

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 85/MP/2013

Sub:Declaration of date of commercial operation and scheduling in respect of Sasan UMPP.

Date of Hearing : 24.9.2013

Coram : Shri V. S. Verma, Member
Shri M.DeenaDayalan, Member

Petitioner : Western Regional Load Despatch Centre , Mumbai

Respondents: : MP Power Management Company Ltd. & Others

Parties present : Shri Sakya Singh Choudhuri, Advocate, WRLDC
Shri Gautam Chawala, Advocate
Shri P.Pentayya, WRLDC
Ms. Jyoti Prasad, WRLDC
Shri S.R.Narasimhan, POSOCO
Shri J.J.Bhatt, Senior Advocate, SPL
Shri Amit Kapur, Advocate, SPL
Shri Vishrov Mukherjee, Advocate SPL
Ms. Ritika Arora, Advocate, SPL
Shri P.Venkatarao, SPL
Shri R.S.Johri, SPL
Shri N.K.Deo, SPL
Shri Vivek Kejriwal, SPL
Shri M.G.Ramachandran, Advocate, HPGCL
Shri G.Umapathy, Advocate, MPPCL
Shri Navin Kumar Kohli, MPPCL
Shri Padamjit Singh, PSPCL
Shri Sanjay Sen, Senior Advocate, Lahmeyer
Ms. Shikha Ohri, Advocate Lahmeyer
Shri C.N.Murthy, Lahmeyer
Shri R.K.Soni, Lahmeyer
Ms Shobana Masters, Advocate, BYPL and BRPL
Shri Haridas Maity, BYPL

Record of Proceedings

At the outset, learned counsel for the petitioner referred to the judgment of Appellate Tribunal for Electricity (ATE) and submitted that since the ATE has remanded the matter for fresh consideration on all issues, including the issue of maintainability, the respondents be directed to file their replies on the merits of the matter. He submitted that since the issue of maintainability is inter-linked with the main issue on merits, the Commission can consider all issues together once pleadings are complete on the merits of the matter.

2. Learned counsel for the petitioner took the Commission through the reliefs sought by WRLDC and the e-mails exchanged between the petitioner and Sasan Power Ltd . (SPL) from 27.3.2013 to 30.3.2013. Learned counsel referred the e-mail dated 27.3.2013 at 4.06 PM where WRLDC allowed SPL to generate only 100 MW of power on account of low demand due to Holi. Learned counsel submitted that SPL never got in touch with WRLDC to increase the load from morning hours on 28.3.2013 (i.e. after Holi on 27.3.2013) until around 9.30 P.M on 29.3.2013. He further submitted that every generator which has to ramp-up its generation is required to take a Code from WRLDC for increasing generation and SPL was required to take the code from WRLDC and not vice-versa. He further submitted that despite WRLDC asking SPL to seek permission for increasing generation, SPL never approached WRLDC before 29.3.2012.

3. Learned counsel for the petitioner further submitted that the Independent Engineer (IE) certificate dated 30.3.2013 was not backed by anything on record and was factually incorrect. Learned counsel submitted that in the IE certificate an allegation has been made that SPL could not increase its generation beyond 101.38 MW on account of non-scheduling of power by WRLDC. He submitted that as a system operator, WRLDC has locus to challenge the IE certificate before the Commission and seek necessary guidance/directions regarding the testing for commercial operation of the generating station and the role of system operator in the process. He pointed out that the Commission could exercise jurisdiction to adjudicate issues in exercise of its regulatory powers under Section 29(5) and 79(1) of the Act.

4. Learned senior counsel for SPL confined his arguments on the issue of maintainability of the petition and submitted that the petitioner has not referred to any specific provisions in the Electricity Act, 2003 under which the petition has been filed. He submitted that Section 28 of the Act does not in any manner give WRLDC any authority to exercise the function of supervising the certificate of I.E. and although Section 29 provides for directions to be given by RLDC, the same has not

been exercised in this case. He also drew the Commission's attention to the affidavit filed by WRLDC in Petitions No. 6, 14, 21 and 75 of 2013 and submitted that WRLDC admitted that it does not have anything to do with COD of the generating station and the same would be governed by the provisions of the PPA between the parties. Learned senior counsel submitted that it was apparent from the stand taken by WRLDC that WRLDC had no locus to impugn the COD or test certificate and that the same was an issue between the Procurers and SPL.

5. Learned senior counsel for Lahmeyer International (India) Limited (Independent Engineer) submitted that the certificate did not present anything which was factually incorrect. He further pointed out that the obligations of the I.E being governed under the terms and conditions of the PPA were contractual in nature and not regulatory and therefore, IE cannot be made a party to the petition. He further submitted that WRLDC has not referred to any provision under which the I.E certificate was being challenged.

6. In response to the query of the Commission as to which is the proper forum to challenge the IE certificate, learned senior counsel submitted that the same can be challenged before a civil court.

7. The representative of PSPCL referred to WRLDC letter dated 15.4.2013 and submitted that SPL had not acted as per direction of WRLDC and continued to insist for firm and infirm generation simultaneously which is not permissible .

8. Learned counsel for the HPGCL referred to the ATE Judgment and submitted that ATE has directed the Commission to reconsider the issues afresh including the issue of maintainability and therefore, the Commission may consider the maintainability and merit of the petition after hearing the parties.

9. In response to the Commission's query as to how SPL declared capacity of 620 MW when the tested capacity was 101.38 MW, learned senior counsel for SPL submitted that this was during the initial few days as there was no clarity to any party. However, subsequently in compliance with WRLDC's directions, all the DCs were revised to 101.38 MW and SPL, thereafter, provided DCs capped to 101.38 MWs only. He further submitted that SPL did follow each and every instruction given by WRLDC.

10. After hearing learned counsel for the petitioner and HPGCL and learned senior counsels for SPL and Lahmeyer International (India) Limited, the Commission observed that since the issue of maintainability of the petition is linked to the facts of the case, it would be appropriate if the petition is heard both on maintainability and merit. The Commission admitted the petition and directed to issue notice to the respondents and Lahmeyer International. The respondents and Lahmeyer International were directed to file their replies on maintainability as well as on merit by 15.10.2013 with an advance copy to the petitioner who may file its rejoinder, if any, by 25.10.2013.

11. The petition shall be listed for hearing on 5.11.2013.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Legal)**