

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 187/MP/2013

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K Singhal, Member

Date of Hearing: 18.3.2014

Date of Order : 13.10.2015

In the matter of

Non-compliance of Regulations 6.4.6, 6.4.9, 2.3.1.5 of Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and Regulation 7.2 of Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) (Second Amendment) Regulations, 2012 endangering the secured grid operation in Southern Region by consistent under injection of power by Meenakshi Energy Private Limited, Nellore.

And

In the matter of

Southern Regional Load Despatch Centre
29, Race Course Cross Road
Bangalore- 110016

....Petitioner

Vs

1. Sr. Vice President (Finance)
Meenakshi Energy Private Limited
Plot No. 119, Road No. 10,
Jubilee Hills, Hyderabad- 500033
2. Dy. General Manager (Electrical)
Meenakshi Energy Private Limited,
Thamminapatnam, Chillakur, Mandal,
Nellore District- 524412
3. Chief Engineer,
SLDC, APTRANSCO,
Vidyut Soudha, Hyderabad- 500082

....Respondents

Member Secretary,
Southern Regional Power Committee
29, Race Course Cross Road
Bangalore- 110016

...Proforma Respondent

Parties Present:

For the Petitioner : Shri V. Suresh, SRLDC
Ms. Jayantika Singh, SRLDC

For the Respondents: Shri Sitiesh Mukherjee, Advocate, MEPL
Shri Sakya Singh Chaudhuri, Advocate, MEPL
Shri Huart, MEPL
Ms. Mandakini Ghosh, Advocate, MEPL
Shri S. Vallinayagam, Advocate, APTRANSCO

ORDER

The petitioner, Southern Regional Load Despatch Centre, has filed the present petition seeking direction to the respondent, Meenakshi Energy Private Limited, to maintain the injection of power strictly as per the schedule in terms of the provisions of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (Grid Code) and the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and related matters) Regulations, 2012 (UI Regulations).

2. The petitioner has submitted as under:

(a) Meenakashi Energy Private Limited (hereinafter referred to as MEPL) has set up a generating station comprising of two units of 150 MW, each.

(b) MEPL has been violating the limit of under-injection on time block basis as well as on daily aggregate basis as specified in Regulation 7(2) of the UI

Regulations which provides that under-injection by a seller shall not exceed 12% of the scheduled injection when the frequency is below 49.80 Hz and 3% on daily aggregate basis for all time blocks when the frequency is below 49.80 Hz.

(c) MEPL contracted for sale of power through Medium Term Open Access (MTOA), Short Term Open Access (STOA) and Power Exchange (PX) transactions from time to time. Based on the contracts entered into by MEPL, block-wise day ahead and daily schedule of injection were issued by SRLDC. MEPL has been deviating from the schedule through consistent under injection beyond the limits specified in the UI Regulations. The extent of deviation ranged from 20% to 100% and in many instances, the violation was continuous for more than 50% of the day. The petitioner in support of its contention has submitted the following data regarding violation of grid discipline through under-injection by MEPL during the period 1.1.2013 to 10.9.2013:

Month	Number of Blocks when under injection is more than 12%			Number of Time Blocks where the under injection during the day is more than					When f < 49.8HZ & under injection persists		
	When f < 49.8Hz	When f > 49.8Hz	Total	12%	20%	30%	40%	50%	Schedule in MWH	Under Injection in MWH	% Under Injection
January 13	31	96	96	96	96	96	96	96	712	-579	-199
February 13	47	86	96	96	96	96	96	96	1235	-762	-290
March 13	58	78	96	96	96	96	96	96	1934	-882	-90
April 13	11	22	31	31	29	23	22	18	1202	-268	-239
May 13	15	11	25	25	20	16	15	13	1527	-293	-187
June13	14	89	96	96	96	96	79	57	1051	-173	-53
July 13	8	93	96	96	96	96	80	68	451	-122	-45
August13	26	94	96	96	96	96	96	93	854	-248	-137
September13	34	52	86	86	85	78	72	67	1957	-712	-67

(d) During the period of violation of grid discipline, i.e 1.1.2013 to 10.9.2013, SRLDC issued directions to MEPL through real time messages to increase the generation up to the injection schedule. Since, the response to the real time

messages was not satisfactory, the matter was taken up with the senior officers of MEPL informing them of consistent violation of the provisions of the Grid Code.

