

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 66/MP/2017

Subject : Petition under Part 7 Regulation 4 of the CERC (Indian Electricity Grid Code) Regulations, 2010 (as amended) read with Regulation 111 of CERC (Conduct of Business) Regulations, 1999 in regard to provision 6.3 A of the Grid Code..

Date of hearing : 13.9.2018

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

Petitioner : NTPC Limited

Respondents : GRIDCO and Others

Parties present : Shri Venkatesh, Advocate, NTPC
Shri Somesh Srivastava, Advocate, NTPC
Shri Nishant Gupta, NTPC
Shri Umesh Ambati, NTPC
Shri P.B. Venkatesh, NTPC
Shri R.K. Mehta, Advocate, GRIDCO
Ms. Himanshi Andley, Advocate, GRIDCO
Shri R.B. Sharma, Advocate, BRPL
Shri Anand K. Ganesan, Advocate, GUVNL
Shri Ashwin Ramanathan, Advocate, GUVNL
Ms. Neha Garg, Advocate, GUVNL
Shri Ashok Rajan, NLDC
Shri G. Chakraborty, POSOCO

Record of Proceedings

At the outset, learned counsel for the Petitioner submitted that the present petition has been filed for seeking relaxation in the provisions of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (Grid Code) (as amended) pertaining to the declaration of CoD of the generating station. Learned counsel further submitted as under:

(a) As per the Regulation 6.3A of the Grid Code, the generator is required to issue notice to the beneficiaries at least 7 days before start of the trial run for declaring the CoD. However, the Petitioner requested for waiver of 7 day prior notice to the beneficiary in case of repeat of trial run of the generating station on account of interruption of more than 4 hours.

(b) Further, it is not possible to bring back the unit to full load within the specified period of 4 hours due to inherent design of the system. Therefore, the total time of interruption may be increased to 8 hours for the trial run considering that each start up requires an average of 7 hours.

(c) As per para 4.3.2 of the Statement of Reasons (SOR) issued by the Commission, the overall partial loading cannot be more than 4 hours, which is not there in the Regulations. The time limit of 4 hours of partial loading within the period of 72 hours is not envisaged in the Regulations. The Petitioner requested to clarify that as per the Regulations partial loading is allowed and the only condition is that the average loading should be equal to or more than 100% excluding the period of exclusion as specified in the Regulations.

2. Learned counsel for GRIDCO submitted that the present petition is not maintainable and is liable to be rejected. Learned counsel further submitted as under:

(a) Part 7 of Regulation 4 of the Grid Code provides that the Commission may by general or special order, for reasons to be recorded in writing, and after giving opportunity of hearing to the parties likely to be affected by grant of relaxation, may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person. Further, Regulation 111 of the CERC (Conduct of Business) Regulations, 1999 provides that nothing shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission. However, none of these two regulations which have been invoked by the Petitioner are applicable in the present petition.

(b) The Petitioner is seeking amendment to the Grid Code Regulations, which is not permissible as per the law.

(c) The power to remove difficulty and power to relax can be exercised only in a given situation and it cannot be invoked for a general relaxation of the Regulations. In support of its contention learned counsel relied upon Hon'ble APTEL judgment dated 6.5.2011 in Appeal No.170/2010.

(d) With regard to the issue of relaxation of norms for CoD, *learned counsel placed its reliance upon Hon'ble Supreme Court judgement in All India Power Engineer Federation Vs. Sasan Power Limited* and submitted that the trial operation for CoD confirms whether the generating unit can run successfully for continuous 72 hours with MCR, so that the installed capacity as Investment Approval of the generator is established as the unit must meet the functional specifications for ramping rate.

(e) Learned counsel referred the Hon'ble Supreme Court judgment in *K.K. Velusamy Vs. N. Palanisamy* [(2011 11 SCC 275] and *Mahadeva Upendra Sinai Vs. UOI* [(1975) SCR (2) 640] and submitted that the Petitioner has already raised all the contentions in the SOR dated 6.4.2016 which is again not permissible.

3. Learned counsel for BRPL and Bihar State Power Holding Co. Ltd.(BSPHCL) submitted that the Petitioner is seeking amendment to the Grid Code which is permissible only by invoking the provision related to the 'Power to Remove Difficulty' which was not raised in the present petition, therefore, the petition is not maintainable. Learned counsel further submitted as under:

(a) With regard to 7 day notice, learned counsel submitted that a maximum period of 6 months are available with the generators to fix all the problems and it is not required to undertake the rectification of the problems during the trial for commercial operation.

(b) With regard to interruption of 4 hours, learned counsel submitted that the interruption of 4 hours is permitted only on account of reasons beyond the control of the generator in the time period of 72 hours due to non-availability of load and/or grid constraints.

(c) With regard to the clarification on the partial loading during trial operation, learned counsel submitted that the Petitioner presumes that the regulation on commercial operation allows during partial loading which is not correct as the regulation prescribes that the short interruptions which may be on any ground are limited for a period of 4 hours. Therefore, there is no need for clarification on the issue.

4. In its rebuttal, learned counsel for the Petitioner submitted that in interpreting the validity of a provision containing relaxation or exemption of another provision of statute, the purpose of such relaxation and the scope and the effect of the same in the context of the purpose of the statute should be taken into consideration and if it appears that such exemption or relaxation intrinsically does not violate the purpose of the statute, there will be no occasion to hold such provision of relaxation or exemption illegal. In support of its contention, learned counsel relied upon the Hon'ble Supreme Court judgement in *Premium Granites and Another Vs. State of T.N. and others*. Learned counsel further submitted that SOR is a public consultation process culminating into a delegated legislation of a Regulations, and it cannot be taken as res-judicata against the Petitioner. The relaxation of norms should be considered by the Commission on case to case to basis and should not be rejected on face of it.

5. Learned counsel for GUVNL and the representative of NLDC adopted the submissions made by the learned counsel for GRIDCO.

6. Learned counsel for the Petitioner requested for time to file its rejoinder on the written submissions filed by GRIDCO.

7. After hearing the learned counsels for the Petitioner, GRIDCO, BRPL, BSPHCL, GUVNL and the representative of NLDC, the Commission directed the Petitioner to file its rejoinder by 12.10.2018. The Commission directed that due date of filing the rejoinder should be strictly complied with failing which the order shall be passed on the basis of the documents available on record.

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

By order of the Commission

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