

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 18/SM/2015  
Alongwith I.A. No. 50/2018**

- Subject : Suo-moto petition in the matter of declaration of commercial operation of Unit 20 to 50 of Mundra Ultra Mega Power project developed by Coastal Gujarat Power Limited.
- Date of hearing : **19.4.2018**
- Coram : Shri P.K. Pujari, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member
- Respondents : Coastal Gujarat Power Limited and others
- Parties present : Shri C.S. Vaidyanathan, Senior Advocate, CGPL  
Shri Abhishek Munol, Advocate, CGPL  
Shri Kunal Kaul, Advocate, CGPL  
Shri Bijoy Mohanty, CGPL  
Shri Sitesh Mukherjee, Advocate, WRLDC  
Shri Divyanshu Bhatt, Advocate, WRLDC  
Ms. Divya Chaturvedi, Advocate, B & V  
Shri M.G. Ramachandran, Advocate, GUVNL  
Ms. Ranjitha Ramachandran, Advocate, GUVNL  
Ms. Anushree Bardhan, Advocate, GUVNL  
Shri Ashok Rajan, WRLDC  
Shri Abhay Kumar, Tata Power  
Shri Anil Kumar, Energy Watchdog

**Record of Proceedings**

The representative of Energy Watchdog argued at length and mainly submitted as under:

- (i) Interlocutory Application has been filed to assist the Commission by analysing the documents already on record. The present case is similar to Sasan and NTPC Barh case. Energy Watchdog is concerned with the manner in which the trials were conducted for Unit Nos. 20, 30, 40 and 50 (especially 30, 40 and 50) of CGPL's power plant located at Mundra in the State of Gujarat and how the Independent Engineer (IE) issued the Certificates leading to declaration of Commercial Operation Date (COD) despite substantial dips and fluctuations observed during the trial period.



(ii) During the period from March, 2012 to March, 2013, CGPL offered trials of its five units operating from its plant as per the provisions of the PPA with the procurers. The Units were connected to the grid controlled by Western Regional Load Despatch Centre (WRLDC).

(iii) As per the WRLDC's report, it is noticed that there were massive dips and fluctuations in load during the trial periods. However, WRLDC owned up the responsibility stating that such dips and fluctuations were caused due to its own instructions of backing down or increasing generation owing to certain operational restrictions on the grid. In the backing down instructions, certain gaps were observed which WRLDC did not clarify.

(iv) Unit Nos. 20, 30, 40, 50 had a continuous trial run for 62 hours, 36 hours, 37 hours and 42 hours continuously above the benchmark. Therefore, none of the Units completed 72 hours of continuous running at 95% of contracted capacity.

(v) WRLDC vide its letter dated 14.7.2015 provided a graph showing performance of the Units during the 72-hour trial period. However, WRLDC chose to provide the readings to the Commission on graphs in a scale of every 02:45 hours, instead of every 15 minutes time block. In order to analyse the stability of the Units in question during the trial period, Energy Watchdog tried to obtain the data for 15 minutes cycle. However, it could lay its hands only on hourly data for Units No. 20, 30, 40 and 50 for the trial period of 72 hours. Energy Watchdog plotted the said information on four separate graphs and found that WRLDC's instruction matched only for Unit No. 20 and not for any other Units.

(vi) Perusal of the instructions issued by WRLDC reveals that CGPL has been instructed to back down generation of Unit No. 20 towards the end of the trial period. However, the generation of other Units, namely, Unit Nos. 30, 40 and 50 during the trial period is far below the desired level and had no co-relation with the instructions issued.

(vii) CGPL was required to demonstrate the capability of the units in accordance with the Article 6.3 of the PPA and was required to undertake performance test. The test shall be deemed to have passed only if the unit operates continuously at not less than 95% of the contracted capacity for consecutive 72 hours and failure to achieve 95% of the contracted capacity shall be considered as failure in commissioning test and the seller is required to retake the required test with notices to the procurers and the IE.

(viii) The certificates issued by the IE only provides that the Units achieved 95% of the contracted capacity but was silent on the issue of consecutive 72 hours. Accordingly, the certificate issued by the IE for COD without achieving 95% of the contracted capacity for 72 consecutive hours is not in line with the provisions of the PPA and is against the professional ethics. From the language used in all test certificates issued by IE, it appears that arbitrary decisions and principles were followed by IE in case of Unit Nos. 20, 30, 40 and 50.



(ix) There are five procurer States and each State has to issue four certificates for four units and therefore total certificates to be issued by States are twenty. However, only eleven certificates are placed on record.

2. Learned Senior counsel appearing for CGPL made detailed submissions as under:

(i) As per the PPA, IE has to certify the tests conducted on units. GUVNL as lead procurer has given certificate accepting that the trial runs were conducted and super critical parameters were achieved as per the PPA. WRLDC has certified the load achieved during trial test run of the Units.

(ii) During the performance tests, Unit Nos. 20 to 50 have achieved more than 95% of the contracted capacity on continuous and sustainable basis without any glitches, breakdown or tripping of the Unit. Almost all the units have achieved the 95% capacity. In case of Unit No. 20, out of the 288 time blocks, 235 time blocks have achieved the target of 95%. In case of Unit No. 30, the tests were conducted for the duration of 82 hours and out of the 328 time blocks, 142 time blocks achieved the 95% capacity. The generation from these units was backed down predominantly on account of WRLDC's instructions on account of grid security and stability. In case of Unit Nos. 40 and 50, the tests were conducted for the duration of 72 hours, and 84 hours and 30 minutes respectively. However, the generation of these Units was backed down due to BFR Strainer Choke and oil leak.

