

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION

In the matter of :-

M/S Gowthami Hydro Electric Company (P) Ltd.
301, Archana Arcade, St John's Road,
Secunderabad (A.P.) 500025

...Petitioner

V/s

- (1) The Himachal Pradesh State Electricity Board Ltd,
Vidyut Bhawan, Shimla-171004
- (2) The Chief Engineer(Commercial),
HPSEB Ltd; Vidyut Bhawan, Shimla-171004
- (3) The Chief Engineer(PSP),
HPSEB Ltd; Vidyut Bhawan, Shimla-171004
- (4) The Chief Engineer(Generation),
HPSEB Ltd; Sundernagar (H.P)

... Respondents

Petition Nos. 28/2010
(Decided on 24-01-2011)

CORAM
YOGESH KHANNA
CHAIRMAN

Counsels: -

for petitioners:

Sh.Satyan Vaidya,
Advocate,

for respondents

Sh. Bimal Gupta,
Advocate and
Sh. Ramesh Chauhan
(authorized representative)

Order

(Last heard on 20.11.2010 and Order reserved)

M/S Gowthami Hydro Electric Company (P) Ltd. 301, Archana Arcade, St John's Road, Secunderabad (A.P.) 500025, a company incorporated under the Companies Act, 1956, (hereinafter referred as "the petitioner") through Sh. K.N.S. Prasad its Director, has moved this petition under section 86 (1) (f) of the Electricity Act, 2003 to adjudicate upon the dispute between the petitioner and the Himachal Pradesh State Electricity Board Ltd (hereinafter referred as "the Board") regarding the payment of

₹ 57,53,750/- alongwith interest @ 18% thereon, for Saleable Deemed Generation for the period 14.7.2009 to 19.8.2009 for the generation loss of 2301500 kwh from its Andhra Stage-II Hydro Electric Project located in District Shimla with installed capacity of 5 MW (hereinafter referred as “the project”). The said project was commissioned in June, 2009 and has become commercially operative w.e.f. 12.6.2009. The petitioner submits that per provisions of clause 13.1 of the Implementation Agreement entered into, between the petitioner and the Government of Himachal Pradesh, on 20.7.2004, a Power Purchase Agreement (in brevity the PPA) has been executed on 30.3.2005, between the petitioner and the Board, for facilitating the sale of electricity generated by the project to the Board, @ ₹ 2.50 per kwh. The power from the project is being sold to the Board with effect from 12.6.2009, in accordance with the terms and conditions of the PPA. A Supplementary Agreement dated 16.11.2007 is also stated to have been executed with the Board, which incorporates the details of the Interconnection Facilities and the charges and the terms and conditions for execution, operation and maintenance of the said facilities.

2. In the petition the petitioner asserts -

(a) that as per Article 9.2 (e) of the PPA, the Board was under obligation to provide suitable transmission arrangements for the evacuation of power generated at the project beyond the interconnection point, at 66/22 kV Sub-station of the Board at Andhra Power House, Chirgaon, District Shimla. The petitioner as such was completely dependent upon the respondents for the evacuation of energy beyond the aforesaid interconnection point but due to lower CT ratio on the outgoing 66 kV Feeder at the Andhra Power House, the Board failed to fulfill the contractual obligations and has thus made itself liable for payment for the Saleable Deemed Generation at Andhra Stage-II Small Hydro Electric Project under Article 6.4 of the Power Purchase Agreement. These facts were repeatedly pointed out to the Board on 27.6.2009, 1.7.2009 and 14.7.2009;

(b) that a meeting regarding evacuation of power from Andhra Stage-I Sub-Station was held between representatives of the Board and the petitioner company on 17.7.2009 and to avoid generation loss, the parties decided to take certain measures for replacement of existing CTs of ratio 150/1-1-1 and cost

sharing for the new CTs of ratio 400-200/1-1-1 and payment on account of deemed generation. In the said meeting the Board asserted that cost and ETC of new CTs will be to the company's account only and they will also not pay for the deemed generation;

(c) that in terms of the provisions of clause 2.2.45 of the PPA, the petitioner is liable for payment of cost of installation and maintenance of the interconnection facilities, which include switching equipment, protection, control and metering devices etc. for the incoming bay(s) for the project lines(s). Similar provision also exists under clause 2.2.15 of the agreement for execution, operation and maintenance of the interconnection facilities and the scope of the work, as detailed in Annexure-III of the said agreement, is also limited to installation of equipment of the 66 kV bay at the Andhra Power House. Thus the cost of new CTs and its ETC on the out-going 66 kV feeder at the Andhra Power House is to be borne by the Board;

