

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 187/MP/2013

- Subject : Non-compliance of Regulations 6.4.6, 6.4.9, 2.3.1.5 of Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and Regulation 7.2 of Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) (Second Amendment) Regulations, 2012 endangering the secured grid operation in Southern Region by consistent under injection of power by Meenakshi Energy Private Limited, Nellore.
- Date of hearing : 18.3.2014
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member
- Petitioner : Southern Regional Load Despatch Centre
- Respondents : Sr. Vice President (Finance), Meenakshi Energy Private Limited and others.
- Parties present : Shri V. Suresh, SRLDC
Ms. Jayantika Singh, SRLDC
Shri Sitiesh Mukherjee, Advocate, MEPL
Shri S. Vallinayagam, Advocate, MEPL
Shri Sakya Singh Chaudhuri, Advocate, MEPL
Ms. Mandakini Ghosh, Advocate, MEPL
Shri Huart, MEPL

Record of Proceedings

The representative of the petitioner submitted that the present petition has been filed seeking direction to the Meenakshi Energy Private Limited (MEPL) to maintain the injection of power strictly as per schedule in line with the provisions of Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (Grid Code) and Central Electricity Regulatory Commission (Unscheduled Interchange Charges and related matters) Regulations, 2012 (UI Regulations). The representative of the petitioner submitted that during the hearing on 19.12.2013, the Commission directed MEPL to furnish the commercial data and accordingly, SRLDC was directed to examine probability of gaming by MEPL. The representative of the petitioner submitted that

based on REA data available with SRLDC and commercial data furnished by MEPL, the following analysis were made for the period from January 2013 to December, 2013:

- (a) The blocks in which under injection was more than 12% were only considered;
- (b) The blocks in which schedule itself was 'zero' due to unit outages were excluded.
- (c) The sale price of power is considered as per the PPA furnished by the respondent (i.e. up to 30.5.2013 –Rs. 5.41 per kWh and subsequent period- Rs. 5.79 per kWh)
- (d) From the analysis, it was observed that there was about ` 31.98 crore profit to MEPL during the year 2013 as under:

| Schedule in MWh | Injection in MWh | UG >12% in MWh | Payment to UI Pool Account (`) | Earnings from Sale (`) | Net savings (`) |
|-----------------|------------------|----------------|----------------------------------|--------------------------|-------------------|
| 1070300 | 980620 | -91774 | -208007372 | 527784992 | 319777620 |

- (e) It was also observed that in some months, there could be additional financial implication to MEPL by way of penalty as per the PPA, if the schedule could have been net of under injection. Considering only the time blocks of under injection more than 12%, the penalty avoided by the respondent works to ` 7.3 crore as under:

| Approved MWh | Minimum Schedule to avoid penalty MWh | Scheduled MWh | Actual injection MWh | UG >12% in MWh | Penalty Avoided |
|--------------|---------------------------------------|---------------|----------------------|----------------|-----------------|
| 1454797 | 1211807 | 1070300 | 980620 | -91774 | 73021413 |

- (f) From the above computation and analysis, it appears that there was about ` 39.28 crore net profit to MEPL during the year 2013 by the way of under injection of more than 12% in the respective time blocks as under:

| Net under generation savings (In `) | Penalty avoided (in `) | Total profit by MEPL (In `) |
|--------------------------------------|-------------------------|------------------------------|
| 319777620 | 73021413 | 392799033 |

2. The representative of the petitioner refuted the allegations of MEPL made in its affidavit dated 18.12.2013 and submitted that MEPL was well aware of the provisions for Short Term Open Access (STOA) Regulations and the procedure before it

commenced STOA and therefore, it was the responsibility of MEPL to assess its capability to execute STOA transactions strictly as per the provisions before entering into such transactions. He also refuted the claim of MEPL that under-injection was inevitable due to lack of provision in STOA Regulations for multiple revision of schedule in real time. He further submitted that the STOA Regulations have the facility for downsize revision in advance and MEPL had used such facility very rarely. He also clarified that though MEPL was advised to give conservative/optimum restoration schedule during the forced outages of units, same was not complied with by MEPL.

3. In response to the Commission's query with regard to present status of injection by MEPL, the representative of the petitioner submitted that under injection by MEPL has come down significantly as observed from the reduction of number of violation messages issued by SRLDC.

4. The representative of the petitioner requested the Commission to direct MEPL to maintain the injection of power strictly as per schedule in line with the relevant provisions of the Grid Code and the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014.

5. Learned counsel for MEPL submitted as under:

(a) During the course of hearing on 19.12.2013, the Commission had directed MEPL to provide unit-wise selling price of generating station for the year 2013 by 2.1.2014. Accordingly, MEPL has compiled all data relating to its generating schedule, level of under injection, UI settlements and total UI losses/gain for the period January to December, 2013 in the format directed by SRLDC.

(b) SRLDC in its rejoinder to the reply of MEPL has alleged that MEPL has resorted to gaming through under injection and has placed on record various schedules and data to demonstrate the profit earned by the respondent through alleged gaming. However, SRLDC has completely ignored the submission of MEPL on 18.2.2014 and 24.2.2014, which clearly shows that there is no intentional mis-declaration on part of MEPL.

(c) Gaming has been defined under Section 2 (ee) of the UI Regulations and has two ingredients, namely:

- (i) Intentional mis-declaration of capacity by the generating station or seller; and
- (ii) Mis-declaration is for the purpose of making undue commercial gains through UI charges.

(d) The UI Regulations do not consider a situation as gaming where a generator incidentally makes commercial gains through under-injecting power

due to genuine technical reasons. MEPL has put on record necessary data to show that all under-injections were primarily due to technical reasons e.g. equipment failure/coal issues and therefore, any gain that MEPL would have made during under-injection cannot be considered as undue commercial gain through UI charges. MEPL has actually lost ` 20 crore on account of UI payment. If the MEPL would have tried to game, its first objective would have been to avoid penalties under the PPA. However, between January to April, 2013, MEPL had paid ` 8 crore as penalty.

(e) The commercial gains have been worked out by SRLDC by comparing PPA earnings and UI losses. However, the incidence of gaming has to be related to an intention to make undue commercial gains from UI charges. Therefore, the reference to the commercial terms of the PPA in order to establish gaming is clearly beyond the scope of the UI Regulations.

(f) Since December, 2013 MEPL had been able to minimize the under injection. Earlier, it was using Chinese equipments and had some problem with coal. Now, it had a new experienced operation and maintenance team in place with in-house technical and commercial capabilities of managing large power station to deal with these problems. This is apparent from the fact that post December, 2013 till date, MEPL is not only more prompt in revising its schedule but is maintaining its injection schedule and making every conceivable efforts towards upholding grid discipline.

6. The representative of SLDC, APTRANSCO submitted that it is facing problem of load shedding because of under-injection by MEPL and it has already made submission vide affidavit dated 14.1.2014 in this regard.

7. After hearing the representative of the petitioner and learned counsel for the respondents the Commission reserved order in the petition.

By order of the Commission

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