

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 74/MP/2013

Coram:

Shri V. S. Verma, Member

Shri M. Deena Dayalan, Member

Date of Hearing: 30.7.2013

Date of Order: 22.2.2014

In the matter of:

Petition under section 79 of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Grant of Connectivity, long term access and medium term open access and inter-state transmission and related matters) Regulations, 2009 as amended from time to time read with Central Electricity Regulatory Commission (unscheduled interchange charges and other related matters) Regulations 2009 as amended on 28.4.2010.

And

In the matter of:

Lanco Budhil Hydro Power Pvt. Limited, Gurgaon

...Petitioner

Versus

1. Northern Regional Power Committee (NRPC), New Delhi

2. Northern Regional Load Dispatch Centre (NRLDC), New Delhi .**Respondents**

Following were present:

Shri Deepak Khurana, Advocate for the petitioner

Shri Archit Virmani, Advocate for the petitioner

Shri B.S.Bairwa, NRPC

ORDER

The petitioner, Lanco Budhil Hydro Power Private Ltd., has filed present petition under Section 79 of the Electricity Act, 2003 (hereinafter "2003 Act") with the following prayers, namely:

- (a) *That this Hon'ble Commission may direct the Respondent No. 1 to revise the UI Accounts for the project of the petitioner during the relevant period commencing from 25.5.2012 to 29.8.2012, in accordance with the applicable CERC*

Connectivity Regulations 2009 as amended from time to time and CERC UI Regulations 2009 as amended on 28.4.2010.

- (b) *This Hon`ble Commission may pass such other and further order(s) as may be deemed fit in the facts and circumstances of the present case."*

Facts of the case

2. The petitioner has set up a 70 MW (2x35 MW) hydro power project (generating station) in Tehsil Bharmour, District Chamba at Himachal Pradesh pursuant to a Memorandum of Undersigning dated 23.9.2004 executed between the petitioner and Government of Himachal Pradesh. On 13.4.2012, the petitioner has signed a connection agreement with NHPC Ltd, and Power Grid Corporation of India Limited. Upon connection to the Central Transmission Utility (CTU), on 25.5.2012, the petitioner synchronized its plant and started injecting the infirm power into the grid. The generating station was declared under commercial operation on 30.8.2012. Thereafter, Northern Regional Load Despatch Centre issued UI accounts for the said infirm power injected into the grid by the petitioner as under:

- (a) From 25.5.2012 to 1.7.2012: by applying capped rate of ₹ 4.03/kWh;
- (b) For the remaining period by applying capped rate of ₹1.55/kWh. NRLDC also started unilaterally revising the earlier accounts by applying capped rate of ₹1.55 kWh.

3. The petitioner enquired from NRLDC the reasons for capping the rate at ₹1.55/kWh as well as for revising the accounts. In response, no reply was received from the NRLDC. The petitioner has submitted that it is a generating company within the meaning of Regulation 2 (2) of the Connectivity Regulations read with Section 2 (30) of

the Electricity Act, 2003. Once Connectivity Regulations are applicable to the petitioner's generating station, the petitioner becomes entitled to payment of UI charges for the infirm power injected into the grid by it before the date of commercial operation, in terms of Regulation 8 (7) of the Connectivity Regulations which provides that the infirm power injected into the grid by a generator is treated as Unscheduled Interchange of the units of the generating station and the generator is to be paid for such injection of infirm power in accordance with the provisions of the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and related matters) Regulations, 2009. The petitioner has been granted connectivity pursuant to the connection agreement dated 13.4.2012 and has injected infirm power into the grid before its date of commercial operation for a period not exceeding six months from the date of first synchronization after obtaining prior permission of the concerned Regional Load Despatch Centre. Accordingly, the petitioner is entitled for payment of infirm power injected into the grid for the period from 25.5.2012 to 29.8.2012 in accordance with UI Regulations.

4. Reply to the petition has been filed by the Northern Regional Power Committee (NRPC) and Northern Regional Load Despatch Centre. In its reply dated 18.6. 2013, NRPC has submitted as under:

(a) Since the generating station has not been defined in Regulation 2 (2) of the Connectivity Regulations, therefore, for the purpose of applicability of UI Regulations

the petitioner is not a generating station and it is considered under the category of seller;

(b) Since the generating station was not declared under commercial operation, the installed capacity was considered as zero and the UI charges have been calculated considering the scheduled injection and installed capacity as zero as per the UI rates prescribed under UI Regulations. The reason for considering zero installed capacity during infirm period was on account of following:

(i) As per convention/practice the installed capacity is considered only after commercial operation of the unit.

