

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 720/MP/2020

Subject : Petition under Sections 79 and 94 of the Electricity Act, 2003 read with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking appropriate directions and relief pursuant to order dated 31.1.2019 passed by this Commission directing implementation of Pilot SCED with effect from 1.4.2019.

Date of Hearing : 30.7.2021

Coram : Shri P. K. Pujari, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Coastal Gujarat Power Limited (CGPL)

Respondent : Power System Operation Corporation Limited (POSOCO)

Parties Present : Shri Sanjay Sen, Sr. Advocate, CGPL
Shri Mansoor Ali, Advocate, CGPL
Shri Kunal Singh, Advocate, CGPL
Shri Abhay Kumar, CGPL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed *inter alia* seeking direction and relief for recovery of actual cost of electricity supplied/ generated during the period from 1.4.2019 to 30.9.2019 pursuant to the order dated 31.1.2019 in Petition No. 2/SM/2019 directing implementation of Pilot Security Constrained Economic Despatch ('SCED') with effect from 1.4.2019. Learned senior counsel mainly submitted the following:

(a) Pursuant to the order of the Commission dated 31.1.2019 in Petition No. 2/SM/2019 and formulation of Detail Operating Procedure ('DOP') by POSOCO in compliance thereof, a pilot for SCED for all inter-State Generating Stations, that are regional entities and whose tariff are determined or adopted by this Commission, including the Petitioner, was implemented for the period from 1.4.2019 to 30.9.2019.

(b) As a result of the aforesaid order and DOP, a generating company was required to generate power upto its declared capacity even if the same is over and above its scheduled capacity and mandatorily supply such electricity to a party with whom it does not have Power Purchase Agreement ('PPA').

(c) The Petitioner is obligated to make power available as per the terms and conditions including tariff enshrined in the PPA only to the beneficiaries of its generating station. However, due to the aforesaid order, the Petitioner was required to supply the un-requisitioned power to the third-parties with which it

had no agreement and that too at the rate under the PPA regardless of actual cost of generation.

(d) Cost of generation of power at the Petitioner's Mundra Project being much higher than the cost at which it is selling power to its beneficiaries under the PPA, it has resulted into the Petitioner supplying power under pilot scheme at a rate, which is much lower than the actual cost incurred by the Petitioner. The Petitioner has suffered a loss of approximately Rs. 30 crore for the relevant period of six months from 1.4.2019 to 30.9.2019 after taking into account the SCED compensation amount due to under recovery of Rs. 0.61/kWh for each unit generated.

(e) Subsequently, the Commission by its order dated 11.9.2019 in Petition No.8/SM/2019 has limited the implementation of pilot to those generating stations, which are 'willing' to participate in the SCED pilot and accordingly, the Petitioner had opted out of the said pilot. Thus, the present Petition is only concerned with the period from 1.4.2019 to 30.9.2019.

(f) As to the jurisdiction to deal with the Petitioner's prayers, this Commission, under Section 79(1) of the Act, has the widest regulatory powers to pass the appropriate directions, where there are no guidelines framed or where the guidelines do not deal with a situation and grant relief to the Petitioner, *inter alia*, restoring the Petitioner to the same financial position had it not been compelled to participate in the SCED pilot. In this regard, the reliance was also placed on the judgment of Hon'ble Supreme Court in the case of Energy Watchdog v. CERC & Ors., [(2017) 14 SCC 80].

(g) Alternatively, under Article 13 (Change in Law) of the PPA, the Commission may pass appropriate direction for recovery/ restitution of actual cost of generating/ supplying electricity during the relevant period.

(h) The Petitioner has also filed Review Petition No. 9/RP/2019, seeking review of the Commission's order dated 31.1.2019 in Petition No. 2/SM/2019, which is still pending for consideration. However, if the Commission entertains/ admits the present Petition, the Petitioner will proceed to withdraw the aforesaid Review Petition.

4. After hearing the learned senior counsel for the Petitioner, the Commission ordered as under:

(a) Admit. Issue notice to the Respondent;

(b) The Petitioner to serve copy of the Petition on the Respondent immediately, if not already served and the Respondent to file its reply, if any, by 24.8.2021 after serving copy of the same to the Petitioner, who may file its rejoinder, if any, by 17.9.2021; and

(c) Parties to comply with above direction within the specified timeline and no extension of time shall be granted.

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

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)