(iii) PPA as approved by the Commission has provided that procurers and IE have to be satisfied about the trial run before declaration of COD. Article 6.3.1 and Schedule 5 of the PPA provided that even if required load is not achieved in consecutive 72 hours, IE can certify the tests. Parties have to be satisfied, it is a commercial efficacy and business principle.

(iv) Energy Watchdog has alleged that unit has not reached 95% of contractual capacity continuously for 72 hours. The present case is not similar to NTPC Barh case.

(v) Procurers are satisfied and there is no case of doubting conduct on the IE or the parties. Further, Schedule 5 of the PPA provides for the performance report which shall be performed in respect of each unit and such unit shall be deemed to have passed if it operates for 72 hours consecutively at or 95% of the contracted capacity as existing on the effective date and within the electrical system limits and the functional specifications. Only when there is variation, the approval of the procurers is necessary.

(vi) The case of Sasan UMPP is different as the Unit-I of Sasan UMPP had not been able to achieve 95% contracted capacity despite being allowed to do so by the WRLDC. In the present case, CGPL had achieved 95% contracted capacity without any concerns or issues and the only reason for not operating continuously at 95% for



72 hours was due to load restriction by WRLDC. Therefore, the Hon'ble Supreme Court judgment in the case of All India Power Engineer Federation vs. Sasan Power Limited [(2017) 1 SCC 487] is not applicable in the present case.

(vii) Learned counsel further prayed time to file written submissions in the matter.

3. Learned counsel for respondent, B & V (Independent Engineer) adopted the submissions of the learned senior counsel for CGPL and submitted as under:

(i) Independent Engineer (IE), pursuant to the PPA dated 22.4.2017 has entered into an agreement with the procurers and CGPL.

(ii) The documents with regard to procedure for declaring commercial operation of Units was reviewed and checked in terms of the Schedules 4 and 5 of the PPA and accordingly, the documents were revised.

(iii) In the presence of IE, CGPL conducted tests of Unit No. 10 which operated for consecutive period of 72 hours and the performance test showed that the capacity was not less than 95%.

(iv) Unit Nos. 20 to 50 ran consecutively for 72 hours and at a contracted capacity of 95% and correspondences was made between the CGPL and IE. However, Unit No. 40 ran for continuous 72 hours. However, due to grid restrictions, the said unit was maintained for 58 hours at or above 95% capacity of 760 MW. The grid restrictions were applied due to high frequency of 50.7 Hz and the Unit ran below 95% contracted capacity for 13.5 hours due to grid restrictions and not unit performance.

(v) IE adhered to the contractual requirement and performed all the tasks. After analyzing the plant during these tests recognized that these Units were constraint by the grid restrictions imposed by WRLDC during the performance tests and certified that the Units were available to produce 95% contracted capacity during the performance test and there were no flaws in the plant design or operation.

(vi) The contentions raised by Energy Watchdog with regard to the language and contents of the certificates issued by IE are denied as the certificates are issued in the prescribed format and contents/ figures are different in each certificate.

4. Learned counsel for GUVNL submitted as under:

(i) GUVNL vide its letter dated 3.9.2014 sought confirmation from WRLDC regarding load restrictions which was confirmed by WRLDC.

(ii) Out of the four Units, Unit Nos. 20, 30 and 40 had reached 95% of the contracted capacity and further operated at 95% continuously other than when load restriction was imposed by WRLDC. Therefore, any back down during the period was only due to the load restriction by WRLDC and no issue



has been reported otherwise for the generating units for not operating continuously for 72 hours.

- (iii) With regard to Unit No. 50, the unit was required to back down for other reasons in addition to the grid restrictions. GUVNL vide its letter dated 3.9.2014 sought explanation from the IE on the declaration of commercial operation for Unit No. 50 which had not operated at 95% continuously due to reasons other than load restriction of WRLDC. Further, GUVNL sought for subsequent dates when the machine had operated continuously for 72 hours above 95%.
- (iv) As per the provisions of the PPA, IE had to issue Final Test Certificate regarding satisfactory performance of a Unit and the Unit shall be commissioned on the day after the date when all the procurers receive the Final Test Certificate of the IE. Accordingly, the IE had issued the Test certificates for all the Units of Mundra from time to time. In the circumstances mentioned above, the declaration of commercial operation was accepted by GUVNL.

5. Learned counsel for WRLDC referred to Hon'ble Supreme Court judgment [All India Power Engineer Federation vs. Sasan Power Limited (2017) 1 SCC 487] and submitted that there were number of technical requirements which were required to issue the certificates and the ramping rate requires the plant to achieve the maximum rated capacity. The testing is permitted based on the prevailing grid conditions. In certain instances, restrictions were imposed in order to ensure secure grid operation. Learned counsel further submitted that in line with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, CGPL had given advance intimation to all the procurers and WRLDC. Further, as per the provisions of the PPA, CGPL units also demonstrated Maximum Continuous Rating (MCR) through successful trial run. As per the existing Regulations, the generators were not asked to perform 72 hours trial run at MCR by WRLDC. The generators carried out the 72 hours trial run at MCR purely in accordance with the provisions of the PPA, which is a bilateral contract between generator and the procurers.

6. The Commission, after hearing the parties, directed WRLDC to submit the details with regard to time blocks during which backing down instructions were given to units of CGPL during trial run and reasons for backing down instructions by 11.5.2018, with an advance copy to the respondents and Energy Watchdog. The Commission further directed the respondents to file their written submissions, on affidavit, on or before 23.5.2018. The Commission directed that due date of filing the information and written submissions should be strictly complied with. No extension shall be granted on that account.

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

**By order of the Commission**  
**-Sd/-**  
**(T. Rout)**  
**Chief (Law)**