(e) Since under injection was continued by MEPL, the matter was reported to Member Secretary, Southern Regional Power Committee under Regulation 1.5 of Grid Code to resolve the issue. On 18.3.2013, 18.7.2013 and 16.9.2013, Member Secretary, Southern Regional Power Committee (SRPC) convened special meetings to resolve the issue of under-injection.

(f) In the said special meetings, MEPL was advised to take prompt action to comply with the provisions of the regulations and to revise MTOA. In the said meetings, MEPL expressed technical difficulties for proper assessment of generation level due to coal quality and machine performance. However, MEPL assured that it would comply with the provisions of Grid Code and UI Regulations. Despite the assurance given by MEPL, there was no improvement in the scheduling by MEPL.

(g) As per Regulation 6.4.19 of the Grid Code, Inter-State Generating Station (ISGS) is required to demonstrate the declared capability of its generating station as and when asked by the RLDC. However, it does not make any regulatory provision for demonstration of declared capacity for Captive Power Plant having his own load as well as load of multiple transactions. Therefore, it is essential that the sellers ensure strict compliance of the provisions of relevant Regulations to maintain injection of power strictly as per the schedule issued by RLDC.

(h) During the special meetings convened by Member Secretary, SRPC, the following measures were suggested to MEPL to streamline the technical difficulties:

(i) Assess the injection capability properly and maintain adequate margin by entering into MTOA/STOA sale transactions conservatively. Any surplus margin observed in the day ahead, may be dealt through contingency/PX transaction.

(ii) Assess the coal quality properly and apply for STOA revision two days in advance to avoid deviation in injection of power w.r.t schedule.

(iii) While declaring expected time of restoration of units followed by tripping of units, consider adequate margin of time based on past experience.

(iv) If there is delay in restoration beyond the expected declared time block, explore necessary procurement action on contingency/Power Exchange transaction.

(v) Since the present transactions are being carried out with the distribution companies of Andhra Pradesh, MEPL should explore the possibility of counter STOA transactions during outage of unit beyond expected restoration schedule which would facilitate Andhra Pradesh to get reduce its schedule proportionate to the injection level of MEPL

(i) Despite the above suggestions, MEPL continues under-injection beyond the specified limit of UI Regulations which has impact in system security as well as declaration of Available Transfer Capability/Total Transfer Capability (ATC/TTC) between S1-S2 control areas. However, the buying regional entity i.e. APTRANSCO continues to draw the power as per its schedule despite the fact of less injection by MEPL.

3. In the above background, the petitioner has made the following prayers:

“(a) To maintain the injection of power strictly as per schedule in line with the relevant provisions of IEGC and UI Regulations;

(b) To comply with the directions of SRLDC and act in accordance with the messages issued by SRLDC; and

(c) Pass any such order as deemed fit under the circumstances of the case.”

4. The petition was heard on 24.10.2013. The parties were directed to complete the pleadings. Reply to the petition has been filed by Meenakshi Energy Private Limited (MEPL) and APTRANSCO.

5. Meenakshi Energy Private Limited in its reply dated 18.12.2013 has submitted as under:

(a) MEPL, being a new generating company, is making all efforts to maintain its injection schedule. The reasons for under-injection are not intentional. However, due to coal quality and machine performance, MEPL is not able to assess its generation level.

(b) MEPL has been under injecting into the grid on certain occasions and position reflected by the petitioner is not factual.

(c) Regulation 7.2 of the UI Regulations mandates that under-injection of electricity by a generating station or a seller during a time block shall not exceed 12% of the scheduled generation of such generating station when frequency is below 49.8 Hz, and 3% on daily aggregate basis for all the time blocks when the frequency is below 49.8 Hz. There is no provision in the Grid Code or the UI Regulations to suggest that under injection into the grid when frequency is above 49.8 Hz is an act of grid indiscipline.

