

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 439/MP/2019

Coram:

Shri P. K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Date of Order: 30th June, 2021

In the matter of

Petition under Section 79(1) of the Electricity Act, 2003 seeking clarification of order dated 12.2.2019 in Petition No. 205/MP/2018.

And

In the matter of

JSW Hydro Energy Limited,
(formerly Himachal Baspa Power Company Limited)
4th Floor, NTH Complex, A-2, Shaheed Jeet Singh Marg,
Qutub Institutional Area, New Delhi -110067.

.....**Petitioner**

Vs.

1. PTC India Limited,
2nd Floor, NBCC Tower, 15,
Bhikaji Cama Place, New Delhi-110 066.

2. Chairman,
Punjab State Power Corporation Limited,
The Mall, Patiyala-147 001.

3. Superintending Engineer,
SPAT Circle,
Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 001 UP.

.....**Respondents**

The following were present:

Shri Aman Anand, Advocate, JSWHEL
Ms. Swapna Seshadri, Advocate, PSPCL
Shri Amal Nair, Advocate, PSPCL
Shri Anurag Agarwal, PSPCL

ORDER

The Petitioner, JSW Hydro Energy Limited, has filed the present Petition seeking clarification of the Commission's order dated 12.2.2019 in Petition No. 205/MP/2018 to the effect that full capacity charges are payable by the beneficiaries based on the Plant Availability Factor achieved for a Month (PAFM) certified by Northern Regional Load Despatch Centre (NRLDC)/ Northern Regional Power Committee (NRPC).

Submissions of the Petitioner

2. The Petitioner has submitted that in compliance of the Commission's order dated 12.2.2019 in Petition No. 205/MP/2018, NRPC vide its letter dated 15.4.2019 certified the revised contract-wise Declared Capacity (DC) and PAFM of the generating station for the months of April 2018 to March 2019. Based on this, on 24.4.2019, the Petitioner raised necessary credit notes for the monthly energy bills to PTC (Respondent No.1). In response, PTC informed the Petitioner that the Respondents, UPPCL and PSPCL are not making payment against the capacity charges for financial year 2018-19 in terms of Regulation 31 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as "the 2014 Tariff Regulations"). UPPCL and PSPCL have claimed that capacity charges related to the overload capacity over and above 100% DC, which have not been opted by them in financial year 2018-19, cannot be paid. UPPCL vide its letter dated 23.7.2019 informed the Petitioner that the Commission's order dated 12.2.2019 does not talk about payment of capacity charges by the beneficiaries for the overload capacity and advised the Petitioner to approach the Commission for clarification in this regard.

3. The matter was heard on 26.5.2020 and notices were issued to the Respondents to file their reply. PSPCL has filed reply to the Petition. However, the Petitioner has not filed rejoinder thereof.

4. The Respondent, PSPCL in its reply dated 10.8.2020, has submitted as under:

(a) The Petitioner having not succeeded in getting direction to PSPCL to schedule the overload capacity in the original Petition No. 205/MP/2018, cannot seek the very same relief in a clarification application.

(b) Under the guise of the present proceedings, the Petitioner is seeking to raise a claim which was not raised by it in the Petition No. 205/MP/2018 and even the direction sought to PSPCL for scheduling of power was not granted by the Commission.

(c) As per the Commission's order, PSPCL has the right to refuse to avail the overload capacity. The Commission in the impugned order held that only in a case where the beneficiaries decided to avail such overload capacity would they be required to make payment to the generating company in terms of Regulation 31(7) of the 2014 Tariff Regulations.

(d) If a particular beneficiary decides not to avail power under overload capacity, then the generating station shall be free to seek alternate avenues to sell its power.

(e) Interpretation being sought by the Petitioner is incorrect since the same would in effect make the order otiose. The Commission after due consideration in its order dated 12.2.2019 held that the beneficiaries have the right to refuse to avail such overload capacity.

(f) Reliance placed by the Petitioner on Paragraph 23 of the order dated 12.2.2019 is not correct. The contention of the Petitioner that because the Commission has held that RLDCs shall allow the overload capacity declared by

the generator for the purpose of PAF calculation of the generating station, it is an automatic corollary that the beneficiaries are liable to pay capacity charges is not correct.

