension of time for testing including full load testing and consequent injection of infirm power in the grid at UI rates from the project beyond 9.9.2012 upto the date of commercial operation of Unit-I of the project.

5. As stated, the petitioner has filed this petition in terms of Clause (7) of Regulation 8 of the Connectivity Regulations, amended on 21.3.2012, which provides as under:

*“(7) Notwithstanding anything contained in clause(6) of this regulation and any provision with regard to sale of infirm power in the PPA, a unit of a generating station, including a captive generating plant which has been granted connectivity to the grid shall be allowed to inject infirm power into the grid during testing including full load testing before its COD for a period not exceeding six months from the date of first synchronization after obtaining prior permission of the concerned Regional Load Despatch Centre:*

*Provided that the Commission may allow extension of the period of testing including full load testing, and consequent injection of infirm power by the unit, beyond six months, in exceptional circumstances on an application made by the generating company at least two months in advance of completion of six month period:*

*Provided further that the concerned Regional Load Despatch Centre while granting such permission shall keep the grid security in view:*

*Provided also that the onus of proving that the injection of infirm power from the unit(s) of the generating station is for the purpose of testing and commissioning shall lie with the generating company and the respective RLDC shall seek such information on each occasion of injection of power before COD. For this, the generator shall provide RLDC sufficient details of the specific testing and commissioning activity, its duration and intended injection etc.”*

*Provided also that the infirm power so injected shall be treated as Unscheduled Interchange of the unit(s) of the generating station and the generator shall be paid for such injection of infirm power in accordance with the provisions of the Central Electricity Regulatory Commission (Unscheduled Regulations, 2009, as amended from time to time.”*

6. During the hearing, the learned counsel for the petitioner reiterated its submissions made in the petition and prayed that extension of time for completion of balance works may be allowed for bonafide reasons as stated and not for trading in infirm power or to derive any undue advantage.

7. Heard the petitioner. The Connectivity Regulations were amended on 21.3.2012 and as per amended provision, Regulation 8(7) provides that a generating company which has been granted connectivity to the grid shall be allowed to inject infirm power into the grid during testing including full load testing before the COD for a period not exceeding 6 months from the date of first synchronization after obtaining the prior approval of the concerned RLDC. The synchronization of Unit-I of the project has taken place on 9.3.2012 and has achieved full load on 28.3.2012. The question which arises for consideration in the instant case is whether Regulation 8(7) of the Connectivity Regulations, as amended on 21.3.2012 has retrospective application considering that the period of 6 months would count from the date of first synchronisation which took place prior to the notification of the amended regulations. Similar issue was considered in Petition No.119/MP/2012 (Everest Power Private Limited v NRLDC) wherein the Commission by its order dated 11.9.2012 disposed of the same as under:

*"10. Thus the Amendment Regulations provides that a generator which has been granted connectivity can inject infirm power into the grid during testing including full load testing for a period of six months from the first date of synchronization with the approval of the concerned Regional Load Despatch Centre. There is no difficulty if the first date of synchronization falls on a date after the notification of the Amendment Regulations on 21.3.2012. However, in cases where the first date of synchronization has taken place prior to the notification of the Amendment Regulations, the generating station would get less than six months time for injection of power into the grid as UI for the purpose testing including full load testing. If the generating company has not declared the commercial operation and the period of six months has already expired prior to the notification of the Amendment Regulations, then it would be ineligible for injection of infirm power into the grid. Therefore, the question arises*

whether Amendment Regulations would operate retrospectively. The Hon'ble Supreme Court in *State of M.P. versus Tikamdas* [(1975) 2 SCC 100] has held that the subordinate legislation cannot be given retrospective effect unless specifically so authorized under the parent statute. The relevant observation of the Hon'ble Supreme Court is as under:-

*"There is no doubt that unlike legislation made by a sovereign legislature, subordinate legislation made by a delegate cannot have retrospective effect unless the Rulemaking power in the concerned statute expressly or by necessary implication confers power in this behalf."*

The Electricity Act, 2003 does not expressly confer power on the Central Commission to make regulations with retrospective effect. The Amendment Regulations provide that it would come into effect from the date of notification in the Official Gazette. Therefore, the Amendment Regulations would operate prospectively.

