

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 28/MP/2016

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of order: 31.8.2017

In the matter of

Petition under Regulation 111 of Central Electricity Regulatory Commission (Conduct of Business Regulations, 1999) seeking clarification on the methodology of computation of availability for inter-state generating stations such as Maithon Power Limited for which capacity has been tied up in Mega watt basis.

And

In the matter of

M/s. Maithon Power Limited
Jeevan Bharti, 10th floor
Tower-I, 124, Connaught Circus
New Delhi-110001

.....Petitioner

Vs

1. Damodar Valley Corporation
DVC Headquarters, DVC Towers,
VIP Road, Kolkata- 700054
2. Tata Power Delhi Distribution Limited
33Kv grid Substation building,
Hudson Lane, Kingsway Camp,
New Delhi-110009
3. West Bengal State Electricity Distribution Company Limited
Vidyut Bhavan, Bidhannagar,
Sector-11, Kolkata- 700091
4. Kerala State Electricity Board Limited
Vydyuthi Bhavanam, Pattom,
Thiruvanthapuram- 695004
5. Tata Power Trading Company Limited
Corporate Centre, A- Block,
34, Sant Tukaram Road, Carnac Bunder,
Mumbai- 400006
6. Eastern Regional Power committee
14, Golf Club Road, Tollygunje
Kolkata- 700033



7. Eastern Regional Load Despatch Center
14, Golf Club Road, Tollygunje
Kolkata- 700033

.....Respondents

Parties Present:

Shri Amit Kapur, Advocate, MPL
Shri Janmali M, Advocate, MPL
Shri Aveek Chatterjee, MPL
Shri Shubhayu Sanyal, MPL
Shri Sakya Singha Chaudhari, Advocate, WBSEDCL
Ms. Molshree Bhatnagar, Advocate, WBSEDCL
Ms. Ranjana Roy Gauri, Advocate, TPDDL
Shri Abhay Pratap Singh, Advocate, TPDDL
Ms. Jayantika Singh, Advocate, TPDDL
Shri Jyotishk Kanoojia, TPDDL
Shri Subhendu Mukherjee, ERLDC
Shri S.S.Barpanda, NLDC
Shri Subrata Ghosal, DVC

ORDER

This petition has been filed by the Petitioner, Maithon Power Limited (MPL) with the following prayers:

- a) *Clarification as regards to the appropriate methodology for computation of Plant Availability for the project for which the share of the contracted capacity for beneficiaries is based in terms of megawatt and not under any pre- determined percentage allocation;*
- b) *Clarification regarding treatment of untied capacity in the computation of Plant Availability;*
- c) *To direct Respondent no. 6, ERPC to certify monthly/ Annual Plant Availability of the project; and*
- d) *To direct Respondent no. 7, ERLDC to schedule power from the project.*

Background

2. The Petitioner is a joint venture between Tata Power Company Limited (TPCL) having 74% shareholding and Damodar Valley Corporation (Respondent no.1) having 26% shareholding. The Petitioner has set up and operates the Maithon Right Bank Thermal Power Project ("the project / generating station") having an installed capacity of 1050 MW (2 x 525 MW) in the State of Jharkhand. The dates of commercial operation (COD) of Unit-I is 1.9.2011 and that of Unit-II is



24.7.2012. PPA was executed between the Petitioner and DVC on 28.9.2006 for sale of 300 MW power from the project for a period of 30 years. Thereafter, an MOU was entered into between the Petitioner and Respondent No. 5 i.e. TPTCL on 29.9.2006 for sale of 700 MW power, which was further extended to 750 MW vide letter dated 26.9.2007. TPTCL has tied up the 750 MW capacity with Respondent No. 2 i.e. TPDDL (300 MW), PSPCL (300 MW) and Respondent No. 3 i.e. WBSEDCL (150 MW). The Petitioner vide letter dated 30.8.2011 intimated DVC that ERLDC has not allowed scheduling of power under Long Term Access (LTA) pending clearance from PGCIL and stated that (a) in the absence of LTA, ERLDC had permitted the Petitioner to schedule power through Short Term Open Access (STOA) and (b) DVC had shown willingness to accept power on STOA basis and for written confirmation. In response, DVC by letter dated 12.9.2011 conveyed its confirmation to avail STOA for scheduling of power to DVC for a quantum of 28.57% of its ex-bus capacity of power in the Installed Capacity (IC) of the project in terms of the PPA. Subsequently, as Unit-I of the project was declared under commercial operation, the Commission by order dated 11.11.2011 granted provisional tariff for supply of 150 MW of power from Unit-I to DVC for the period from 1.9.2011 to 31.3.2012 based on the capital cost claimed by the Petitioner. Thereafter, on 18.2.2012, the Power Supply Agreement (PSA) between TPTCL and PSPCL was terminated. Subsequently on 29.3.2012, PGCIL intimated ERLDC for scheduling of power to Respondent Nos. 1, 2 and 3 from Unit-I of the project under LTA as per their respective contracted capacity. Meanwhile, the Commission granted the extension of the terms in order dated 11.11.2011 in respect of supply of 150 MW to Respondent No. 1 from 1.4.2012 to 31.3.2014 or till final disposal of Petition No. 274/2010, whichever was earlier. Meanwhile, Unit-II of the project was commissioned on 24.7.2012. On 19.2.2013, WBSEDCL entered into a supplementary PSA with TPTCL for purchase of additional 150 MW power from the project w.e.f 1.4.2013 and accordingly, the contracted capacity of the project was increased from 750 MW to 900 MW.