(d) The data furnished by the petitioner in the petition is incorrect and inconsistent with the data furnished by it periodically to the Commission. The petitioner has been furnishing data in compliance with the Commission's directions dated 16.10.2008 in Petition No.115/2008 and letter dated 12.5.2009. The data submitted by the petitioner in the present petition cannot be treated as an instance of grid indiscipline.

(e) There is a gross mismatch between the under injection data provided by the petitioner in its website and the actual data maintained by MEPL. It is evident that the percentage of overall under injection by MEPL is significantly lower than the level of under-injection claimed by SRLDC. There has been under injection on part of MEPL though not at the levels alleged by SRLDC.

(f) As per Regulations 6.5.8 and 6.5.18, of the Grid Code, a generating station is required to revise its declared capacity and inform the concerned RLDC for the same. Similarly, as per Regulation 6.5.20 of the Grid Code, if, at any point of time, RLDC observe that there is a need for revision of the schedules in the interest of better system operation, it may do so on its own and in such cases, the revised schedules shall become effective from the fourth time block, counting the time block in which the revised schedule is issued by RLDC to be the first one. MEPL, whenever possible, has reasonably assessed the shortfall in its generation and informed SRLDC without fail on every such occasion regarding its lower level of generation. As per Regulation 6.5.20 of the Grid Code, SRLDC has also the discretion to revise MEPL`s declared capacity on its own accord.

6. APTRANSCO vide its reply affidavit dated 4.1.2014 has submitted as under:

(a) Due to persistent under-injection by MEPL, Southern Grid/Andhra Pradesh, SLDC/ distribution companies of Andhra Pradesh are facing problems to maintain load generation balance as the frequency maintained was comparatively lower during that period. As a result of under-injection, the distribution companies of Andhra Pradesh were forced to implement additional load shedding to maintain the system frequency within the operating range specified in the Grid Code.

(b) As per Regulation 6.5.19 of the Grid Code, in case of forced outage of generator (unit) of capacity more than 100 MW supplying under STOA, the

generator is required to send revision of schedule along with estimated time of restoration of unit to SRLDC which would revise the schedules of the generator and buyer accordingly. However, SRLDC is accepting only one revision and is not revising the schedules in the event of delay in synchronization of unit beyond the estimated time. Therefore, SRLDC is facing difficulty to maintain load generation balance.

(c) There is a possibility of gaming by the STOA generators. In order to prevent disturbance to the grid and to maintain the prescribed frequency, it is necessary for the generator to intimate SRLDC and SLDC, the estimated time for restoration of the unit and then SRLDC can revise the schedule of STOA generator accordingly. Regulation 6.5.19 of the Grid Code is silent about specified duration or number of revisions to a STOA generator in case of tripping of its unit.

7. The petitioner in its rejoinder dated 19.2.2014 to the reply of MEPL dated 18.12.2013 has submitted as under:

(a) MEPL has contended that there is no provision in the Grid Code or the UI Regulations to suggest that under injection into the grid when frequency is above 49.8 Hz is an act of grid indiscipline. Regulation 6.4.1 of the Grid Code demarcates the responsibility of respective load dispatch centre in scheduling, monitoring and control of the real time interchange of power between the control areas.

(b) As per Regulation 6.4.6 of the Grid Code, the system of each regional entity shall be treated and operated as a notional control area. The algebraic summation of scheduled drawal from ISGS and from contracts through long-term access, medium-term and short term open access arrangements shall provide the drawal schedule of each regional entity which shall be determined in advance on day-ahead basis. Such deviation from net drawal schedule shall be priced through the Unscheduled Interchange (UI) mechanism as specified by the Commission from time to time.

(c) As per Regulation 6.4.9 of the Grid Code, other generating stations and sellers are responsible for power generation/ power injection generally according to the daily schedules advised to them by the RLDC/SLDC on the basis of the contracts/requisitions received from the SLDCs/buyers/Power Exchanges. Accordingly, any regional entity like MEPL is required to maintain the injection as per schedule except on rare instances which are beyond its control.