(d) that the CTs on the outgoing bay at Andhra Stage-I Sub-Station were ultimately replaced by the Board on 19.8.2009 and the power thereafter from Andhra State-II SHEP is being fully evacuated. However, on account of failure to provide suitable transmission arrangements beyond the interconnection point in terms of Article 9.2 (e) of the PPA, in the intervening period from 14.7.2009 to 19.8.2009, the Board has become liable for payment of ₹ 57,53,750/- for loss of generation of 2301500 (kwh) to the petitioner company on account of deemed generation under provisions of Article 6.4 of the PPA;

(e) that while executing the PPA, both the parties have taken into consideration all the material facts, keeping in view such eventualities, Article-13 "Resolution of Disputes" of the PPA refers to good faith negotiations in the event of any dispute relating to the provisions in the PPA, in respect of which no procedure for the resolution of dispute is provided in the agreement. Since there is dispute arising out of or relating to the PPA more specifically there is violation of Article 9.2(e), the petitioner before resorting to this procedure has served, through registered A.D, on 24.9.2009 a notice of 20 working days on the respondent Board in compliance to the said Article 13 of the PPA. Since the respondents did not respond, the provisions of Article 13.1 (b) and (c) do need not to be complied with.

(f) that the respondents did not turn up for negotiations in terms of Clause 13.1 of the PPA, therefore, the present petition for payment for Saleable Deemed Generation to the tune of ₹ 57,53,750/- with interest @ 18% per annum has been filed against the respondents under Clause 13.2 of the PPA;

(g) that clause 13.2 of the PPA provides that all disputes arising out or relating to the PPA, as are not resolved during the period as per Clause 13.1, shall be adjudicated upon or referred to arbitration by the Commission as per section 86(1) (f) of the Electricity Act, 2003. The provisions of section 158 of the Act, read with regulation 53 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, are applicable in the present proceedings. The petitioner has, therefore, prayed for adjudication upon its claim for Saleable Deemed Generation amounting to Rs ₹ 57,53,750/-.

3. In response to this petition the respondent No.4 i.e. Superintending Engineer (E), Generation Circle, HPSEB Ltd, Shaktinagar, Nahan submits :-

- (a) that the petitioner has no cause of action to file this petition and the petition is not maintainable in the present form, as no resolution of M/S Gowthami Hydro Electric Company Ltd authorizing Sh. K.N.S Prasad to file this petition has been annexed to this petition;
- (b) that the reference to various annexures to the petition has not been correctly made;
- (c) that whatever generation of Andhra Stage-II has been received during the period from 14.7.2009 to 19.8.2009 was transmitted in the grid system without any restrictions. Clause 9.2 (e) of PPA only provides for suitable transmission arrangements beyond interconnection point i.e. 66/22 Switchyard Andhra Power House Chirgaon. The existing CTs provided on the 66 kV Nogli Feeder were sufficient and could have transmitted 18.862 MW (with 10% overloading) of load or more keeping in view the ambient temperature in consideration at any time. In addition, there were also 3 Nos. 22 kV Feeders of sufficient capacity to transmit the additional load at any time;
- (d) that the Board is not liable to make any kind of compensation on account of replacement cost of CTs and generation loss on account of shutdown/otherwise;

- (e) that the interpretation of clauses 2.2.45 of the PPA and 2.2.15 of the Agreement for execution, operation and maintenance, as given by the petitioner, is not correct and complete. According to Clause 2.2.45 of the PPA “interconnection facilities” means all the facilities which shall include without limitation switching equipments, protection control and metering devices etc. for the incoming bays for the project lines to be installed and maintained by the Board at 66/22 kV HPSEBLtd; Sub-station at Andhra Power House, Chirgaon, District Shimla, at the cost of the company to enable evacuation of electrical output from the project in accordance with the agreement. It is further submitted that in the clause 2.2.15 of the agreement for execution, operation and maintenance “Interconnection facilities” means all the facilities to be installed and maintained by the Board at the Sub-station at the cost of the company to enable evacuation of electrical output from the project. This shall include without limitation, switching equipments, protection, control and metering devices etc. for the incoming bays for the project lines;
- (f) that the claim for deemed generation under clause 6.4 of the PPA is not based on real facts as it has not been complianced in any way. No instruction was conveyed to the petitioner to restrict the generation w.e.f. 14.7.2009 to 19.8.2009. Capacity of various equipments beyond interconnection point was sufficient for transmission purpose, therefore, the Board is not liable to pay any compensation. Thus the claim of ₹ 57,33,750/- with interest @ 18% p.a. is not maintainable;
- (g) that the Board did not reply to the notice served under Article 13.1(a) of the PPA, because during the meeting held on 17.7.2009 it had already been clarified to the petitioner regarding the disputed points such as the cost of replacement of CTs and deemed generation thereof;
- (h) that the petitioner is totally based upon false facts and deserves to be dismissed in the interest of justice.
4. The petitioner, through a rejoinder to the reply filed by respondent No.4, has stated -
- (i) that through an oversight the authorization letter could not be annexed with the petition and that defect has now been rectified by furnishing

