

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.281/MP/2021

Subject : Petition under Sections 61 read with 79 of the Electricity Act 2003 and Regulation 6.3.B of Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 and this Commission's Order No. L-1/219/2017-CERC dated 05.05.2017 seeking directions to Uttar Pradesh Power Corporation Limited for making payment for Technical Minimum Compensation on account of Part Load Operation of MB Power's 1200 MW (2x600 MW) Anuppur Thermal Power Project.

Date of Hearing : 21.1.2022

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : MB Power (Madhya Pradesh) Limited (MBPMPL)

Respondents : PTC India Limited and 5 Ors.

Parties Present : Shri Amit Kapur, Advocate, MBPMPL
Shri Akshat Jain, Advocate, MBPMPL
Shri Pratyush Singh, Advocate, MBPMPL
Shri Abhishek Gupta, MBPMPL
Shri Sitesh Mukherjee, Advocate, UPPCL
Shri Abhishek Kumar, Advocate, UPPCL
Shri Karan Arora, Advocate, UPPCL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed challenging the refusal of the Respondent, Uttar Pradesh Power Corporation Limited ('UPPCL') to make payment of Rs.20,29,70,629/- toward technical minimum compensation for part load operation of its Project (i.e. part/ under scheduling by UPPCL) during the period from May 2017 to March 2021. Learned counsel further referring to his note of arguments mainly submitted the following:

(a) In terms of Regulation 6.3.B of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 ('IEGC') and the Commission's order dated 5.5.2017, Western Regional Power Committee ('WRPC') from time to time has issued the compensation statement with respect to part load operations of the Petitioner's generating station stating the compensation amount payable by the respective distribution licensees procuring power from the Petitioner.

(b) Based on the compensation statement issued by WPRC, the Petitioner had issued the invoices dated 11.8.2021 and 20.10.2021 upon PTC/UPPCL seeking compensation for part load operations. However, UPPCL and PTC by their letters dated 15.11.2021 and 17.11.2021 respectively have refused to make payment towards technical minimum compensation claimed by the Petitioner stating that there is no provision in the Power Purchase Agreement ('PPA') with regard to claiming of technical minimum compensation for operating at technical minimum schedule.

(c) Such action of UPPCL/PTC to deny the legitimate statutory claim for compensation on account of part load operation of its generating station is illegal and violative of Regulation 6.3.B of IEGC and the Commission's order dated 5.5.2017 in terms of which the Petitioner by virtue of being a regional entity and Inter-State Generating Station is entitled to grant of compensation for part load operation of its generating station.

(d) The Hon'ble Supreme Court in the case of PTC India Ltd. v. CERC, [(2010) 4 SCC 603] has held that a Regulation framed under Section 178 of the Electricity Act, 2003 is in the nature of subordinate legislation, which has the effect of interfering and overriding the existing contractual relationship between the regulated entities including the PPA, which has to be aligned with the Regulations.

(e) In terms of Article 15.24 of PPA dated 18.1.2014, any provisions of the PPA which is in deviation or is inconsistent with the provisions of the Act or any regulations made thereunder shall be deemed to be amended to the extent required to make it consistent with such regulations.

(f) Therefore, the right of the Petitioner to claims compensation from UPPCL on account of part load operation of its generating stations is not contingent upon PTC/UPPCL's consent to incorporate the compensation mechanism provided in Regulation 6.3B of the IEGC and the order dated 5.5.2017 in the PPA.

3. Learned counsel for the Respondent, UPPCL submitted that the instant Petition is not maintainable in the present form and sought liberty to file its reply.

4. In response to the specific query of the Commission as to how the part load operation or the operation below technical minimum is being attributed to the Respondents, PTC/UPPCL when the tied up capacity under the PPAs (361 MW) is only a part capacity of total installed capacity (1200 MW), learned counsel for the Petitioner sought liberty to file the necessary explanation along with its rejoinder.

5. After hearing the learned counsel for the parties, the Commission directed the Respondent, UPPCL to file its reply within three weeks with copy to the Petitioner, who may file its rejoinder, if any, within two weeks thereafter.

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

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