3. Accordingly, the Petitioner vide letter dated 1.10.2012 informed ERLDC that power is being scheduled on bilateral mode basis with schedule being intimated and agreed to by the



beneficiaries and then intimated to ERLDC for consideration. It was also informed that in the months when beneficiaries' requisitions for power is less than the contracted capacity, the Petitioner was facing issues with the certification of availability of its project. The Petitioner had also informed that as the beneficiaries of the project have requested that the availability of the project be certified by ERLDC, ERLDC may commence scheduling of power and also provide availability certification for the project. In response, ERLDC by letter dated 5.10.2012 informed that the Petitioner had tied up only part of its full capacity under the PPAs and that the same was in mega watt basis and no percentage wise allocation of the said capacity among the beneficiaries existed. It also informed that the long term PPAs entered into by the Petitioner were bilateral in nature and accordingly all accounts have to be maintained by the beneficiaries through their respective load despatch centers and were required to be settled individually between the beneficiaries and that ERLDC had no role to play in the matter.

4. The Petitioner has submitted that during the meeting on 24.6.2014 in the chamber of the ERPC Secretary, DVC stated that it would no longer pay the capacity charges of monthly energy bill based on the Plant availability computed based on contracted capacity on MW basis and accordingly sought that the capacity charges payable be calculated on installed capacity of the project. On submission of the Petitioner that Declared Capacity (DC) of the project is required to be certified by ERPC/ERLDC, it was clarified by ERPC that since tariff is determined by the Central Commission, the computation of fixed charges is to be carried out as is being done for other ISGS. ERPC also emphasized that allocation must be changed from absolute figure in MW to percentage figure to facilitate smooth scheduling as well as recovery of fixed charges to avoid dispute. Accordingly, DVC requested the Petitioner to file petition before the Commission seeking clarification and ERPC requested DVC to continue payment of monthly bills as per existing methodology till such time the Commission clarifies the said issue.



5. Thereafter by order dated 19.11.2014 in Petition No. 274/2010, the Commission determined the tariff of Units I & II of the generating station for the period 2011-14 and also directed the Petitioner to adjust the monthly bills as per proviso to Regulation 5(3) of the 2009 Tariff Regulations. The issue of scheduling of power, declaration of capacity and certification of Plant availability by the Petitioner and payment of arrears by DVC as per order dated 19.11.2014 was discussed in the 116th OCC meeting and after detailed deliberations, the OCC advised the Petitioner to approach the Central Commission for seeking clarification on the methodology of computation of plant availability and percentage wise allocation of capacity from the project. Hence, the present petition has been filed by the Petitioner seeking clarification on the methodology of computation of plant availability for ISGS in which capacity has been tied up in mega watt basis.

Submissions of the Petitioner

A. Methodology of computation of Plant Availability

6. As regards the methodology for computation of Availability, the Petitioner has submitted the following:

(i) The Petitioner is an independent power producer (IPP) and has executed the PPAs with long term beneficiaries on the basis of contracted capacity i.e megawatt basis unlike Central Government owned /controlled inter-state generating stations where the contracted capacity with the beneficiaries are allocated in terms of percentage (%) basis. Historically, the allocation of power from central generating stations (CGS) to various state/union territories in the country is being done by the CEA as per guidelines of the MOP, GOI. Unlike the central generating stations where the installed capacity remains allocated at all times, there would be numerous instances where the capacities of IPPs would remain partly contracted for certain periods of time due to market conditions. In the case of the Petitioner, the installed capacity of the project had not been allocated on the basis of any allocation formula to various long term beneficiaries unlike the case of CGS. The generating capacity has been contracted through various PPAs on megawatt basis and therefore it is not possible to assign percentage wise allocation of capacity to each long term beneficiary of the project.



(ii) ERLDC carries out the scheduling process only for the CGS of the Eastern Region whose installed capacity has been allocated among various States on percentage basis as per allocation ratio determined by the Ministry of Power /CEA. The Petitioner declares the day-ahead available capacity or DC in 96 time blocks to the respective Load Dispatch Centers (LDC) for each of the long term beneficiaries separately based on their contracted capacity. The LDC of the beneficiaries accepts the same and provides the demand in the 15 minute time blocks to the Petitioner and the Petitioner intimates the respective schedules to ERLDC for preparing the final demand schedules for the beneficiaries. ERLDC in the final schedules declares only the scheduled generation of the Petitioner and does not declare the Plant Availability/DC schedules as in case of CGS.