(d) The matter was taken up in various OCC and CCM`s meetings. However, the result was insignificant and the under-injection continued which indicates that the under-injection was not inadvertent or beyond the control of MEPL.

(e) The frequency being one of the parameters monitored by RLDCs, is not the sole consideration which can cause grid jeopardy. The Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Second Amendment) Regulations, 2014 limited the deviation irrespective of system frequency.

(f) During the special meetings convened by Member-Secretary, SRPC suggested certain proactive suggestions to streamline the technical difficulties. However, MEPL continues the trend of under-injection beyond the specified limit of UI Regulations which has impact in system security as well as declaration of ATC/TTC between S1-S2 control areas.

(g) Based on REA data available with SRLDC and commercial data furnished by MEPL, the following analysis were made for the period from January 2013 to December, 2013:

(i) The blocks in which under-injection was more than 12% were only considered;

(ii) The blocks in which schedule itself was 'Zero' due to unit outages were excluded; and

(iii) The sale price of power was considered as per the PPA furnished by MEPL (i.e. up to 30.5.2013 –₹. 5.41 per kWh and subsequent period –₹. 5.79 per kWh).

From the analysis, MEPL earned about ₹ 31.97 crore profit during the year 2013 on account of under-injection.

(h) As per the provisions of the agreement for sale of power to APCPDCL through PTC, a penalty of ₹1.0 per kWh was applicable when supply was below 80% of the approved quantum of MTOA for the period up to 30.5.2013 and for the following period, a penalty of 20% of sale price (₹ 5.79) which works out to

₹ 1.148 was applicable when the schedule was below 85% of the quantum approved.

(i) In certain months, there could be additional financial implication to MEPL by way of penalty as per the agreement, if the schedule could have been net of under injection. Considering only the time blocks of under-injection more than 12%, the penalty avoided by MEPL works out to ₹ 7.3 crore.

(j) It appears that there was about ₹ 39.28 crore net profit to MEPL due to under-injection during the year 2013 by the way of net under-injection (₹ 31.97 crore) and penalty avoidance (₹ 7.30 crore).

8. In response to our query as to whether there was any gaming by MEPL, the representative of the petitioner submitted that in absence of commercial data, SRLDC is not in a position to comment in this regard. The Commission directed MEPL to provide unit-wise selling rate of generating station for the year 2013.

9. MEPL vide its affidavit dated 21.2.2014 has submitted as under:

(a) MEPL is taking all necessary steps not only to address the various recurring problems in plant operation, but is also in constant discussion with the equipment suppliers on these issues. The GdFSuez group has completed the acquisition of 74% of MEPL on 16.12.2013 and since then a new experienced operation and maintenance team is in place and MEPL is already benefitting from the broad expertise of the GdFSuez group. MEPL has submitted that there were communication gap on its part. However, MEPL is now making sincere

efforts to improve communication with SRLDC with regard to revision of schedule.

(b) It is not possible at all times to provide scheduling instructions to the SRLDC with absolute precision since there have been occasions when the plant has faced additional operational issues, which has prolonged the period of repair. However, on earlier occasions, when MEPL approached SRLDC to re-revise the schedule, SRLDC refused to carry out multiple revisions as MEPL was availing Short Term Open Access for selling power. There are various commercial considerations for which a generating company is entitled to avail STOA. However, MEPL has been unable to carry out proper and realistic revisions to the schedule due to the restriction on multiple revisions of schedule for STOA users under the Grid Code.

(c) On several instances, even though MEPL has faced unforeseen/unpredictable forced outage of its generating unit throughout the day, it was unable to revise its generation schedule more than once during the day. This has prevented MEPL from taking necessary steps to maintain grid discipline in the wake of equipment failure being faced by it on a day-to-day basis. In such circumstances, no intentional mis-declaration of schedule can be attributed to MEPL, and the commercial implications under the UI during such period will have no relevance in this regard.