the copy of resolution of the petitioner company, authorizing Sh. K.N Parsad, its Director, to act as its authorized representative;

- (ii) that the cause of action arose when respondent No.4, despite under obligation as per the Clause 9.2.(e) of the PPA, failed to provide suitable transmission arrangements beyond interconnection point at 66/22 kV Sub-station of the Board at Andhra Power House, Chirgaon, resulting in loss of generation to the petitioner w.e.f. 14.7.2009 to 19.8.2009;
- (iii) that respondent No.4 has grossly misunderstood the “interconnection point” to be beyond the 66/22kV Switchyard at Andhra Power House, Chirgaon, whereas the same as per Article 2.2.46 of the PPA means the physical touch point where the project line(s) and the allied equipment forming a part of the interconnection facilities are connected to the 66 kV HPSEB Sub-station at Andhra Power House, Chirgaon, District Shimla. A copy of 66 kV Switchyard layout showing the physical touch point of Andhra Stage-II Project lines with the 66 kV busbars on the 66/22 kV HPSEB Ltd; Sub-station has been attached as R-1 to the rejoinder;
- (iv) that the scope of work as per Interconnection Agreement is also limited upto the physical touch point of Andhra Stage-II Project lines with the 66 kV busbars on the 66/22 kV HPSEB Ltd;Sub-station;
- (v) that the respondent’s version that existing CTs provided on the 66 kV Nogli Feeder were sufficient and could have transmitted 18.862 MW (with 10% overloading) of load or more keeping in view the ambient temperature in consideration at any time and there being also 3 Nos. 22 kV feeders of sufficient capacity to transmit any additional load at any time and the submissions now made is only an afterthought as would be evident from the following facts:-
 - (a) that the Board vide its letter dated 14.7.2009 clarified that the CT ratio of the outgoing Samoli line at Andhra Power Sub-station is 150/1 Amps and no extra load can be put on the existing CTs as the over current tripping has been adjusted at 150 Amps i.e. the full load current of Andhra Power House (16.95 MW) and Gumma Power House (3 MW). It has been

further stated in the said letter that the extra load of approximately 45 Amps is required due to operation of Andhra-II (5 MW) which at present is not possible on the existing CT and requested the petitioner company to initiate/replace the existing CTs of 150/1 Amps with atleast 300-150/1 Amps or 400-200/1 Amps, so that all three power houses, could run at full load during the peak season;

- (b) the perusal of the minutes of the meeting held on 17.7.2009, between the Board and the petitioner company, makes it amply clear that the Board was all along aware of the fact that the CT ratio of 150/1-1-1 installed on the outgoing Andhra Samoli 66 kV feeder was not adequate to transmit the total power of Andhra Stage-I (16.95 MW), Gumma (3 MW) and Andhra Stage-II (5 MW) power projects. Under item 3 of the aforesaid minutes of the meeting the Board also clarified that it will not reduce the load of their Andhra Stage-I and Gumma HEPs and any regulation of load will have to be done by the petitioner at its end to keep the load current within the permissible limit of 150 Amps till the time existing CTs are replaced;
- (vi) that the Board under Clause 9.2(e) of the PPA is contractually bound to bear the cost of augmentation of the transmission system beyond the interconnection point and in the event of failure to do so, the petitioner is entitled for the benefit of deemed generation charges under Clause 6.4 of the PPA. The controversy has arisen as the Board has failed to appreciate that as per Clause 2.2.46 of the PPA, interconnection point means the physical touch point where the project line(s) and the allied equipment forming a part of the interconnection facilities are connected to the 66 kV Sub-station of the Board at Andhra Power House, Chirgaon, District, Shimla.
- (vii) that the Commission under para 5.32 (sic 5.31) of its Order dated 18.12.2007 on “Small Hydro Power Projects Tariff and other Issues” has also amply clarified that the State Transmission Utility or the Distribution Licensee shall bear the cost for

augmentation/establishment of network beyond the interconnection point.