(iii) The Petitioner declares its available capacity to all its beneficiaries separately based on the contracted capacity in terms of the respective PPAs. It was imperative to declare DC for each beneficiary separately since there is no single authority to compile the data for DC for the Project on behalf of the Petitioner as is done by ERLDC in case of CGS.

(iv) Out of the total capacity of 1050 MW, 300 remained untied till 31.3.2013. Thereafter, 150 MW of capacity was contracted with WBSEDCL and the remaining 150 MW remained untied for the period from 1.4.2013 to 27.12.2015. The Petitioner did not declare day-ahead availability for such untied quantum of power. In the event the Petitioner would declare DC based on the allocation ratio as suggested by DVC, then the capacity corresponding to the untied capacity would also have to be declared to the long term beneficiaries having no interest or right for scheduling power from the untied 150 MW. This would have led actual DC to be more than the contracted capacity.

(v) The PPAs executed with the various beneficiaries are in megawatt basis and no percentage wise allocation of the total installed capacity of the Project has been carried out. As per PPA executed with DVC, the supply of power shall be 300 MW on schedule basis (Article 3.1 of PPA). Also, in terms of Article 4.1 of the PPA, DVC is mandated to pay capacity charges proportionate to its contracted capacity and in terms of Article 4.3 of the PPA, the Petitioner has agreed to avail LTA from CTU for supply of power for 300 MW only.

(vi) For DVC, the contracted capacity of 300 MW will actually be the installed capacity for the purpose of declaring availability and payment of fixed and variable charges. As regards untied capacity since there is no buyer and no open access available, the Petitioner was not obliged to declare availability for untied capacity. From the date of COD of the units, the Petitioner had declared the capacity to each of the beneficiaries based on their respective



contracted capacity and computed the monthly plant availability and capacity charges in accordance with the provisions of the 2009 Tariff Regulations.

(vii) The Petitioner has computed the Monthly/Annual Plant Availability Factor (PAFM and PAFY) for each beneficiary on the basis of contracted capacity in the respective PPA instead of the Installed capacity. When the scheduling of power from the project and declaration of day ahead available capacity are not done by ERLDC, the Petitioner cannot declare any Availability out of the untied capacity. Even if the Availability of untied capacity is declared by the Petitioner, there is no validating agency to certify such plant Availability declared out of untied capacity. As per terms and conditions of the respective PPAs executed with the long term beneficiaries, the Petitioner could declare the available capacity only to the extent of the contracted capacity on megawatt basis. Therefore, the Petitioner has considered the contracted capacity instead of the installed capacity for computation of the Monthly/Annual Plant Availability of the project for each of the long term beneficiaries.

(viii) The aforesaid methodology of computation of Plant Availability limits the beneficiaries' obligation to pay for the annual fixed charges pertaining to their respective contracted capacity in the installed capacity as stipulated in Regulation 32(2) of the 2009 Tariff Regulations. Also, Regulation 6(5) of the 2014 Tariff Regulations provides that even in cases where there is untied capacity of the generating station, the tariff determined by this Commission would be payable by the beneficiaries to the extent of their contracted capacity.

(ix) In case the entire installed capacity of the project is tied up, the declaration of available capacity and methodology of the computation of Plant Availability followed by the Petitioner would result in the same Plant Availability and the liability for payment of capacity charges for the beneficiaries as the Plant Availability and capacity charges obtained by computation of Plant Availability on the basis of percentage allocation. The DC for each of the beneficiaries has been computed by the Petitioner taking into consideration the contracted capacity with each of the beneficiaries and not the total installed capacity. The Petitioner has not in the supplementary invoices raised on the long term beneficiaries claimed any excess capacity charges beyond the capacity charges approved by the Commission in order dated 19.11.2014.

(x) Even if the total installed capacity of the project is considered, the capacity charges at normative plant availability at 85% would be recovered from the long term beneficiaries as per percentage share of the contracted capacity in the total installed capacity. The PAFY has been computed based on the contracted capacity of the respective beneficiaries. Hence, the



liability of the payment of AFC remains the same as the beneficiaries are liable to pay only the portion of the capacity charges to their share in the installed capacity. The available capacity declared on megawatt basis reflects the Plant Availability of the project to each of the beneficiaries irrespective of the other. The Petitioner has also not taken into consideration untied capacity of the project in computing and declaring Plant Availability of the Project.

