

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.119/MP/2012**

**Sub:** Petition under first proviso to Regulation 8 (7) of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term access and Medium-term open access in inter-State transmission and related matters) Regulations, 2009 as amended.

Date of hearing : 17.4.2012

Coram : Dr. Pramod Deo, Chairperson  
Shri S.Jayaraman, Member  
Shri V.S. Verma, Member

Petitioner : Everest Power Private Limited, Shimla

Respondent : Northern Regional Load Despatch Centre , New Delhi.

Parties present : Shri Tarun Johri. Advocate, EPPL  
Shri S.S.Jamwal, EPPL  
Shri Tapan Patel, EPPL  
Shri D.H. Kulkarni, EPPL

**Record of Proceedings**

Through this petition, the petitioner, Everest Power Private Limited has prayed as under:

- (a) Clarify as to whether the first proviso of Regulation 8 (7) of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term access and Medium-term open access in inter-State transmission and related matters) Regulations, 2009 as amended is having retrospective application and would also include and apply to the case of the petitioner, wherein the injection of infirm power from both the units of the project had taken place more than 6 months ahead in August, 2011; and
- (b) Allow to inject infirm power generated from the 100 MW Malana-II HEP into the Grid for four months after the second synchronization which is expected in the fourth week of April, 2012 .

2. The learned counsel for the petitioner submitted that the petitioner is engaged in executing, implementing and developing the 100 MW (2x50 MW) Malana-II Hydro Electric Project in Himachal Pradesh on Build, Own, Operate and Transfer basis and its first and second units were synchronized on 3.8.2011 and 12.8.2011, respectively. The date of commercial of the plant could not be completed due to problems encountered in civil structure detected during the progress of commissioning and performance tests on the plant. The project had to be completely shutdown from 2.10.2011 in the light of the civil structure problem and rectification work was undertaken thereafter.

3. The learned counsel further submitted that meanwhile, the Commission notified the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term access and Medium-term open access in inter-State transmission and related matters) (Second amendment) Regulations, 2012 ( hereinafter referred to as the 'Connectivity Regulations') which provides that '*a unit of a generating station, including a captive generating plant which has been granted connectivity to the grid shall be allowed to inject infirm power into the grid during testing including full load testing before its COD for a period not exceeding six months from the date of first synchronization after obtaining prior permission of the concerned Regional Load Despatch Centre*'. He submitted that the petitioner could not declare the date of commercial operation of its units due to defects caused by geological surprises and project could not perform the full capacity testing of units in terms of Power Purchase Agreement.

4. The learned counsel for the petitioner requested the Commission to clarify whether the first proviso of Regulation 8 (7) of the Connectivity Regulations is having retrospective application in this case.

5. In response to Commission's query as to whether the Appellate Tribunal for Electricity had issued any order for declaration of date of commercial operation of the plant, the learned counsel submitted the Appellate Tribunal in its judgment has issued direction regarding commissioning of the units for the purpose of payment of transmissions charges only.

6. In response to Commission's query regarding action taken during the construction of the plant, the learned counsel submitted that the petitioner had taken all necessary measures during the construction period. Referring to the Central Electricity Authority letter dated 17.1.2012, he submitted that the commissioning and date of commercial operation of the project are two distinct events. In pursuance of definition of commissioning of hydro power projects for the purposes of capacity addition, the units of Malana-II HEP have been considered as commissioned on 6.8.2011 and 14.8.2011, respectively for the purposes of capacity addition. He also submitted that date of commercial

operation of the plant has not been achieved as various tests are pending in terms of the PPA.

7. After hearing the learned counsel for the petitioner, Commission directed the petitioner to file following information on affidavit, on or before 4.5.2012:

- (a) Details establishing that the existing defects are due to geological surprises/failures;
- (b) A copy of the PPA; and
- (c) Details of activities /tests to be carried out and the time required for completion of tests/action justifying the time of 4 months from the 4th week of April, 2012 for the date of commercial operation to occur.

8. Subject to above, order in the petition was reserved on the question of 'maintainability'.

**By Order of the Commission**

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