(g) As per the 2014 Tariff Regulations, capacity charges are payable to the extent of energy scheduled.

Analysis and Decision

5. We have considered the submissions made by the parties and perused the documents available on record. According to the Petitioner, in terms of paragraphs 19 and 23 of the order dated 12.2.2019 in Petition No. 205/MP/2018, the Respondents/beneficiaries are required to pay the capacity charges on the basis of PAFM certified by NRLDC/NRPC which also includes the overload capacity. However, the Respondents, Uttar Pradesh Power Corporation Ltd. (UPPCL) and Punjab State Power Corporation Ltd. (PSPCL) have refused to pay capacity charges for overload capacity on the ground that they did not opt for such capacity during financial year 2018-19. Moreover, the Respondent, UPPCL vide its letter dated 23.7.2019 advised the Petitioner to seek the Commission's clarification regarding payment of capacity charges for the overload capacity.

6. Thus, the only issue that arises for our consideration is whether any clarification to the order dated 12.2.2019 in Petition No. 205/MP/2018 as regards payment of capacity charges by Respondents/beneficiaries on the basis of PAFM certified by NRLDC/NRPC which also includes the overload capacity as sought for by the Petitioner is required to be issued. In order to examine the aforesaid issue, it would be apt to refer to the relevant records of Petition No. 205/MP/2018. The said Petition was filed by the Petitioner under Section 79(1)(c) of the Electricity Act, 2003

read with the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 seeking direction to NRLDC to schedule overload capacity up to 10% within the existing Long-term Access granted by Central Transmission Utility. In the said Petition, the Petitioner had made the following prayers:

“(a) Admit the Present Petition;

(b) Direct NRLDC to schedule overload capacity up to 10% within existing LTOA granted by CTU in accordance with the Grid Code and the Order dated 30.03.2017;

(c) Devise a suitable mechanism for scheduling and evacuation of the overload capacity;

(d) Direct transfer of the Long-term Open Access presently in the name of Petitioner to the beneficiaries;

(e) Direct the Respondent No. 4 to 6 to schedule their respective share in overload capacity; and

(f) Pass ad interim order in respect of Prayer (e) during pendency of this Petition”.

7. Perusal of the prayers in Petition No. 205/MP/2018 reveals that the grievance of the Petitioner and consequent reliefs sought by it emanated from refusal of scheduling the overload capacity of 10% by NRLDC. The refusal by NRLDC, as communicated to the Petitioner vide its e-mail dated 5.6.2018, was on the basis that NRLDC was already scheduling to the beneficiaries up to the approved LTA quantum as per the approval granted by CTU and that for any change in LTA quantum, the Petitioner ought to take up the matter with CTU. Accordingly, the prayers of the Petitioner were for redressing the aforesaid grievance and scheduling of overload capacity by the beneficiaries. There was no prayer by the Petitioner regarding payment of capacity charges by the beneficiaries for the corresponding overloading capacity.

8. The aforesaid grievance in terms of prayers (b) and (d) of the Petitioner were dealt with by the Commission under Issue No. 1 of the order dated 12.2.2019 in Petition No. 205/MP/2018. The relevant portion of the order is extracted as under:

“Issue No. 1: Whether the power corresponding to overload capacity of a hydro generating station (up to 10%) during peak season shall be scheduled without taking LTA corresponding to the overload capacity?”

18. We have considered the submissions of the Petitioner and the Respondents. Sub-clause 12 of Regulation 6.5 of the Grid Code provides as under:

“(12). Run-of-river power station with pondage and storage type power stations are designed to operate during peak hours to meet system peak demand. Maximum capacity of the station declared for the day shall be equal to the installed capacity including overload capability, if any, minus auxiliary consumption, corrected for the reservoir level. The Regional Load Despatch Centres shall ensure that generation schedules of such type of stations are prepared and the stations despatched for optimum utilization of available hydro energy except in the event of specific system requirements/constraints.”

