

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 28/MP/2016

Subject : Petition under Regulation 111 of CERC (C&B) Regulations, 1999 seeking clarification on the methodology of computation of availability for Inter-State Generating Stations such as Maithon Power Ltd. For which capacity has been tied up in Mega Watt basis.

Date of hearing : 27.10.2016

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Maithon Power Limited

Respondents : Damodar Valley Corporation and Others

Parties present : Shri Amit Kapoor, Advocate, MPL
Shri Vishal Anand, Advocate, MPL
Shri Shubhayu Sanyal, Advocate, MPL
Ms. Molshree Bhatnagar, Advocate, WBSEDCL
Ms. Jayantika Singh, POSOCO
Shri Subhendhu Mukherjee, POSOCO

Record of Proceedings

At the outset, learned counsel for WBSEDCL submitted as under:

(a) The petition is not maintainable under Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business Regulations) 1999. It is settled position of law that if specific provisions are available, there is no scope for exercise of inherent power. In this connection, learned counsel relied upon the judgment in the case of *Padam Sen & Anr vs State of Uttar Pradesh* [1961 (1) SCR 884].

(b) In the rejoinder, the petitioner has invoked Removal of Difficulty clause which can only be invoked to remove angularities i.e to remove difficulty in application of provision but cannot be applied to defeat the provisions of law. In this connection, learned counsel relied on the judgment of the Hon`ble Supreme court in the case of *Maldeva Upendra Sinai &Ors. V/s Union of India* {(1975) 3 SCC 765}.

(c) The methodology followed by the petitioner for computation of availability is erroneous in law and cannot be ratified by the Commission whether as clarification or otherwise.

(d) The PPAs executed with the various beneficiaries are in megawatt basis and no percentage-wise allocation of the total installed capacity was carried out. The petitioner has computed the monthly/ annual plant availability factor for each beneficiary in the respective PPA instead of installed capacity.

(e) As per Regulation 6(1) of the 2014 Tariff Regulations, the tariff in respect of a generating station may be determined for the whole of the generating station or stage or generating unit or block thereof. Therefore, the tariff can be determined only in relation to the generating station, generating unit or block as defined in law. The regulation does not provide for determination of tariff in accordance with or related to any particular PPA.

(f) As per Regulation 30(1) of the 2014 Tariff Regulations, the fixed cost of thermal generating station shall be computed on annual basis based on norms specified under the Regulation. Therefore, the fixed cost has to be worked out for the entire generating station or generating unit or block as the case may be, and the fixed cost so determined has to be shared by the beneficiaries in proportionate to their contracted capacities.

(g) The scheme of the Regulation is clear that availability has to be worked out for the generating station and not in relation to the capacity contracted under different PPAs. The fact that the generating station may have tied up capacity only for a part of its total capacity does not in any way derogate from the scheme and for recovering the entire capacity charges for the generating station, the plant availability factor for the entire generating station has to be demonstrated equal to NAPAF for the generating station.

(h) The petitioner is seeking to recover the entire capacity charges for the generating unit in proportion of the tied up capacity charge without achieving NAPAF prescribed for the entire generating station which is clearly in violation of the provision of 2014 Tariff Regulations.

(i) The reliance placed by petitioner on Regulation 6(5) of the 2014 Tariff Regulations is without any basis since the Regulation clearly provides that the capital cost would have to be worked out for the entire project but the beneficiaries are required to bear the project cost only in proportion to the capacity contracted by them.

(j) In support of its arguments, learned counsel relied upon the judgments of Hon'ble Supreme Court in *Maldeva Upendra Sinai & Ors. V/s Union of India* {(1975) 3 SCC 765}, *Padam Sen and Another v/s State of Uttar Pradesh* {(1961) 1 SCR 884} and *Kiran Singh and Others v/s Chaman Paswan and Others* {(1955)1 SCR 117}.

2. In its rebuttal, learned counsel for the petitioner submitted as under:

(a) The petitioner has approached the Commission seeking clarification on the methodology of computation of plant availability for the Maithon Generating Station in view of the concerns raised by the beneficiaries.

(b) It is settled principle of law that issue of maintainability has must be raised at the first instance and cannot be raised towards the end of the proceedings.

(c) The petitioner has raised the invoice to WBSEDCL for recovery of the capacity charges as approved and determined by the Commission in order dated 19.11.2014.

(d) WBSEDCL was well aware of the methodology of declaration of capacity adopted by the petitioner since the practice had been in place since the COD of the project.

(e) The petitioner in its monthly bills and supplementary invoices claimed to recover the capacity charges only upto the extent of capacity contracted with the respective long-term beneficiaries, and as such, no capacity charges have ever been claimed beyond such contracted capacity.

(f) Regulation 6(5) 2014 Tariff Regulations recognizes that fact that if only a certain part of the total capacity of the generating station has been contracted, the tariff determined for the entire plant will be applicable as per the corresponding capacity contracted for supply to the beneficiaries.

(g) As per Regulation 32 of the 2014 Tariff Regulations, the entire installed capacity of the ISGS shall be contracted with the Long-term beneficiaries, and therefore, the Plant Availability shall be computed based on the installed capacity as stipulated in the formula.

(h) In a scenario, where part of the installed capacity for computation is uncontracted, it is essential to consider the contracted capacity of a specific beneficiary as the installed capacity for computation of Plant Availability and determination of capacity charges recoverable from the above beneficiary.

(i) The difference of opinion lies in the computation of the Plant availability. WBSEDCL has considered the uncontracted capacity in the denominator of the formula for the computation of Plant availability. Such computation by WBSEDCL would result in under-recovery of the annual fixed charges from the beneficiary.

(j) The reliance placed by learned counsel of WBSEDCL in the case of *Padam Sen & Anr vs State of Uttar Pradesh* 1961 1 SCR 884 has no bearing in the present case as the said judgment relates to inherent powers of a court under Code of Criminal Procedure and is in the context of a criminal proceeding.

3. After hearing the learned counsels for the parties, the Commission reserved order in the petition.

By order of the Commission

Sd/-

**(T. Rout)
Chief (Legal)**