- (viii) that the submissions made by respondent No.4 (except relating to replacement of CTs) being wrong and incorrect are denied. The Board's admission of the fact that CTs on the outgoing bay at Andhra State-I Sub-station were ultimately replaced by the Board on 19.8.2009 in pursuance of the Board's undertaking under Clause 9.2 (e) of the PPA in a way tantamount to admitting that the ratio of the existing CTs was not adequate to take the full load of Andhra Stage-I (16.95 MW), Gumma (3 MW) and Andhra Stage-II (5 MW) power projects and also of the liability for cost of replacement to the Board's account;
- (ix) that if the capacity of the various equipments beyond the interconnection point was sufficient for transmission purpose, then there was no need for the Board to replace the CTs and that the submission being now made by the Board is misconceived and contrary to record and clearly is an afterthought to absolve themselves of the deemed energy charges;
- (x) that the respondent No.4 has averred that the CTs were replaced on 19.8.2009 and accordingly no instruction was conveyed to the petitioner w.e.f. 14.7.2009 to 19.8.2009 to restrict the generation. It has been submitted that the generation was required to be restricted before replacement of the CTs as after their replacement on 19.8.2009 the power from Andhra Stage-II is being fully evacuated. The petitioner vide letters dated 27.6.2009 and 1.7.2009 informed the Board of the urgency for replacement of the existing CTs with ratio 150/1 Amps on the outgoing 66 kV bay for the feeder (towards Samoli Sub-station) at Andhra Stage-I Power House as these were inadequate to carry the full load current of the three power houses namely Andhra Stage-I, Gumma and Andhra Stage-II HEPs. It was also categorically stated by the petitioner in letter dated 1.7.2009 that after the onset of the monsoon and during the course of the month of July, 2009, if all three power houses go on to a full load, it is expected that the breaker would trip on overload and the petitioner may be forced to back out from generation. It was further mentioned in the said letter that in such

an event the petitioner would be eligible for deemed generation as per clause 6.4 of the Power Purchase Agreement. The Board responded in the matter vide its letter dated 14.7.09 clarifying that the C.T ratio on outgoing 66 kV Samoli line at Andhra Power sub-station is 150/1 Amp corresponding to full load current of Andhra Power House (16.95 MW) and Gumma Power House (3 MW) and the over current tripping has already been adjusted at 150 Amps and further no extra load can be put on these CTs and requested the petitioner to replace the same with atleast 300-150/1 or 400-200/1 Amp, so that all the power houses could be run at full load during the peak season. In the meeting held on 17.7.2009 the respondent Board further clarified that it will not reduce the load of their Andhra Stage-I and Gumma HEPs till the existing CTs are replaced. Accordingly Andhra Stage-II HEP had to be operated on part load varying from 2 MW to 3 MW during the period w.e.f. 14.7.2009 to 19.8.2009. In this context, copy of joint meter reading for the month of June and July 2009 has been furnished.

5. The respondent No.4 by filing the surjoinder counter averted the issues raised by the petitioner in its rejoinder stating:-

- (a) that the petitioner's contention that scope of work is limited to the physical touch point is not correct as the clause 3.1 of "Agreement for Execution, Operation and Maintenance of Facilities" clearly provides that interconnection facilities comprise of components in the sub-station of Board which connect the station to the Board's Grid system and any other facility required to integrate the station with the Board Grid system to facilitate evacuation of power from the project. The Board shall accordingly at the cost of Company plan, design, execute and commission the works relating to interconnection facilities with a view to provide protection to the grid system and safety to the Board's personnel; ensure compatibility with the proposed system at the station; maintain high standards of reliability, security and quality of electric supply to the consumers of the Board; meet requirements for operating, dispatching and metering and avoid adverse impact on grid system/station by providing necessary isolation arrangement and that as per the Agreement, signed between the Board and the petitioner