Further, to ensure primary response to frequency excursions, Regulation 5.2 (h) of the Grid Code provides as under:

“(h) For the purpose of ensuring primary response, RLDCs/SLDCs shall not schedule the generating station or unit(s) thereof beyond ex-bus generation corresponding to 100% of the Installed capacity of the generating station or unit(s) thereof. The generating station shall not resort to Valve Wide Open (VWO) operation of units whether running on full load or part load, and shall ensure that there is margin available for providing Governor action as primary response. In case of gas/liquid fuel based units, suitable adjustment in Installed Capacity should be made by RLDCs/SLDCs for scheduling in due consideration of prevailing ambient conditions of temperature and pressure vis-à-vis site ambient conditions on which installed capacity of the generating station or unit(s) thereof have been specified:

Provided that scheduling of hydro stations shall not be reduced during high inflow period in order to avoid spillage:

Provided further that the VWO margin shall not be used by RLDC to schedule Ancillary Services.”

The Grid Code also provides that in order to minimize the spillage and maximize the power generation, the schedule of hydro stations cannot be reduced during the high inflow period in order to avoid spillage. The Grid Code further provides that available hydro energy is optimally utilized except in the event of specific system requirements or constraints.

19. The transmission system including connectivity line and corresponding system strengthening schemes are planned to take into account overload capacity of such generating stations. RLDCs do not reduce the schedule of hydro generating stations of the Central Generating Stations during high inflow period i.e. they are allowed to inject the generation over and above the installed capacity and the same is also considered for the purpose of PAF of the generating station. NRLDC in its justification for allowing scheduling of overload capacity to Central Generating Stations has contended that in case of Central Generating Stations, allocations from Central Generating Stations are

covered under deemed LTA and are in percentage basis. NRLDC has argued that the change in unallocated quota in these generating stations results change in allocation of the beneficiaries and therefore, allocated quantum changes from time to time. PGCIL has also argued on similar lines.

20. The Commission in its order dated 30.03.2017 in Petition No. 434/GT/2014 had decided as under:

“32. *****

(b) Overload capacity of the generating station shall be 10% as per the provisions of CEA and IEGC.NLDC/ RLDC shall ensure that the scheduling of the station shall be based on the installed capacity of 1000 MW with overload capacity of 10%.-----”

21. We do not agree with views of NRLDC and PGCIL as regards differential treatment between Central Generating Stations and others. The allocation on percentage basis by Central Government in the Central Generating Stations is only within the installed capacity and does not mention overload capability. In that sense, there is no difference between deemed LTA of CGS and LTA of other (private sector) generating stations. Further, by virtue of tariff being determined by this Commission, the beneficiaries of Central Generating Stations as well as others are required to make payment of annual fixed charges provided the generating station is able to meet the normative obligation of declaring availability over and above the NAPAF. Further, by way of Tariff Regulations and Grid Code, the beneficiaries have a share in the overload capacity in ratio of their PPAs to be delivered to them during high inflow period. In our view, the long term beneficiaries should get the benefits of such overload capacity.

22. The Petitioner has obtained the connectivity equal to installed capacity (1000 MW) of the generating station. Out of 1000 MW, the Petitioner has been granted LTA of 880 MW and remaining 120 MW (free power) has been retained by the home State for receiving the free power.

23. In the light of the express provisions in the Grid Code; dispensation provided to the Central Generating Stations for scheduling the generation corresponding to overload capacity during peak season; LTA being in place in the instant case for 880 MW; and availability of margins in transmission system commissioned at the behest of LTA customers, we are of the considered view that the hydro generating stations irrespective of ownership (private or government) are not required to obtain LTA corresponding to overload capacity (up to 10%) and the injection of the same should be allowed by concerned RLDC. In our view, even in case of a hydro generating station in the private sector, the RLDCs cannot compel them to obtain LTA/ MTOA/ STOA for overload capacity up to 10% of existing LTA during high inflow period. Accordingly, RLDCs are directed to allow injection of power corresponding to overload capacity up to 10% of LTA without obtaining additional LTA/ MTOA/ STOA for the overload capacity. Needless to mention, the RLDCs shall allow the Declared Capacity declared by the generator for the purpose of PAF calculation of the generating station. In order to ensure that the CTU and RLDCs receive their respective charges, we also think it appropriate to clarify that in case of scheduling of overload capacity up to 10% beyond granted LTA, the hydro generating station or the beneficiary, as the case may be, shall be required to pay additional LTA charges and additional RLDC fees & charges for the overload capacity. These additional charges shall be in proportion to the existing LTA charges and RLDC fees & charges respectively. CTU and respective RLDCs shall raise bills accordingly.”