B. Difference in Interpretation of Regulations

7. As regards the difference in interpretation of the regulatory provisions, the Petitioner has submitted as under:

(i) The Petitioner has raised supplementary Invoice to all the beneficiaries as per the provisions of the 2009 Tariff Regulations based on the directive of the Commission in the order dated 19.11.2014 for an amount of Rs 128 crore for the period 2011-14. However, DVC has withheld the payment of the arrears amount.

(ii) DVC has sought that the computation of Plant Availability as per the formula stipulated in Regulation 21 (3) of the 2009 Tariff Regulations considering the Installed Capacity of the generating station including the untied capacity. DVC has also considered the allocation ratio of 28.57% (300/1050 MW) for computation of AFC payable by them out of the total AFC recoverable by the Petitioner from all its beneficiaries.

(iii) DVC's stand is that the Plant Availability ought to be calculated taking into account the entire Installed Capacity of the project on the basis of allocation of capacity percentage wise among the long-term beneficiaries of the Petitioner. Since the Petitioner had not declared availability for 150 MW which was not contracted, by following the methodology for computation for availability suggested by DVC, the Plant Availability qua each of the beneficiaries will come down and the their respective liability to pay capacity charges will also get reduced. It is submitted that the difference in AFC computed by DVC and the Petitioner is due to the manner in which un-tied capacity of the project is treated in the computation of the Plant Availability. It is submitted that the untied capacity has not been declared by the Petitioner for the period 2011-14 to any of its beneficiaries. It is noteworthy that while executing the PPA with the Petitioner, DVC never raised any objection regarding the allocation of contracted capacity in the PPA in terms of megawatt rather than in terms of percentage allocation.



(iv) The Petitioner is undergoing financial hardship due to withholding of payment of arrears by DVC owing to the difference of opinion on the methodology of computation of the Plant Availability. The outstanding arrears of DVC is approximately Rs 157 crore, out of which Rs 128 crore pertains to arrears for the period 2011-14 and Rs 29 crore pertains to the outstanding amount for the year 2014-15 (upto November 2014).

(v) Declaring capacity to the beneficiaries beyond their contracted capacity would be contrary to the terms of the respective PPAs. The long-term beneficiaries would not have accepted any capacity beyond the contracted capacity as per the respective PPAs during daily scheduling. It is submitted that the inclusion of such untied capacity while computation of the PAFM/PAFY would impact the recovery of the AFC by the Petitioner. The Petitioner being contractually bound by the respective PPAs could only declare the capacity up to contracted capacity and could not include the untied quantum of capacity while declaring day-ahead available capacity for the beneficiaries.

(vi) In the event of any untied capacity, the Plant Availability for the project may be computed after considering the contracted capacity and not the overall installed capacity of the project. The contracted capacity for the project represents the installed capacity for the long-term beneficiaries as they are only liable to pay for the portion of the capacity charges approved by the Commission in the ratio of their respective shares in the installed capacity of the project. The present difference of opinion regarding the computation of the Plant Availability of the Project is only qua the DVC as other beneficiaries of the Petitioner, viz., TPDDL and WBSEDCL have accepted the Petitioner's methodology of computation of PAFY/PAFM and have made payments to the Petitioner.

8. In the above background, the Petitioner has filed this petition seeking clarification of the interpretation of Regulation 21 and Regulation 32 of the 2009 Tariff Regulations and Regulation 30 and 42 of the 2014 Tariff Regulations towards the computation of Plant Availability for Inter-State Generating Stations for which PPA's have been signed on megawatt basis, instead of the percentage allocation of the total installed capacity.

9. The Commission admitted the petition and issued notices on the respondents. The respondents have filed their replies to the petition and the Petitioner has filed its rejoinder to the said replies.



Submissions of respondents

Tata Power Delhi Distribution Ltd

10. Respondent No. 2, TPDDL has mainly submitted as under:

(i) The Petitioner has been declaring the availability of power against the contracted capacity on day to day basis and TPDDL has been giving its requisitions in each time block as per its requirement. TPDDL has been receiving the power supplies from the Petitioner to its satisfaction.

(ii) It is evident from the letter issued by ERLDC dated 5.10.2012 that the tied up capacity of the Petitioner is in megawatt basis and no percentage allocation of the said capacity among the beneficiaries exists. The long term PPAs entered into by the Petitioner and long term beneficiaries are bilateral in nature and accordingly all accounts have to be maintained by the beneficiaries through their respective load dispatch centers and are required to be settled on one to one basis.

(iii) The certificate of Plant Availability also needs to be settled individually with the beneficiaries. Hence, ERLDC role is limited to providing mutually agreed schedule for generation. TPDDL has been accepting the monthly Plant Availability Factor and Annual Plant Availability computed on the basis of average daily declared capacity made by the Petitioner with respect to the contracted capacity and the annual fixed charges as determined by the Commission proportionate to the contracted capacity.

(iv) TPDDL has been making payment of capacity charge on the basis of proportionate annual fixed charges and PAFM and PAFY as computed with respect to capacity declarations made to TPDDL on the contracted capacity. If there is a need for clarification in this regard, the Hon'ble Commission may accordingly consider the same.