- (Annexure-III in the footnote 2), it has been clearly specified that IPP shall bear the proportionate cost of creation/upgradation/ strengthening of the Evacuation System beyond interconnection point as per Master Plan in addition to aforesaid cost as and when demanded by the Board;
- (b) that as per the contents of letter of Resident Engineer Andhra Power House dated 14.7.09 and as per the Minutes of the Meeting (MOM) dated 17.7.09 it was desired to provide the required capacity of CTs at the cost of IPP and if the petitioner would have taken timely action during Jan 2009 on the request of R.E. Andhra Power House, the situation during the period 14.7.2009 to 19.8.2009 should not have arisen;
- (c) that the upgradation of the capacity of CTs as per the letter dated 14.7.09 was discussed in pretext if all three power houses i.e. APH-1 (HPSEB), APH-II (IPP) and Gumma Power House, were running in full load. But Gumma P/H 3 MW was under complete break down due to leakage in the power channel w.e.f. 22.6.09 and which could not be revived and was still not operational. Moreover the letter dated 14.7.09 was written keeping in view the reminder to the verbal instructions given to M/S Gowthami during Jan 2009;
- (d) that the said minutes of meeting of 17.7.2009 are indicative of the fact that although it was made clear that load of Andhra Stage-1 and Gumma Power Houses will not be reduced and any regulation of load shall have to be done by the petitioner at its end to keep the load current within the permissible limits, but the Gumma Power House was actually under complete break down and APH-1 did not achieve full capacity of 16.95 MW due to low water discharge availability between period 14.7.09 to 19.8.09. It was only on 29.7.09 that generation to the extent of 2,94,000 units i.e 12.2 MW could be achieved from APH Stage-I, still leaving a sufficient scope for evacuation of full load transmission of APH-II (IPP 5 MW). It has been submitted that the capacity of Andhra Sub-station at that time was 22.34 MW and as such even if both the Power Houses i.e APH-I (16.95 MW) and APH-II (5 MW) were to run on full load, the total power could have been easily transmitted through the network at Andhra Sub-station. The question

of upgradation of CTs 150/1 Amp on 66 kV Samoli (Nogli) feeder was insisted to the petitioner, just keeping in view the odd situation which could otherwise arise in case of Gumma power house is operational and all the three power houses run on full load and also there is breakdown of 22 kV system.

- (e) that the petitioner has not been able to appreciate the intention behind provisions of Clause 9.2 (e) of the PPA, the cause behind insisting by R.E. APH vide his letter dated 14.7.09 and of the Minutes of the Meeting (MOM) dated 17.7.09, besides over and above the contents of Annexure-III under footnote No.2 specified in the “Agreement for Execution, Operation and Maintenance of Interconnection Facilities”, where in it is an obligation on the part of petitioner to bear the proportionate cost of creation/upgradation/strengthening of evacuation system beyond interconnection point as per Master Plan in addition to aforesaid cost as and when demanded by the Board.
- (f) that the Board has asked only for augmentation cost of CTs provided on Andhra Samoli (Nogli) feeder and has never asked to bear the cost of augmentation of 66 kV line between Andhra and Samoli or the Sub-station at Samoli which are beyond interconnection point. It has been further submitted that the PPA and the Agreement for execution, operation and maintenance of interconnection facilities have been mutually agreed and signed between both the parties i.e. M/s Gowthami and the Board much before the order dated 18.12.2007 of the Commission;
- (g) that even after augmentation of CTs, the Board’s APH Stage-I and APH Stage-II (IPP) have run their power houses as per the availability of water discharge. The generation record if compared to the disputed period from 14.7.09 to 19.8.09 is proportionate to the available discharge for APH Stage-I (HPSEB Ltd) and APH Stage-II (IPP) which clearly indicates that both power houses have run under capacity as per the availability of discharge and APH Stage-II could never run at its full capacity due to low water discharge. The replacement of CTs on 19.8.09 by the Board was necessary as already mentioned so as to

evacuate the full capacity of power by APH-1 (HPSEB Ltd), Gumma Power House and APH Stage-II in case of failure of 22 kV system.