10. MEPL, vide its affidavit dated 14.3.2014, has further submitted as under:

(a) As per Regulation 2 (ee) of the UI Regulations gaming has two ingredients, namely: (i) Intentional mis-declaration of capacity by the generating station or seller; and (ii) Mis-declaration for the purpose of making undue commercial gains through UI charges. UI Regulations do not consider a situation as gaming where a generator incidentally makes commercial gains through under-injecting power due to genuine technical reasons. MEPL has placed on record necessary data showing all under-injections due to technical reasons e.g. equipment failure/coal issues. Therefore, any gain made during under-injection cannot be considered as undue commercial gain through UI charges. MEPL has actually lost ₹ 20 crore on account of UI payment. If the MEPL would have tried to game, its objective would have been to avoid penalties under the PPA. However, between January to April, 2013, MEPL had paid ₹ 8 crore as penalty.

(b) The commercial gains have been worked out by SRLDC by comparing PPA earnings and UI losses. However, the incidence of gaming has to be related to an intention to make undue commercial gains from UI charges. Therefore, the reference to the commercial terms of the PPA in order to establish gaming is clearly beyond the scope of the UI Regulations.

(c) The commercial terms negotiated by a generating company with any beneficiary cannot be the basis for determining gaming. A generating company may enter into various commercial terms with the buyers of electricity depending on the length of the contract, time of supply, quantum of supply and such other aspects. If the approach adopted by SRLDC is upheld, it will result in different

findings on the issue of gaming depending on the commercial terms settled between the parties.

(d) SRLDC relied upon the various charts and data which shows that there was no specific pattern of over-injection and under-injection followed by MEPL at any point of time. This can give rise to a presumption that the scheduling was done by MEPL with the deliberate intent of earning money from UI charges. From the details submitted by MEPL regarding plot of approved schedule, minimum schedule, actual schedule and actual generation from January to December 2013, it may be concluded that on all months, the actual schedule has always been lower than the approved schedule while a gaming behaviour would have been to maximize the actual schedule. The actually scheduled figures were not stable across the year and this deviation can be actually co-related with the technical issue faced by MEPL.

(e) MEPL, since December, 2013 till date, is not only revising its schedule but is maintaining its injection schedule and is making every conceivable effort towards upholding grid discipline.

(f) There is no *mala fide* intention on the part of MEPL and load variations are purely due to technical reasons and not intentional. In fact the non-linear levels of deviation establish beyond doubt that MEPL was not acting intentionally with a strategy to make a gain out of UI charges.

11. During the course of hearing of the petition, learned counsel for MEPL submitted that Regulation 1 of the UI Regulations defines gaming as intentional mis-declaration of declined capacity by any generating station or seller in order to make an undue commercial gain through UI charges. He further submitted that UI Regulations do not consider a situation as gaming where a generator incidentally makes commercial gains through under-injecting power due to genuine technical reasons. Learned counsel for MEPL submitted that since December 2013 MEPL had been able to minimize the under injection. Earlier, it was using Chinese equipments and had some problem with coal. Now, it had a new experienced operation and maintenance team in place with in-house technical and commercial capabilities of managing large power stations to deal with these problems. The representative of the petitioner submitted that under injection by MEPL has come down significantly as observed from the reduction of number of violation messages issued by SRLDC.

Analysis and Decision:

12. We have considered the submissions of the petitioner and respondents. The issue for consideration is whether there was any intentional mis-declaration by MEPL and whether MEPL has made undue commercial gain through the UI charges or there were other factors/technical problems in the generating station which were not properly handled by MEPL.

13. The petitioner has alleged that MEPL has violated the provisions of Regulation 7(2) of the UI Regulations and Regulations 6.4.6, 6.4.9, 2.3.1.5 of the Grid Code. Regulation 7(2) of the UI Regulations as amended from time to time provides as under:

“7(2). The under-injection of electricity by a generating station or a seller during a

time-block shall not exceed 12% of the scheduled injection of such generating station or seller when frequency is 'below 49.80 Hz' and 3% on daily aggregate basis for all the time blocks when the frequency is 'below 49.80 Hz'."