Damodar Valley Corporation

11. Respondent No. 1, DVC has mainly submitted as under:

(i) The Petitioner is a joint venture between Tata Power Company (74%) and DVC (26%) and thus, indirectly the Petitioner is owned/controlled by the Central/State Government through DVC. The Petitioner also cannot claim itself as Independent Power Producer in this petition while declaring itself earlier as State Controlled entity based on 26% equity participation by DVC in its capital structure.



(ii) When problem was being faced by the beneficiaries of the Petitioner for determination of the entitlement in absence of any percentage allocation in PPA, DVC through correspondences dated 11.7.2013, 13.8.2013, 18.11.2013 urged the Petitioner to execute supplementary agreement for quantum of power in terms of percentage of installed capacity instead of 300 MW in absolute. Even ERLDC through its letter dated 5.10.2012 expressed its inability to schedule the power of the Petitioner and certify its availability on the ground that PPAs of the Petitioner are in megawatt and no percentage wise allocation of the said capacity among the long term beneficiaries exists. The Petitioner ignored the plea of DVC as well as advice of ERLDC and did not show any interest to supplement the existing PPA with its beneficiaries.

(iii) The Petitioner never declared the DC of the station and rather it adopted a peculiar formula wherein the installed capacity is divided into a number of 'notional installed capacity' based upon the contracted capacity with its long term beneficiaries and declared 'available capacity' for its individual long term beneficiaries in 96 times blocks based on the notional IC. ERLDC only agrees to facilitate the whole procedure by declaring the schedule generation only and this has no relation with declaration of DC of CGS and non- CGS station as claimed by the petitioner.

(iv) The declaration of DC of the generating station as per CERC Regulations has no relation with the tied/ untied capacity of the station. Rather it is the capability of the generating station to deliver ex-bus capacity in MW by the generating stations.

(v) It transpires from Regulation 6 and Regulation 20 that (a) the generator has to calculate first PAFM based on DC and IC (b) generator has to compute the monthly fixed charge it is entitled to recover from its beneficiaries based on PAFM (c) the total capacity charge payable for the generating station shall be shared by its beneficiaries as per their respective percentage share/ allocation in the capacity of the generating station. It is therefore obvious that there is no conflict between the methodology of calculating the capacity charge as described in the PPA and the 2009 Tariff Regulations. The Petitioner never declared DC of its units right from COD and has considered the contracted capacity instead of the IC for computation of the monthly / annual plant availability of the project for each of the long term beneficiaries.



(vi) It transpires from Article 4.0 of the PPA that (i) tariff for sale of power by the Petitioner to DVC at seller periphery will be determined by CERC and (ii) buyer shall be liable to pay capacity charges proportionate to their contracted power as per CERC norms.

(vii) In terms of Regulation 32 of the 2009 Tariff Regulations, the capacity charge of the generating station is to be determined and then the capacity charge will be shared by the beneficiaries as per their percentage share. Regulation 32 never interprets that computation of capacity charge will be based on contracted capacity instead of installed capacity. In terms of Regulation 6 (5), 20 and 30(1), it is evident that for generating station whose capacity is not fully tied up, the tariff of the generating station shall be determined with reference to the capital cost of the entire project. However, the Petitioner has proportionately reduced the AFC for each beneficiaries as per their allocation (in case of DVC it is 300/1050 MW), then calculated PAFM/PAFY based upon the contracted allocation towards beneficiaries instead of installed capacity and accordingly determined the capacity charge to be paid by DVC.

(viii) The Tariff Regulations do not provide that the methodology for computation of capacity charge will be different for the different generator which is fully tied up and which is partially tied up. DVC never agreed to the methodology of computation of capacity charge adopted by the Petitioner and through various correspondences requested it to calculate the energy bills as per CERC Regulations but got no response from the Petitioner.

(ix) The Petitioner was also requested to revise PPA for incorporation of quantum of allocation in percentage basis on various occasions but the same was ignored and the Petitioner kept on raising the energy bills.

(x) The Commission vide order dated 19.11.2014 determined the tariff of the generating station and hence the Petitioner cannot violate the 2009 & 2014 Tariff Regulations at the time of application of its tariff to its different beneficiaries. Moreover the acceptance of the methodology adopted by the Petitioner regarding computation of PAFY/PAFM by other respondents cannot be reason to consider that the methodology is in conformity with the Tariff Regulations.



WBSEDCL

12. Respondent no. 3, WBSEDCL has mainly submitted as under:

(i) As regards to the statement of the Petitioner with respect to the acceptance of the methodology of computation of PAFY/PAFM by WBSEDCL, it is submitted that no submission have been made in this regard, however, provisional payments have been made to the Petitioner as is evident from the letter dated 16.2.2015.