- (h) that the CTs were replaced by the Board on 19.8.09 as these were necessary to give path to entire generation of APH-I, Gumma and APH-II (IPP) through 66 kV system by way of 66 kV Andhra-Samoli-Nogli line in case of interruption on 22 kV system of Andhra Power House Sub-station;
- (i) that since the petitioner was not serious, despite the issue of letter dated 14.7.09 and the MOM dated 17.7.09, the respondent Board has just discharged its obligation in view of Article 9.2 (e) of PPA even though the petitioner was liable for providing these new CTs as per the “Agreement for Execution, Operation and Maintenance of interconnection facilities” as per Annexure-III footnote-2 as already requested by the RE APH-I during Jan., 2009 as reminded vide letter dated 14.7.09 and MOM dated 17.7.09;
- (j) that the daily plant load factor and average generation in MW of Andhra -1 and Andhra-II HEP w.e.f. 1.7.2009 to 30.9.2009 indicates that the Andhra-I HEP and Andhra-II HEP have never generated full load capacity during the period and there was sufficient scope of evacuation of power of Andhra-II HEP. The Andhra-II HEP has not generated its full load capacity even after 19.8.2009 after replacement of CTs;
- (k) that both the power houses i.e APH-I (HPSEB Ltd) and APH-II (IPP) are on the same catchment except for APH-I, two tributaries are also adding to its water discharge, and if the plant load factor for APH-I and APH-II is compared it is concluded that both are in the proportionate ratio even before the disputed period i.e. before 14.7.09, thereafter 14.7.09 to 19.8.09 and even after 19.8.09 on which CTs were augmented from 150/1 to 400/200/1 Amps (Gumma power house of 3 MW is under breakdown due to the problem of leakage in power channel even up-till now);
- (l) that no where alarming figures appear which could substantiate the claim of petitioner company that it has curtailed/restricted/ regulated

its generation from 2 MW to 3 MW between the period 14.7.09 to 19.8.09;

- (m) that in view of above, no deemed generation to the petitioner is liable to be paid and the petition is not based as per the guidelines under clause No.6.4 of the PPA;
- (n) that the action of the Board as per MOM dated 17.7.09 cannot be termed as propriety because the MOM has been signed by both the parties with independent consent.

6. For the better understanding of the matter, the petitioner was asked to supply the following additional information:-

- (a) the copies of log-sheets maintained by the petitioner at his Power House interalia showing half hourly machine-wise generation at his powerhouse and details of other data/events affecting the generation as well details of water spillage, for the period upto 30.9.2009 starting from the date of commissioning.
- (b) the statements in respect of water spillage and loss of generation, if any, at the petitioner's Plant, prepared and submitted by the petitioner for the months of July and August, 2009 in terms of clause 7.16 of the PPA;
- (c) the copies of instructions, if any, received by the petitioner from the competent authority of the Board for restricting the generation at the petitioner's Plant during different time blocks in respect of the period under consideration (14.7.2009 to 19.8.2009);
- (d) the reasons for extremely low/nil generation at Andhra-II Power House on certain days during the period under consideration (14.7.2009 to 19.8.2009);
- (e) No. of machine(s) which were in operation at Andhra-II HEP during the period under consideration, clearly indicating whether any machine was under shutdown at any time during the period under consideration;
- (f) Did the petitioner try to ascertain the reason(s) for non evacuation of power at least to the extent of the capacity of the CTs installed at Andhra-I HEP, which has been stated to be 18.62 MW, particularly

keeping in view of the report that at least 16.52 MW power was evacuated on 14.7.2009, if so, with what results.

- (g) the detailed computation of saleable deemed generation as per provisions of clauses 6.4 and 7.16 of the PPA.
- (h) any other information relevant to his claim.

7. In compliance, the petitioner submitted the data/information, which is as under:-

- (a) Machine wise generation and other data/events affecting generation in the shape of copies of log sheet maintained at APH-II Power House, summarized data (with generation and running/non-running hours/shut downs and reasons for shutdowns); the daily/monthly rainfall data for July 2009 and August 2009 for Rohru and Chirgaon gauging stations and hydrology chapter from Andhra Stage-II DPR and summary of shutdown details given in Annexures S-1 to S-8;
- (b) as regards statements showing details of water spillage and loss of generation, if any, prepared under clause 7.16 of PPA, the petitioner states that due to conflicting stand of the parties in the matter of entitlement of the petitioner company to the benefit of deemed generation, no separate statements in this regard were prepared by them; regarding back down instructions, the petitioner refers to the telephonic message received by it on 14.7.2009, as recorded in logbook of APH-II which reads as under:-

“1700 hours Message to Chirgaon Power House increase the load from Andhra Stage II from 3.8.MW to 4.6 MW.