14. Regulations 6.4.9 and 2.3.1.5 of the Grid Code provides as under:

"6.4.9 The ISGS, other generating stations and sellers shall be responsible for power generation/power injection generally according to the daily schedules advised to them by the RLDC/SLDC on the basis of the contracts/ requisitions received from the SLDCs/buyers/Power Exchanges.

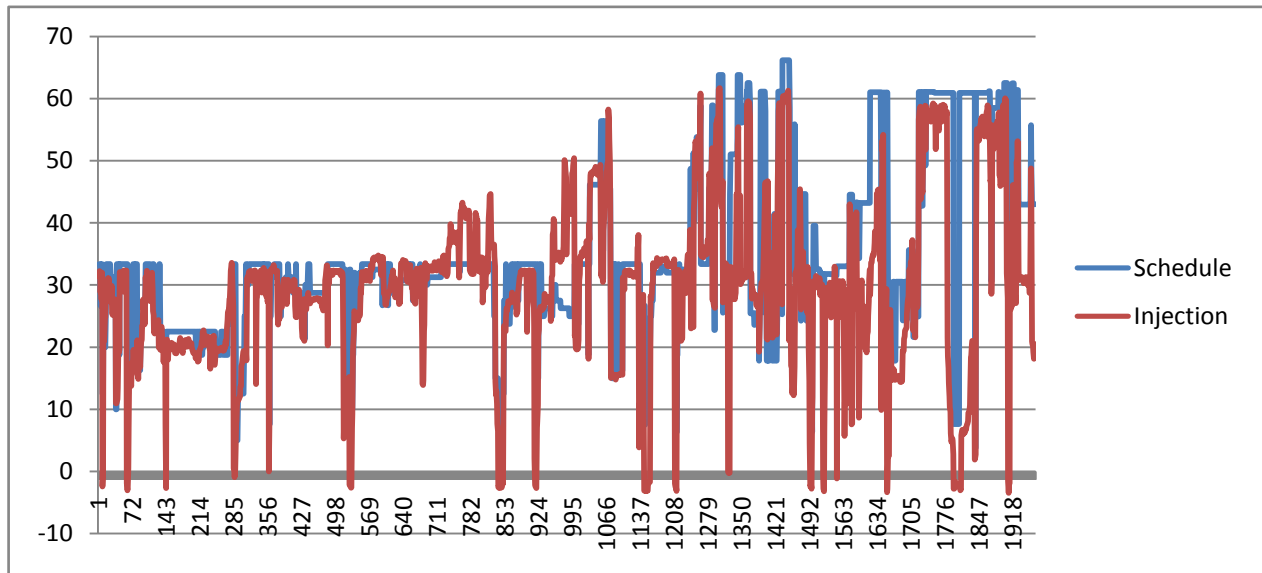
2.3.1.5 Every licensee, generating company, generating station, substation and any other person connected with the operation of the power system shall comply with the directions issued by the Regional Load Despatch Centers."

15. A reading of the provisions of said Regulations reveals that under-injection should not have exceeded 12% of the schedule when the frequency was less than 49.8 Hz. However, even when the system frequency is above 49.8 Hz, then also regional entities should regulate their generation close to their schedule as stipulated in Regulation 6.4.9 of the Grid Code. Therefore, consistent under injection when the frequency is above 49.8 Hz is also an act of indiscipline.

16. The petitioner has submitted month-wise details of under-injection by MEPL from 1.1.2013 and 10.9.2013. The data submitted by the petitioner reveals that in a number of instances, the violation continued for more than 50% of the month. SRLDC on numerous occasions, through fax messages or letters, requested MEPL to adhere to the schedule as per the provisions of UI Regulations and Grid Code. In response, MEPL has pleaded that the under-injection was unintentional, unavoidable and not reasonably foreseeable and was due to supervening circumstances beyond its control. MEPL has

tried to justify its under-injection by stating that being a new generating station, it is not able to assess its generation level due to coal quality.