(ii) Second amendment of UI Regulations, 2009, which was stayed by Hon`ble High Court of Madras, provides for cap rates for infirm power. The intention is to compensate the generators for injection of infirm power but not to use UI mechanism as market tool for sale of power.

(c) The issue raised by the petitioner was discussed in NPRC Secretariat on 14.9.2012 and 21.12.2012 and during the discussion methodology used for UI computation was clarified.

(d) Since the error for the computation of UI charges for the period 2.7.2012 to 30.8.2012 was noticed in the month of July, 2012, cap rate of ₹1.55 kWh was

applied on computation of UI charges on infirm power w.e.f. 2.7.2012. NRPC has prepared the revised accounts for the period from 25.5.2012 to 1.7.2012. However, same has been kept on hold pending disposal of the present petition.

5. The petitioner in its rejoinder dated 9.7.2013 has submitted as under:

(a) The petitioner's contention that the installed capacity has been treated as zero is without any support or authority of law.

(b) NRPC has relied on second amendment of UI Regulations which came into effect from 17.9.2012. Since the said amendment was admittedly stayed by the Hon'ble High Court of Madras, it is not applicable to the generating station of the petitioner and UI charges payable to the petitioner are to be determined in accordance with the UI Regulations prior to the said amendments.

(c) The petitioner is entitled to UI charges for the infirm power injected into the grid during the period 25.5.2012 to 29.8.2012 in accordance with Regulation 5 (1) of the UI Regulations as amended on 28.4.2010 and same are to be worked out on the average frequency of the time block at the rates specified in the Schedule A of the UI Regulations.

(d) The determination of charges in terms of Regulation 5 (1) does not differentiate between a 'generating station' and 'seller' under UI Regulations. NRPC is not entitled to treat the 'installed capacity' of the petitioner's generating

station as zero before its date of commercial operation as the same is without any support and apply capped rate of ₹ 1.55/kWh.

6. NRPC in its letter dated 26.7.2013 has further reiterated submissions made in its reply dated 18.6.2013.

7. NRLDC in its reply dated 9.12.2013 has submitted that 'Installed Capacity' has been defined in the CERC (Terms and Conditions of Tariff) Regulations, 2009 as below:

“(20) **'Infirm power'** means electricity injected into the grid prior to the commercial operation of a unit or block of the generating station;

(21) **'Installed capacity'** or 'IC' means the summation of the name plate capacities of all the units of the generating station or the capacity of the generating station (reckoned at the generator terminals), approved by the Commission from time to time.

That in the normal parlance, Installed Capacity (IC) as name plate figure is considered from the first synchronization of unit. Presently, total clarity for usage of Installed Capacity (IC) during infirm or otherwise for different purpose in different regulations is missing. There are chances that this aspect of consideration of Installed Capacity (IC) in current dispute is treated by different RPCs and also during different time frame differently. Therefore, Hon'ble Commission may like to further clarify the figures to be considered for various purposes viz. operational information system, and for computation of UI during infirm injection period etc. so that uniform approach is taken by all concerned.”

8. NRLDC has further submitted that there are many instances where UI mechanism has been used as market mechanism. The Commission in its various orders and regulations has advised market participants to refrain from using UI as a market mechanism. In this connection, NRLDC has relied upon the Explanatory Memorandum to the 2nd amendment to Connectivity Regulations, wherein the Commission proposed to limit the period of injection of infirm power and also to make the payment subject to the ceiling near the variable cost. Though the ceiling rates for injection of infirm power was proposed

in the amendment to the Connectivity Regulations, the Commission subsequently inserted this provision in the UI Regulations. However, the UI Regulation was stayed by the High Court, Madras, and after disposal of the writ petition, it become operative w.e.f. 17.9.2012. Moreover, the petition filed in Madras High Court was mainly on the narrowing of operational grid frequency rather than on the rates of infirm power. NLDC has submitted that despite the delay in the implementation of the amendment to UI Regulations, the intent of the Commission has been to effectively cap the infirm power rates to near the variable charges of the generating stations.