9. Thus, the Commission observed that the hydro generating stations irrespective of ownership are not required to obtain LTA corresponding to overload capacity (10%). Accordingly, RLDCs were directed to allow injection of power corresponding to overload capacity up to 10% without requiring additional LTA/ MTOA/ STOA for the overload capacity. The Commission also observed that *“Needless to mention, the RLDCs shall allow the Declared Capacity declared by the generator for the purpose of PAF calculation of the generating station”*. According to the Petitioner, based on the above direction of the Commission in order dated 12.2.2019 in Petition No. 205/MP/2018, NRPC has certified the revised contract-wise DC and PAFM of its generating station. However, the Respondent No. 2 and Respondent No. 3 have not made full payment against the capacity charges for the financial year 2018-19. In the present Petition, the Petitioner has relied upon the above-quoted observations at paragraph 23 of order dated 12.2.2019 in Petition No. 205/MP/2018 to contend that the Respondents/beneficiaries are required to pay the capacity charges on the basis of PAFM certified by NRLDC/NRPC which also includes the overload capacity.

10. Undisputedly, in the order dated 12.2.2019, the Commission has directed RLDCs to allow DC (declared capacity) by the generator for the purpose of PAF calculations of the generating stations. However, the said observation cannot be construed as finding of the Commission on payment of capacity charges by the beneficiaries corresponding to the overload capacity, as the issue of payment of capacity charges corresponding to the overload capacity was neither the prayer of the Petitioner nor was subject matter of discussion.

11. The Petitioner in its prayer (e) in Petition No. 205/MP/2018 had prayed for direction to the Respondent No.4, Respondent No.5 and Respondent No.6 (PSPCL, Haryana Power Purchase Centre and UPPCL, respectively) to schedule their respective shares in overload capacity. This prayer of the Petitioner was dealt with by the Commission under issue No. 2 of the order dated 12.2.2019. The relevant portion of the order is extracted as under:

“Issue No.2: Whether beneficiaries with PPAs for fixed quantum of power shall schedule the power generated by the overload capacity of hydro stations during peak season/period of high inflows?”

24. The Respondent, PSPCL has submitted that no additional burden should be imposed on it if it schedules the generation corresponding to overload capacity in proportion of its PPA. Per Contra, the Petitioner has submitted that PSPCL is obliged to schedule the overload capacity. The Petitioner has submitted that in terms of Clause 4.3.2 of the PPA, PTC is required to receive secondary energy in the same proportion at that of its share in the design energy. The said obligation is passed on to PSPCL in terms of Clause 4.3.1 of the PSA. Therefore, PSPCL is under contractual obligation to take the overload capacity and pay for it.

25. We have considered the submissions of the Petitioner and the Respondents. While agreeing to determination of tariff by the Commission, the beneficiaries have already agreed to pay the entire annual fixed charges provided the generating station is able to meet the normative obligation of declaring availability over and above the NAPAF.

26. Regulation 31 (7) of the 2014 Tariff Regulations provides as under:

“(7) In case the energy charge rate (ECR) for a hydro generating station, computed as per clause (5) of this regulation exceeds ninety paise per kWh, and the actual saleable energy in a year exceeds $\{DEX(100-AUX) \times (100-FEHS)/10000\}$ MWh, the Energy charge for the energy in excess of the above shall be billed at ninety paise per kWh only.”