17. MEPL has submitted the following graph plotted with the data regarding under-injection/over-injection below 49.8 Hz. The graph which shows that in a number of the time blocks, the MEPL is under injecting:



18. Perusal of the above graph reveals that the average actual generation is consistently lesser than the scheduled generation. When such consistent under-injection by MEPL was being appraised by SRLDC to MEPL, it was expected of MEPL to investigate the reasons as to take remedial measures. MEPL has attributed the reasons for consistent under-injection to the low coal quality which means that MEPL was aware of the under-injection. It was always open for MEPL to improve the coal quality, if required by blending with imported coal. However, MEP continued to fiddle with grid security through persistent under-injection despite being put on notice by SRLDC.

19. MEPL was selling power through MTOA from January 2013 to May 2013. It is noted that during this period, MEPL through e-mail had requested SRLDC on a few occasions to revise schedule on account of problems in plant operation which were carried out by SRDLC. However, this practice was not followed by MEPL on regular basis leading to under-injection of power. It is further noticed that MEPL was selling power through STOA from June 2013 and was regularly under-injecting the power into the grid whereas the buyers, namely the distribution companies of Andhra Pradesh, were drawing power as per their schedule. The under-injection by MEPL was impacting the flow on S1-S2, as APTRANSCO continued to draw power as per schedule.

20. SRLDC has analyzed the data on schedules and actual injection by MEPL for the period January 2013 to December 2013 based on the price and penalty clause agreed in the PPA between MEPL and AP Discoms. For the purpose of analysis, SRLDC has considered the blocks in which under-injection was more than 12% and the blocks in which schedule was zero due to unit outages have been excluded. Further, SRLDC has considered the sale price as per the PPA of MEPL i.e. Rs. 5.41/kWh upto 30th May 2013 and Rs. 5.79/kWh for the subsequent period. After analysis of the data, SRLDC has concluded that there was net gain of about Rs. 31.97 crore due to under-injection by MEPL. Further, as per the PPA, there is a penalty clause which provides for penalty of Rs. 1.00/kWh when supply is below 80% of the approved quantum of MTOA upto 30.5.2013 and thereafter, there is a penalty of 20% of the sale price of Rs. 5.79/kWh when the schedule is below 85% of the quantum of MTOA approved. SRLDC has submitted that considering only the time blocks of under-injection of more than 12%, the penalty avoided by MEPL is about Rs. 7.3 crore. SRLDC has concluded that on account

of under-injection by MEPL, there was a net gain of about Rs. 39.28 crore during the year 2013.

21. MEPL in its sur-rejoinder dated 11.3.2014 has submitted that under Regulation 2 (ee), gaming has been declared as intentional mis-declaration of capacity by any generating station or seller in order to make undue commercial gain through UI charges. Therefore, in order to establish gaming, it is required to prove whether there was intentional mis-declaration by MEPL and further such mis-declaration has been made by MEPL for making undue commercial gain through UI charges. MEPL has further submitted that Regulation 6 of the UI Regulations contemplates gaming as an act when the generator under-declares its capacity and thereby schedules less power than what it is able to generate, but in fact injects power in excess of its declared capacity and schedules, thereby recovering the additional UI charges and making undue commercial gains. It does not and cannot apply to instances of under-injection from the declared schedule. Para 6 of the sur-rejoinder containing contention of MEPL is extracted as under:

“6. The UI Regulations do not consider a situation where a generator incidentally makes commercial gains through UI by under-injecting power due to genuine technical reasons as gaming. MEPL has put on record necessary data and documents that clearly show that all under-injections were primarily due to technical reasons e.g. equipment failure/coal issues and lacuna in the Grid Code. Therefore any gain that MEPL would have made during under-injection cannot be considered as undue commercial gain through UI charges.”

22. MEPL has further submitted that allegations of gaming made out by SRLDC is baseless and without any merits due to the following reasons:

(a) Incidence of gaming has to be related to an intention to make undue commercial gains from UI charges. Therefore, the reference to the commercial

terms of the PPA in order to establish gaming is clearly beyond the scope of the UI Regulations.

(b) The Commercial terms that are negotiated by a generating company with any beneficiary cannot be the basis for determining whether there has been gaming by the generating company.