9. Though the Connectivity Regulations were amended specifying a time limit for injection of infirm power and providing that the payment will be made as per the UI rates specified in the UI Regulations, the UI rates could not be implemented on account of the stay of the UI Regulations by the High Court of Madras, which was vacated with the final disposal of the writ petition vide judgment dated 14.3.2012. Since the period under dispute falls within the period of stay by the Hon'ble High Court, we have to consider the case of the petitioner in accordance with the provisions of the UI Regulations prior to the 2nd amendment.

Analysis & Decision

10. We have considered the submissions of the petitioner, respondent NRPC and NRLDC. The dispute in question is computation of UI charges for the injection of infirm power for the period from 25.5.2012 (date of synchronization of the generating station) to 30.8.2012 (date of commercial operation of the generating station). Infirm power has not

been defined in the Connectivity Regulations as well as UI Regulation. However, the term has been defined in the 2009 Tariff Regulations as 'electricity injected into the grid prior to the commercial operation of a unit or there of the generating station. Infirm power by its very nature is unscheduled in nature and cannot be scheduled. The last proviso of Regulation 5 (1) of the UI Regulations as amended on 28.4.2010 provides as under:

"Provided also that the Charges for the Unscheduled Interchange for the injection by the seller in excess of ex-bus generation corresponding to 105% of the Installed Capacity of the station in a time block or 101% of the installed Capacity over a day shall not exceed the charges for the Unscheduled Interchange corresponding to grid frequency interval of 'below 50.02 Hz and not below 50.0Hz'."

11. Regulation 5 (5) of the UI Regulations as amended on 28.4.2010 which is also applicable to the sellers provides as under:

"The Cap Rate for the Unscheduled Interchange for the injection by the seller in excess of 120% of the schedule subject to a limit of ex-bus generation corresponding to 105% of the Installed Capacity of the station in a time block or 101% of the Installed Capacity over a day shall be the same as the charges for the Unscheduled Interchange corresponding to grid frequency interval of 'below 49.70 Hz and not below 49.68 Hz' as specified in Schedule "A" of these Regulations."

12. In accordance with the said Regulations, any generation in excess of schedule shall be paid as under:

(a) Generation in excess of schedule up to and including 120% of schedule :

Payable at UI rate without any ceiling;

(b) Generation in excess of 120% of schedule and up to 105% of Installed Capacity

(IC) in a time block and 101% of IC over a day : Payable at UI rate subject to

ceiling of ₹4.03/kWh;

- (c) Generation of excess of 105% of IC during a time block and 101% of IC over a day: Payable at UI rate of ₹1.55/kWh.

13. NRPC while applying Regulation 5(1) read with 5(5) of UI Regulations as amended on 24.4.2010 in respect of infirm power injected in the month of July 2012 has considered Installed Capacity as zero and has accordingly calculated the UI charges payment to the petitioner. However, the petitioner has disputed the interpretation of 'Installed Capacity' by NRPC and has submitted that the UI charges should be payable as per the Connectivity Regulations and UI Regulations.

14. According to NRPC, the Installed Capacity was considered as zero since the generating station was not declared under commercial operation and the petitioner had injected infirm power. The UI charges have been calculated considering the scheduled injection and installed capacity as zero as per UI rates, i.e. cap rate ₹ 1.55 per kWh specified in the UI regulations.

15. The issue which needs to be decided by this Commission is as to what shall be the Installed Capacity of the generating station before the date of commercial operation and as to whether Installed Capacity of the generating station considered as zero by the respondents before the date of commercial operation was right.

16. NRPC has submitted that as per convention/practice, the installed capacity is considered only after commercial operation of the unit. The second amendment of UI

Regulations, 2009 notified on 5.3.2012 which was to be effective from 2.4.2012 was stayed by the Hon`ble High Court of Madras. In the said amendment, this Commission had specifically provided cap rates for infirm power which indicates that intent of this provision is to compensate the generators for injection of infirm power depending upon the primary fuel used for power generation but not to use UI mechanism for profiteering.