(ii) Regulation 30(1) of the 2014 Tariff Regulations indicates that the fixed cost has to be worked out for the whole generating station and such cost has to be shared by the beneficiaries proportionate to their contracted capacities.

(iii) PAF has to be worked out for the generating station as a whole based on the DC of generating station and not in relation to the capacity contracted under different PPAs. In case the generating station cannot achieve NAPAF during a particular year, the capacity charges recoverable by the Petitioner would reduce proportionally.

(iv) Once the fixed cost of the generating station has been computed, capacity charge for the generating station is to be shared by all the beneficiaries based on their respective allocation in the capacity of the generating station.

KSEB

13. Respondent no. 4, KSEB has mainly submitted as under:

(i) A long-term PPA was entered into with the Petitioner for purchase of 150 MW power on 30.12.2013 and the same is valid till 23.7.2042. Another PPA was contracted for purchase of 150 MW of power on 29.6.2015.

(ii) Declared capacity and PAF has no relation with the contracted capacity or untied capacity and accordingly the procedure of declaration of DC by the Petitioner for the beneficiaries separately as per their contracted capacity is not in accordance with the provisions of the 2009 and 2014 Tariff Regulations.

(iii) The methodology adopted by the Petitioner for declaring capacity and calculation of PAF would result in undue benefit to the Petitioner in the form of incentive. If the generator considers DC of the project on contracted capacity of the beneficiaries, the generator is credited with incentive even if PAF of the generating station is below 85%.



(iv) The recovery of capacity charge of a generating station depends on PAFY/PAFM which in turn depends on the average ex-bus declared capacity in mega watt. Accordingly, the methodology adopted by the Petitioner for computation of DC based on contracted capacity and recovery of capacity charge based on PAFY/PAFM based on contracted capacity is not in accordance with the provisions of 2009 and 2014 Tariff Regulations.

ERLDC

14. Respondent no. 7 has mainly submitted as under:

(i) Long term PPAs were signed between the Petitioner and each of its beneficiaries separately. Considering plant auxiliary consumption to be 7.5%, the connectivity provided by CTU to the generating station was 971 MW which was later revised to 989.63 due to change in auxiliary consumption to 5.75% as per the 2014 Tariff Regulations.

(ii) The Petitioner has tied up part of its full capacity under the PPAs which is in mega watt basis and no percentage wise allocation of the said capacity has been done among the beneficiaries. Since the said PPAs are bi-lateral in nature, the accounts are to be maintained by the beneficiaries through their respective load despatch centers and to be settled on one to one basis. Accordingly, the availability certification should be settled individually between the Petitioner and each of the beneficiaries. Hence the role of this respondent is limited to schedule the generation based on the quantum of power agreed between the Petitioner and its beneficiaries.

Rejoinder of Petitioner

15. The Petitioner vide its rejoinder to the replies of the respondents above has mainly submitted as under:

(i) PPAs executed by the Petitioner with each beneficiaries are in megawatt basis and not in percentage terms unlike other CGS for which the capacities are tied up based on percentage allocation.

(ii) The Petitioner has been declaring the capacity of the generating station to all its beneficiaries since its COD against their respective capacities and therefore the Petitioner declared capacity only upto the contracted capacity as per the PPAs. Accordingly, the plant availability has been computed based on the contracted capacity.



(iii) ERLDC had declined to certify the DC/ schedule power from the generating station as PPAs of the Petitioner with the long term beneficiaries are on megawatt basis and not on percentage basis, the Petitioner was compelled to declare capacity in terms of contracted capacity with each of the beneficiaries.

(iv) Regulation 21(1) of the 2009 Tariff Regulations and Regulation 30(1) of the 2014 Tariff Regulations stipulates that if NAPAF of 85% for the contracted capacity is achieved, the Petitioner is entitled to recover the entire AFC for the year proportionate to the capacity contracted with each of the beneficiaries out of the Installed capacity of the generating station. While so, the Petitioner cannot recover excess capacity charges from the beneficiaries even if it computes PAFY based on the contracted capacities with the respective beneficiaries.

(v) The Petitioner had declared capacity out of its contracted capacity of 750 MW from 1.4.2012 to 31.3.2013 and 900 MW from 1.4.2013 till 26.12.2015 as the Petitioner is eligible to recover capacity charges as determined by Commission's order dated 19.11.2014 for such contracted capacity. As such, the Petitioner is not eligible to recover capacity charges for the un-contracted capacity which is outside the scope of the provisions of the Tariff Regulations and EA 2003.

(vi) Regulation 6(5) of the 2014 Tariff Regulations envisages that for a project with only part of its installed capacity contracted for supply of power under the long term PPAs, tariff for such projects shall be determined on capital cost. However, the same shall be apportioned to the capacity contracted for supply to beneficiaries. The percentage share allocation of long term beneficiaries is to be computed on the basis of the contracted capacity of each beneficiary in the installed capacity of the project which is tied up under the long term PPAs. In the absence of any guidelines available for declaration of DC and computation of Plant Availability (PA) for the generating stations having partial contracted capacity, the Petitioner had followed the said methodology for computation of PA from 2011-12 till date.