As per the above provision, the ex-bus energy over and above the ex-bus design energy is available to be scheduled at 90 paise/KWh. We have already decided in Issue No. 1 above that the hydro generating station or the beneficiary, as the case may be, shall have to bear additional charges proportionate to overload capacity if they opt to avail of the additional capacity during the high inflow period. In our considered view, the beneficiary shall have the first right of refusal in such overload capacity. If the beneficiary decides to avail of the overload facility, it shall make payments to the generating company in terms of Regulation 31(7) of the 2014 Tariff Regulations. In the scenario of the beneficiary deciding not to avail such power under overload capacity, the generating station shall be free to sell the same to any other entity or in power exchanges and shall be liable to pay the STOA charges, instead of additional LTA charges, for such overload capacity scheduled.”

12. Since the Petitioner had prayed for direction to the beneficiaries to schedule their respective share, the same was examined only to the extent of scheduling of

overload capacity. In the order dated 12.2.2019, the Commission has recognized that the beneficiary shall have the first right of refusal in such overload capacity. It was further observed by the Commission that if the beneficiary decides to avail the overload capacity, it shall make the payment to the generating company in terms of Regulation 31(7) of the 2014 Tariff Regulations, which provides for the energy charge rate of the ex-bus energy scheduled over and above the ex-bus design energy and that in case the beneficiary deciding not to avail such overload capacity, the generating station will be free to sell such power to others.

13. Respondent, PSPCL has relied upon the above observations of the Commission at paragraph 26 of order dated 12.2.2019 in Petition No. 205/MP/2018 and has submitted that while recognizing the beneficiaries' right to refusal of overload capacity, the Commission has clearly held that only in a case where the beneficiaries decide to avail such overload capacity that they would be required to make payment and not otherwise. According to PSPCL, if the interpretation of the Petitioner that the beneficiaries are liable to pay for the capacity charges corresponding to the overload capacity even if such overload capacity is not availed by the beneficiaries is accepted, it would render the order dated 12.2.2019 otiose.

14. We are not in agreement with the aforesaid contention of PSPCL to the extent that observation of the Commission at paragraph 26 of the order is only pertaining to scheduling of the overload capacity and, therefore, aptly refers to the Regulation 31(7) of 2014 Tariff Regulations which is related to payment of energy charges and not the capacity charges. As already observed, the Commission neither examined the issue of liability of the beneficiaries for payment of the capacity charges corresponding to the overload capacity nor the methodology for calculation of the

capacity charges corresponding to such overload capacity, as these were not the subject matter of the discussion in the order dated 12.2.2019.

15. During the course of hearing of the instant petition on 27.8.2020, the Commission observed that the primary issue involved in Petition No. 205/MP/2018 was pertaining to availability of long-term access corresponding to the overload capacity and not the payment of capacity charges in respect of overload capacity. In response, the learned counsel for the Petitioner sought liberty to approach the Commission to raise its claims through a separate Petition. However, the learned counsel for the Respondent, PSPCL objected to the same and submitted that since the Petitioner is barred from raising such prayer in terms of Order II Rule 2 of the Code of Civil Procedure, 1908 (CPC), no such liberty ought to be granted to the Petitioner. As regards the contention of PSPCL that there is bar on the Petitioner from raising such claims in terms of Order II Rule 2 of CPC, we would like to observe that since the payment of the capacity charges corresponding to the overload capacity by the beneficiaries itself was not within the scope of the order dated 21.2.2019 in Petition No. 205/MP/2018, any clarification on the same as has been sought for by the Petitioner cannot be dealt with through a clarificatory Petition as the instant Petition filed by the Petitioner. Accordingly, the issue as to whether the Petitioner is barred from raising such claims in terms of Order II Rule 2 of CPC is not required to be examined at this stage.

16. In view of the foregoing observations, as the instant clarificatory Petition is seeking clarification on the order dated 12.2.2019 in Petition No. 205/MP/2018 relating to a subject matter which was not a subject matter of discussion in the said order, the same is disallowed on this ground only.

17. The Petition No. 439/MP/2019 is disposed of in terms of the above.

Sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member

sd/-
(P.K.Pujari)
Chairperson