(c) There was no specific pattern of over-injection and under-injection followed by MEPL at any point of time which can give rise to a presumption that the scheduling was done by MEPL with the deliberate intent of earning money from UI charges.

(d) MEPL has suffered a loss of Rs. 35.66 lakh during the period from January 2013 to December 2013 by payment of UI for under-injection at a frequency level 49.8 Hz and Rs. 20.80 crore from January 2013 to December 2013 for other beneficiaries.

23. We have considered the submissions with regard to gaming. There is no denial by MEPL that there was under-injection during the period January 2013 to December 2013. However, MEPL has submitted that under-injection does not qualify for 'gaming' under the UI Regulations. Gaming has been defined in Regulation 2 (ee) of the UI Regulations as under:

“(ee) ‘gaming’ in relation to these regulations, shall mean an intentional mis-declaration of declared capacity by any generating Station or seller in order to make an undue commercial gain through Unscheduled Interchange charges.”

According to MEPL, an entity gains through UI charges only when it injects above the schedule and not in case of under-injection. We are unable to agree with MEPL.

Gaming can occur both in case of over-injection and under-injection in relation to schedule. If an entity over-injects, it gets payment for the scheduled generation from the buyer of electricity and UI charges for the injection over the schedule. If an entity under injects, it pays UI charges to the extent of under-injection but commercially it meets the requirements of schedules and avoids the penalty for short supply. Thus, by paying UI charges, the entity gains through under-injection. We do not agree with MEPL that gaming cannot be assessed with reference to the commercial terms in the PPA. Since RLDC is required to schedule power in terms of the contract, any loss/gain on account of deviation from the schedule will have to be considered in the light of the provisions of the contract.

24. The under-injection data for the period from January 2013 to December 2013 from the website of SRPC reveals that the under-injection was more when MEPL was selling power through Short Term Open Access and Power Exchanges. In case of MTOA transactions, average under-injection was of lesser magnitude as compared to transactions through Short Term Open Access and Power Exchanges. However, MEPL did not properly seek revisions of schedule during MTOA also. The possibility of intentional under- injection cannot be ruled out completely as there was no loss to MEPL, as it did not take any shut down even during problem in the plant.

25. Regulation 6 (6) of the UI Regulations provides as under:

“(6)The Commission may, either *suo-motu* or on a petition made by RLDC, initiate proceedings against any generating company or seller on charges of gaming and if required, may order an inquiry in such manner as decided by the Commission. When the charge of gaming is established in the above inquiry, the Commission may, without prejudice to any other action under the Act or regulations thereunder, disallow any Unscheduled Interchange charges received by such generating company or the seller during the period of such gaming.”

26. In view of the data placed on record by SRLDC which have not been refuted by MEPL, we are of *prima facie* view that there is gaming by MEPL. We direct Member-Secretary, SRPC to investigate into the incidence of gaming by MEPL for the period from 1.1.2013 to 31.12.2013 in terms of Regulation 6 (6) of the UI Regulations. Both SLRDC and MEPL are directed to place all necessary materials before Member-Secretary, SRPC who shall, after considering the relevant material and hearing the parties, submit a report to the Commission by 31.11.2015.

27. Without prejudice to the investigation into gaming by Member-Secretary, SRPC, we are of the view that MEPL through consistent under-injection has violated the provisions of Regulations 6.4, 6.4.9 and 2.3.1.5 of the Grid Code and Regulation 7.2 of the UI Regulations. The arguments of MEPL that its O & M staff was not well trained and there was problem in stabilization of the units, cannot be accepted as the justification for violation of the provisions of the regulations and jeopardizing the grid security. MEPL is directed to explain by 15.11.2015 as to why appropriate penalty should not be imposed on it under Section 142 of Act for violation of the provisions of the Grid Code and UI Regulations.

28. The Commission will take a view in the matter after receiving the report from Member-Secretary, SRPC and the reply from MEPL.

SD/-
(A. K. Singhal)
Member

SD/-
(Gireesh B. Pradhan)
Chairperson