(vii) The Commission may also consider the contracted capacity equivalent to installed capacity in the formula for computation of PA under the 2009 & 2014 Tariff Regulations. This would enable the Petitioner to recover the AFC corresponding to the contracted capacity.

(viii) DVC being one of promoters of Petitioner has been fully aware of the practice of capacity declaration and scheduling procedure from the project. Once the ERLDC denied facilitating the capacity declaration and scheduling procedure of the project, the Petitioner had



no other option but to declare DC for each of the long term beneficiaries based on their respective contracted capacities.

(ix) It is envisaged from Regulation 21(3) of the 2009 Tariff Regulations and 30(3) of the 2014 Tariff Regulations that the entire installed capacity of Inter State Generating Station (ISGS) shall be contracted with the long term beneficiaries and therefore the PA shall be computed based on the installed capacity as stipulated in the formula and the beneficiaries are required to make the payment of capacity charges in terms of their allocation of share in the installed capacity of such ISGS in percentage terms.

(x) DVC has computed the PAFY based on the entire installed capacity and thereby incorporating the unallocated capacity in the denominator of the formula specified in Regulation 21(3) which worked out to a lower PA than availed by DVC since COD. Such computation of PA by DVC is erroneous as it has considered the untied capacity in the denominator which is outside the scope of Regulations and Act and would also result in under recovery of AFC from the beneficiaries to the extent of their respective contracted capacities.

(xi) Since PA has not been certified by ERLDC, DVC has declined to release arrear payment of Rs 157 crore (upto November 2015) for the AFC claimed by the Petitioner through supplementary invoices based on the tariff order dated 19.11.2014.

16. Accordingly, the Petitioner has sought clarification and has submitted that the present case is a fit case for exercise of power by the Commission vested under Regulation 44 (power to relax) of the 2009 Tariff Regulations and Regulation 55 (power to remove difficulty) of the 2014 Tariff Regulations to approve the methodology adopted by the Petitioner to compute PAFM/ PAFY based on capacity declarations made to the beneficiaries out of the respective contracted capacities from 2011-12 till date. It has also prayed for a direction upon DVC to settle the withheld arrear payment till date with the Petitioner in terms thereof.

Analysis and Decision

17. We have examined the submissions of parties and documents available on record. The Petitioner is an Independent Power Producers (IPP) and has executed PPAs with long term beneficiaries on the basis of contracted capacity i.e. on megawatt basis unlike in Central



Generating Stations (CGS) / ISGS wherein contracted capacity with the beneficiaries is allocated on percentage basis. Out of the total installed capacity of 1050 MW of the project of the Petitioner, 300 MW remained untied till 31.3.2013. Thereafter, 150 MW capacity was contracted with WBSIEDCL and the remaining 150 MW remained untied for the period from 1.4.2013 to 27.12.2015. It is observed that the Petitioner has considered the contracted capacity instead of the installed capacity for computation of the monthly/ annual PA of the project for each of the long term beneficiaries. This has been objected to by the respondent, DVC on the ground that the computation of PA ought to be done as per formula specified under Regulation 21(3) of the 2009 Tariff Regulations considering the installed capacity of the generating station including the untied capacity and has accordingly withheld payment of arrear amounts. Thus, the difference in AFC computed by DVC and the Petitioner is on account of treatment of the untied capacity in the computation of PA. While the Petitioner has sought clarification on the computation of PA, it has also prayed for a direction upon the respondents ERPC and ERLDC to certify monthly / annual Plant Availability and for scheduling of power from the project respectively. Regulation 21 of the 2009 Tariff Regulations provides as under:

"21. Computation and Payment of Capacity Charge and Energy Charge for Thermal Generating Stations:

(1) The fixed cost of a thermal generating station shall be computed on annual basis, based on norms specified under these regulations, and recovered on monthly basis under capacity charge. The total capacity charge payable for a generating station shall be shared by its beneficiaries as per their respective percentage share/allocation in the capacity of the generating station.

(3) The PAFM and PAFY shall be computed in accordance with the following formula:

$$PAFM \text{ or } PAFY = \frac{10000 \times I \times DO}{N \times IC \times (100 - AUX_j)} \%$$

$$1 = 1$$

Where,

AUX = Normative auxiliary energy consumption in percentage.

DO = Average declared capacity (in ex-bus MW), subject to clause (4) below, for the ith day of the period i.e. the month or the year as the case may be, as certified by the concerned load dispatch centre after the day is over.

IC = Installed Capacity (in MW) of the generating station

N = Number of days during the period i.e. the month or the year as the case may be.