11. The case of the petitioner is that the units of the generating station were synchronized with effect from 3.8.2011 and 12.8.2011 respectively. The units injected infirm power during testing for two months i.e. till 1.10.2011. However due to problems encountered in the civil structure, the project remained completely under shut down. After completion of the rectification and restoration works, the units of the generating station were synchronized to the grid on 5.5.2012 and 9.5.2012 respectively and the infirm power from the units were injected into the grid. After completion of the testing, the petitioner has declared the commercial operation of the project w.e.f. 12.7.2012 in consultation with the PTC India Ltd/Long term beneficiary of the project. The petitioner has placed on record a report on restoration work carried out in the project. On perusal of the documents in record, it is evident that the testing was abandoned w.e.f. 2.10.2011 due to problems in the civil structure and testing again started from the first week of May 2012 after rectification and restoration works were complete. If the period of six months is counted from the first synchronization in accordance with the provisions of Clause 8 (7) of the Connectivity Regulations as amended w.e.f. 21.3.2012, the petitioner becomes ineligible for injection of infirm power for the purpose of testing from both units of the project w.e.f. 3.2.2012 and 12.2.2012 respectively. This is not the purpose of the Amendment Regulations to retrospectively take away the rights of the generators to inject infirm power during testing by counting the period of six months from a date prior to the notification of the regulations. Since it is a settled principle of law that the delegated legislation would have prospective application only, there is a requirement to adopt purposive interpretation of the words "six months from the first synchronization" so that the purpose of the regulation is served. It is pertinent to mention that the purpose of specifying a time limit of six months for injection of infirm power was to discourage the generators from delaying declaration of commercial operation of their projects and to encourage sale of power through the different forms of access. The purpose of the Amendment Regulations would be defeated if a generator is deprived of the facility to inject infirm power during testing because the period of six months from the first synchronization has expired before the notification of Amendment Regulations. In our view, the words "six months from the first synchronization" should be counted from the date of first synchronization or from the date of notification of the Amendment Regulation whichever is later. This will protect the interests of the generators in whose cases first synchronization took place prior to the notification of Amendment Regulations but who could not declare the commercial operation of their projects."

9. Applying the above said interpretation to the instant case of the petitioner, the petitioner is eligible to inject infirm power into the grid for a period of 6 months from 21.3.2012 i.e. upto 21.9.2012. As the delay in completion of testing including full load

testing was for reasons beyond the control of the petitioner, the petitioner has prayed for permission to inject infirm power beyond 9.9.2012, in exercise of special power under the first proviso to Regulation 8(7) of the Connectivity Regulations to inject infirm power. From the documents submitted, it is observed that the completion of external and internal CHP work by the executing agencies were delayed on account of disturbance by local people, the theft of fabricated materials and due murder of a worker which had resulted in de-mobilization of workers who had left the site. It is also noticed that only after ensuring adequate protection and mobilization of workers by the petitioner, the work for stacker reclaimer was started on 7.5.2012. Thus, it is clear from the above that despite efforts taken by the petitioner, complete testing and full load testing could not be completed within six months from the date of initial synchronization.

10. On a specific query by the Commission, as to the expected date of commercial operation of the said unit of the project, the learned counsel for the petitioner submitted that all efforts are being made by the petitioner to achieve commercial operation of the unit by 31.12.2012. He also prayed that extension of time to inject power into the grid for testing till the date of commercial operation may be granted as the delay in completion of testing including full load testing was for reasons beyond the control of the petitioner. Taking into consideration the submissions of the petitioner and the consequent delay in the commercial operation of the said unit, we allow the extension of time for injection of infirm power for testing including full loading by Unit-I of the project upto 30.11.2012. We expect the petitioner to take all efforts to ensure the commercial operation of Unit-I of the

project by this date. A copy of the order be sent to SRLDC for accounting and releasing payment to the petitioner for injection of power under UI from this project in accordance with the UI rate as specified under clause 2(f) of the schedule to the Central Electricity Regulatory Commission (Unscheduled interchange charges and related matters) Regulations, 2012.

11. Miscellaneous Petition 171/2012 is accordingly disposed of at the admission stage.

*Sd/-*  
[M. Deena Dayalan]  
Member

*Sd/-*  
[V.S. Verma]  
Member

*Sd/-*  
[S. Jayaraman]  
Member

*Sd/-*  
[Dr. Pramod Deo]  
Chairperson