

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.333/MP/2018**

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 read with Regulations 6.3 A and 6.3 B of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 regarding the validity of the Commercial Operations Date of Units I and II of its generating station as declared by Bhartiya Rail Bijlee Company Limited.

Date of hearing : 31.1.2019

Coram : Shri P.K. Pujari, Chairperson  
Dr. M.K. Iyer, Member  
Shri I.S. Jha, Member

Petitioner : East Central Railway (ECR)

Respondents : Bhartiya Rail Bijlee Company Limited (BRBCL) and Others

Parties present : Shri Sitesh Mukherjee, Advocate, ECR  
Shri Deep Rao, Advocate, ECR  
Ms. Swapna Seshadri, Advocate, BRBCL  
Shri Prashant Chaturvedi, BRBCL

**Record of Proceedings**

Learned counsel for the Petitioner submitted that the present Petition has been filed *inter-alia* for challenging the alleged declaration of CoD of Units I and II of the generating station of Bhartiya Rail Bijlee Company Limited (BRBCL) as 15.1.2017 and 10.9.2017, respectively which is contrary to the Commission's Regulations. Learned counsel further submitted as under:

(a) In terms of Proviso (iii) to the Regulation 6.3A(1) of the Grid Code, it is a mandatory condition for all generating companies desirous of declaring CoD of its units that all the auxiliary systems including Balance of Plant equipment are commissioned and capable of operation at full load on a sustained basis along with the main plant equipment. While filing the Form 5D of tariff filing form filed on affidavit by BRBCL in Petition No.23/GT/2017, BRBCL admitted that most of auxiliaries of the project are either yet to be commissioned or they were commissioned after the declaration of CoD of Units I and II of the project.

(b) Regulation 6.3B(1) of the Grid Code provides that the technical minimum schedule of a Central Generating Station or a unit thereof shall be 55% of the installed capacity of that unit. However, Units I and II of the project have repeatedly failed to maintain the technical minimum schedule of 55% of the installed capacity for operation of the units. Due to frequent reductions and the consequent fluctuations in the DC being declared by BRBCL, the Petitioner is suffering from shortage of power and facing difficulty in arranging power from other sources.

(c) Learned counsel requested to direct BRBCL to refund the excess tariff recovered from the Petitioner for Units I and II for the periods when CoD had not been declared validly.

2. Learned counsel for BRBCL objected to the maintainability of the Petition and submitted that BRBCL has filed its preliminary objection to the Petition. Learned counsel further submitted as under:

(a) BRBCL had filed Petition No. 24/MP/2017 for the acceptance of DC of Unit I of the NTPP from the successful declaration of CoD as per procedure laid down in the Grid Code and the Petitioner was also a party to the same. The Petitioner had filed IA No. 20 of 2017 in Petition No. 24/MP/2017 challenging the validity of the Bulk Power Purchase Agreement (BPPA) entered into on 16.12.2010 with BRBCL for electricity generated from NTPP and at that stage, the Petitioner never raised any objections to the CoD declaration by BRBCL. The Commission in its order dated 29.6.2017 in Petition No.24/MP/2017 alongwith IA No. 20/2017 directed that the DC of the plant would have to be accepted and reflected in the ERLDC website and further directed CTU to operationalize the LTA for evacuation of power from NTPP and raise bills accordingly.

(b) BRBCL had specifically averred in the Petition that its COD had been properly declared after following the provisions of the 2014 Tariff Regulations and the Petitioner never raised any objections to the same in the hearing before the Commission. Therefore, the Petitioner is barred from raising the said claims/objections by way of the present Petition under Order II, Rule 2 of the Code of Civil Procedure, 1908 which provides that a suit must contain the whole part of the claim with respect to the cause of action.

(c) The present Petition is barred by res-judicata and constructive res-judicata since the same issue of CoD declaration has been noted and decided by the Commission in its order dated 29.6.2017 in Petition No.24/MP/2017 alongwith IA No. 20/2017.

3. After hearing the learned counsels for the parties, the Commission admitted the Petition and directed to issue notice to the Respondents on maintainability.

4. The Commission directed the Respondents to file their replies on maintainability, by 21.2.2019 with an advance copy to the Petitioner who may file its rejoinder, if any, by, 13.3.2019.

5. The Petition shall be listed for hearing on maintainability in due course for which separate notices will be issued.

**By order of the Commission**

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