

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.122/MP/2018

Subject : Petition for seeking declaration that Petitioner can declare and Schedule power on the basis of its actual Auxiliary consumption as per Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, as amended from time to time, for fulfilling its obligations under two different Power Purchase Agreements.

Date of hearing : **29.5.2018**

Coram : Shri P.K. Pujari, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Lanco Anpara Power Ltd. (LAPL)

Respondents : NRLDC and Others

Parties present : Shri Gaurav Dudeja, Advocate, LAPL
Shri Arun Tholia, LAPL
Shri Sidharth Jalali, LAPL
Shri Rahul Srivastava, Advocate, UPSLDC
Shri Ashok Rajan, NRLDC
Shri Rajiv Porwal, NRLDC
Shri S.C. Gautam, UPSLDC
Shri Piyush Sukhlal, UPSLDC

Record of Proceedings

At the outset, Learned Senior Counsel for the Petitioner submitted as under:

- (i) The directions issued by Northern Regional Load Despatch Centre (NRLDC) restricting the calculation of net capacity at ex-bus at installed capacity minus normative auxiliary consumption and direction of U.P. State Load Despatch Centre restricting the calculation of net capacity at ex-bus at installed capacity minus normative auxiliary consumption in terms of the PPA with UP Discoms thereby leading to wastage of useful capacity of around 21 MW of its Anpara Power Plant (generating station) are contrary to the provisions of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (Grid Code);
- (ii) Pursuant to the Fifth Amendment of the Grid Code, on 29.4.2017 NRLDC issued direction to all regional entities to the effect that all generators shall ensure that declared capacity on ex-bus does not exceed capacity at bar less normative auxiliary consumption. Accordingly, the restriction imposed by NRLDC to consider net generation at bar on normative basis is erroneous and is in contravention of the Grid Code;
- (iii) In cases where actual auxiliary consumption is more than normative auxiliary consumption, allowing a generating station to declare capacity by using

normative auxiliary consumption will defeat the purpose of the Fifth Amendment to Grid Code;

- (iv) In terms of Regulation 5.2 (h) of the Grid Code, the Petitioner can declare capacity on the basis of its actual auxiliary consumption. The purpose of the Fifth Amendment was to restrict power plants to run beyond 100% of installed capacity and resort to Valve Wide Open operations so that it can pick up generation when frequency falls suddenly. Accordingly, the direction issued by NRLDC is contrary to specific provisions of Grid Code since it forces a generating company to declare/schedule power lower than 100% of its actual capacity;
- (v) Learned counsel referred to APTEL judgment dated 30.7.2010 in Appeal No. 153 of 2009 and submitted that underlying principle of determining a component on normative basis is that any additional cost over and above the normative figure would be borne by the generating company and any gain achieved due to efficiency above normative level must go to the benefit of the generating station.

2. The representative of NRLDC submitted as under:

- (i) Use of the term 'normative auxiliary consumption' in the scheduling process for ex-bus electricity from the generating station is in accordance with the interpretation of the regulations prescribed by the Central Commission;
- (ii) The Commission in the Statement of Reasons to the 5th Amendment of the Grid Code has clarified that actual auxiliary consumption would be considered only after actual operation of machines and that schedule restriction has to be based on normative auxiliary consumption;
- (iii) Since, the generating station is UP State control area embedded State entity generator, its scheduling is being done by UPSLDC. The declared capacity and auxiliary consumption of the generating station is neither submitted nor taken into consideration by NRLDC. Accordingly, the dispute for consideration of normative auxiliary consumption is between the Petitioner and UPSLDC and NRLDC is not party to the same.

3. Learned counsel for UPSLDC submitted as under:

- (i) Nowhere in the petition, the Petitioner has challenged the directions of NRLDC. Accordingly, the petition falls under the jurisdiction of UP State Electricity Regulatory Commission and is not maintainable before this Commission;
- (ii) The Petitioner has gone through the competitive bidding process instead of MoU for determination of tariff. The PPA executed between the Petitioner and UP discoms provides for 7.5% of normative auxiliary consumption for determination of tariff and UPSLDC is considering the same rate for scheduling the power from the generating station of the Petitioner. Therefore, the prayer of the Petitioner is not maintainable and is contrary to the provisions of Section 63 of the Electricity Act, 2003;
- (iii) The Petitioner vide letter dated 12.2.2018 informed UPSLDC that auxiliary consumption of the unit of the generating station is 6.5% of the installed

capacity. Further, under the PPA with UP Discoms, the Petitioner has considered the auxiliary consumption at 7.5%, whereas in the present petition the Petitioner has prayed to consider auxiliary consumption at the rate of 5.75%. However, the Petitioner has considered auxiliary consumption at different rates with the different power purchasers for the same generating station;

- (iv) Since, the Petitioner has prayed to consider normative auxiliary consumption as 5.75% which amounts to change in conditions of the PPA. Accordingly, the Petitioner may be directed implead UP discoms as party in the petition.

4. In its rebuttal, learned counsel for the Petitioner submitted as under:

- (i) Statement of Reasons to the Fifth Amendment of the Grid Code has no relevance while interpreting the provisions of the statute which are clear and unambiguous. In this regard, learned counsel placed his reliance on the judgment of Hon'ble Supreme Court in State of Tamil Nadu Vs. K. Shyam Sunder & Ors. (AIR 2011 SC 3470);

- (ii) Normative Auxiliary Consumption mentioned in the PPA is for commercial purpose whereas purpose of Regulation 5.2(h) of the Grid Code is to provide grid safety and security. The commercial parameters agreed between the parties in a contract cannot be considered for grid safety and security;

- (iii) Normative Auxiliary Consumption mentioned in UP PPA is 7.5% for commercial purpose only which binds the rights and obligations of the parties under the PPA. Nowhere in the petition, the Petitioner has challenged any condition under the UP PPA nor UP discoms have raised any objection on the issue of auxiliary consumption;

- (iv) There might be different PPAs under Section 63 of the Electricity Act, 2003 for supply of electricity from the same generating station and different PPAs may indicate different auxiliary consumption. In the present case, the normative auxiliary consumption mentioned in UP PPA is 7.5% whereas in TANGEDCO PPA, it is 6.5% and/or as notified by the Central Commission from time to time. As per Fifth Amendment to the Grid Code, a generating station can declare capacity on the basis on actual net capacity at ex-bus. Therefore, the Petitioner is entitled to declare capacity by considering auxiliary consumption of 5.75% since the same has also been recommended by CEA and prescribed by the Central Commission.

5. After hearing the parties, the Commission directed the Petitioner and respondents to file their written submissions with copy to each other, on or before 22.6.2018.

6. Subject to above, the Commission reserved order in the petition.

By order of the Commission

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