17. NRLDC has submitted that in the normal parlance Installed Capacity (IC) as name plate figure is considered from the first synchronization of unit. Presently, total clarity for usage of Installed Capacity (IC) during infirm or otherwise for different purpose in different regulations is missing. There are chances that this aspect of consideration of Installed Capacity (IC) in current dispute is treated by different RPCs and also during different time frame differently. Therefore, Hon`ble Commission may like to further clarify the figures to be considered for various purposes viz. operational information system, and for computation of UI during infirm injection period etc. so that uniform approach is taken by all concerned.

18. The Installed Capacity has been defined in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (Tariff Regulations) as under:

"Installed Capacity' or 'IC' means the summation of the name plate capacities of all the units of the generating station or the capacity of the generating station (reckoned at the generator terminals), approved by the Commission from time to time;"

19. Further, Regulation 12 (b) of the Tariff Regulations pertaining to date of the

commercial operation of a hydro generating station provides as under:

*"(b) in relation to a unit of hydro generating station, the date declared by the generating company from 0000 hour of which, after notice to the beneficiaries, scheduling process in accordance with the Indian Electricity Grid Code is fully implemented, and in relation to the generating station as a whole, the date declared by the generating company after demonstrating peaking capability **corresponding to installed capacity** of the generating station through a successful trial run, after notice to the beneficiaries:*

Note

*1. In case the hydro generating station with pondage or storage is not able to demonstrate peaking capability **corresponding to the installed capacity** for the reasons of insufficient reservoir or pond level, the date of commercial operation of the last unit of the generating station shall be considered as the date of commercial operation of the generating station as a whole, provided that it will be mandatory for such hydro generating station to demonstrate **peaking capability equivalent to installed capacity of the generating unit or the generating station** as and when such reservoir /pond level is achieved.*

*2. In case of purely run-of-river hydro generating station if the unit or the generating station is declared under commercial operation during lean inflows period when the water is not sufficient for such demonstration, it shall be mandatory for **such hydro generating station or unit to demonstrate peaking capability equivalent to installed capacity** as and when sufficient inflow is available."*

20. From the combined reading of the above definitions of installed capacity and date of commercial operation, it can be seen that in relation to a unit of a generating station, installed capacity is a specific number which is the name plate capacity irrespective of the fact that whether the date of commercial operation of the unit or the station has occurred or not. The definition of date of commercial operation also provide for demonstration of capability corresponding to installed capacity of the unit or the generating station. Therefore, installed capacity is a sacrosanct number which is summation of name plate capacities of the units.

21. According to the petitioner, he is a seller and not a generating station in terms of

UI Regulations and the provisions of Tariff Regulations are not applicable to such seller or a generating station whose tariff is not regulated by CERC.

22. The UI charges are leviable for the generating stations/sellers depending upon the quantum of deviation from schedule. In the absence of any schedule for infirm power, the schedule needs to be taken as zero only. However, the reliance on installed capacity is not correct, which is not relevant for the infirm power injection..

23. The Central Electricity Regulatory Commission (Unscheduled Interchange Charges and Related Matters) (Second Amendment) Regulations, 2012 was notified on 5.3.2012 to be implemented with effect from 2.4.2012, the said regulations could not be implemented on account of stay of the Hon'ble High Court of Madras in Writ Petition Nos. 8509 and 8510 of 2012. The Writ Petitions were dismissed by the Hon'ble High Court of Madras by its order dated 14.9.2012 by upholding the validity of the UI Regulations and Grid Code. Consequently, POSOCO implemented the amended regulations with effect from 17.9.2012 (midnight). Therefore, the UI rate of ₹ 1.55/kWh on injection of infirm power was made applicable from 17.9.2012. Reliance by NRPC on the said regulations to allow the UI charge of ₹ 1.55 / kWh for injection of infirm power from 2.7.2012 to 30.8.2012 is not correct.

24. In view of the above discussion, we hold that the cap rate of ₹1.55/kWh for injection of infirm power cannot be applied in case of the petitioner as the second amendment to the UI regulations which intended the cap rate of ₹1.55/kWh came into

operation with effect from 17.9.2012. The respondents are directed to calculate the UI charges applicable to the petitioner for the period 2.7.2012 to 30.8.2012 in accordance with the then prevailing UI regulations prior to the operation of the second amendment to the UI regulations.

25. The petition is disposed of with the above direction.

sd/-
(M. Deena Dayalan)
Member

sd/-
(V.S. Verma)
Member