Note: DCI and IC shall exclude the capacity of generating units not declared under commercial operation. In case of a change in IC during the concerned period, its average value shall be taken'

18. Clause 1 of Regulation 21 is applicable for Central Generating Station and Inter State Generating Stations wherein share in the entire capacity is allocated on percentage basis by the MOP, GOI. Unlike in the case of CGS / ISGS, in respect of IPPs like the Petitioner, allocation is not done by MOP but their capacity is tied up on megawatt basis with different beneficiaries and a portion of capacity may remain untied even for a long period of time. It is however noticed that in respect of Central Generating Stations like Korba stage-III and Farakka stage-III each having 500 MW capacity, 75 MW remained unallocated and the Commission had determined tariff of these stations in terms of the provisions of the 2009 Tariff Regulations. It is in this background that the Commission while specifying the terms and conditions for determination of tariff for the period 2014-19 had incorporated Clause 5 under Regulation 6, which provides as under:

"6. Tariff determination

(5) Where only a part of the generation capacity of a generating station is tied up for supplying power to the beneficiaries through long term power purchase agreement and the balance part of the generation capacity have not been tied up for supplying power to the beneficiaries, the tariff of the generating station shall be determined with reference to the capital cost of the entire project, but the tariff so determined shall be applicable corresponding to the capacity contracted for supply to the beneficiaries"

19. In the backdrop of the above, a methodology for computation of capacity charges in respect of the generating stations of IPPs like the Petitioner whose entire capacity has not been contracted is required to be addressed. It is noticed that in a similar case (Petition No. 192/MP/2016) filed by Jaiprakash Power Limited (JPVL) it has been prayed for, amongst others, for a direction on WRLDC/ WRPC to certify the availability / PAFM of its 1320 MW (2 x 660 MW) coal based power project in the State of Madhya Pradesh. In the said case, WRLDC had not considered the certification of DC and PAF on the ground that JPVL had contracted part capacity of the generating station and that the provisions of the Regulations and IEGC do not permit the same. Subsequently, after deliberations and based on the advice of the Commission, WRLDC vide



affidavit dated 15.3.2017 has suggested a methodology for prospective certification of DC and computation of PAF for IPPs who are ISGS and whose capacity has not been fully contracted. According to this, the station PAF determined by respective RPCs/ denominator of the PAF calculation may be the “contracted capacity” instead of “installed capacity”. In terms of this methodology, a format for data submission by IPPs has also been specified by WRLDC. It is further observed that the Commission after hearing the parties in Petition No. 192/MP/2016 on 18.5.2017 had directed WRLDC to put in place the methodology proposed by it to facilitate certification of DC of the generating station to RPCs with effect from 1.6.2017. As the prayer of the Petitioner and the issues raised in the instant petition are similar to the case of JPVL in Petition no. 192/MP/2016, we are of the considered view that the interim direction made in the case of JPVL as above shall be made applicable in the instant case also.

20. The Petitioner shall declare the capability to deliver ex-bus capacity tied-up in different PPA corresponding to availability of fuel under FSA corresponding to such contracted capacities. Accordingly, the generator should furnish the fuel availability including stock for capacity declaration in various PPAs.

21. The Petitioner shall furnish, a week before the start of month to ERLDC, final consent of the coal supplier for quantum of coal to be supplied during month along with the details of allotment of daily rakes, specific indent and offer made to railway for supply of coal.

22. Accordingly, as an interim measure, the Petitioner is directed to furnish the data as per format (as specified by WRLDC) enclosed as **Annexure-I** to this order. ERLDC is directed to schedule power from the generating station and for certification of DC and Plant Availability prospectively from 1.8.2017. Any final decision taken in Petition No. 192/MP/2016 with regard to certification of DC will also be applicable in case of the Petitioner. As regards certification of declaration and Plant Availability of the generating station of the Petitioner for the prior period



(2011-14 till 1.8.2017) and for payment of arrear amounts by the respondents to the Petitioner, the matter is under consideration of the Commission in Petition No. 192/MP/2016 and the decision taken in the said petition shall be made applicable in case of the Petitioner.

23. Petition No. 28/MP/2016 is disposed of in terms of above.

Sd/-
(Dr. M.K.Iyer)
Member

Sd/-
(A.S Bakshi)
Member

Sd/-
(A.K.Singhal)
Member

Sd/-
(Gireesh B. Pradhan)
Chairperson



FORMAT FOR DATA SUBMISSION BY IPPs

Station Name:

Installed capacity (MW)

Time Block	Untied capacity (MW)	PPA-1 DC	PPA-1 Agreed schedule	PPA-2 DC	PPA-2 Agreed schedule	PPA-n DC	PPA-n Agreed schedule	PPA-(n+1) DC	PPA-(n+1) Agreed schedule
1									
2									
3									
4									
5									
6									
7									
8									
Up to block no. 96									