At 2015 hours, Message to Power house increase the load at Chirgaon 4.6 MW to 5.3 MW.

At 2200 hours we want to increase our load up to 6 MW but Andhra Power House not allowed us to increase the load.”

The petitioner states that subsequently instructions to back down were received by it as per R.E. Andhra Power House-I letter dated 14.7.2009 and MOM dated 17.7.09. The petitioner further refers to the JMR dated 01-08-2009 (Annexure S-9).The petitioner also pleads that, as the Clause 6.4 of PPA, the saleable deemed generation is payable at a fixed rate of ₹ 2.50 per unit and the instructions for restricting the

- generation during different time blocks are necessary only in the event of the Board adopting TOD/frequency linked accounting for which a supplementary agreement is to be signed as per Clause 8.9 of PPA;
- (d)&(e) the reasons for extremely low/unit generation and details of machine outages are given as per Annexure S-3;
- (f) with regard to the pointed question as to whether the petitioner tried to ascertain the reasons for non evacuation of power at least to the full available capacity stated to be 18.62 MW, particularly when at least 16.52 MW was evacuated on 14.7.2009, the petitioner submits that subsequent to the telephonic message on 14.7.09, it received letter dated 14.7.2009 that CT ratio of outgoing 66 kV feeder at Andhra Power sub-station is 150/1 Amp i.e full load current of Andhra Power House (16.95 MW) and Gumma Power House (3 MW) and with adjustment already made at 150 Amp, no further load can be put on these CTs. Under these circumstances the petitioner had no option but to restrict its generation output to a maximum of 3 MW utilizing the reserved capacity of Gumma (3 MW) as it was under shutdown;
- (g) the computation of saleable deemed generation as per Clause 6.4 and 7.16 of the PPA are given in Annexure S-10.
8. Further to facilitate the proceeding with this case, the petitioner was also requested to furnish the following supplementary information:-
- (a) to furnish the details of the back-down instructions, (in juxtaposition with PPA defined procedure) received from the respondent Board to restrict the generation because of Andhra-II HEP, during the disputed period;
- (b) to explain circumstances under which Unit-II after tripping on 07.08.2009, was not run (except for very small durations) for almost 16 days' period which extended even beyond the replacement of the CTs;
- (c) to explain as to why the statements showing the water spillage and loss of generation were not prepared in accordance with the Clause 7.16 of the PPA;
- (d) to explain the delay in approaching the Commission for the redressal of IPP's grievances .

9. In response to above the petitioner submits -
- (a) that there is no provision relating to backing down instructions in the PPA. The petitioner, however, refers to the remarks given in the JMR for June and July, 2009 (Annexure S-9) which mentions that instructions for backing down received vide RE. APH letter dated 14.7.09 and MOM dated 17.7.09 and that it would be unjust at this stage to link the claim of the petitioner for deemed generation with issuance of back down instructions;
 - (b) that Unit 2 was not under breakdown during the period in question and running of units for very small duration was a choice exercised by the operating staff to keep at least one machine safe from corrosion from excessive silt experienced in the rainy season and to get higher operating efficiency by running one machine to full capacity plus 15% overload capacity and that it will be unjust to presume that Unit 2 was under breakdown or maintenance;
 - (c) that as per the item 6 (f) of Minutes of the Meeting (MOM) dated 17.7.2009 it was agreed that generation loss of IPP on account of regulation of its load will be recorded and signed by the R.E. Andhra and authorized representative of IPP for record purpose and that soon after the incident period, the officers of Andhra Power House collected log-books of the project and made out copies of the same for their record but never signed any statement relating to loss of generation. The petitioner submits that statement prepared afterwards on the basis of JMR would in no way harm the administration of justice in present case;
 - (d) that the petitioner, despite remaining occupied in emergent repair/ maintenance of works, served a notice on the Board on 24.9.2009 under Article 13 of the PPA to attempt in good faith negotiations to resolve the dispute. The petitioner was not informed of the mutually agreed venue, date and time for the said negotiations. The petitioner followed up the matter regularly with the officers of the Board and was advised to wait as the comments of the field officers were awaited. The petitioner, after awaiting the response of the Board, ultimately filed the present petition during March, 2010.

10. The petitioner further urges -
- (i) that it was the responsibility of the Board to replace the CTs and the provisions of the footnote under Annexure III to the agreement dated 16.11.2007 are contradictory to the Clause 2.2.15 thereof and Clause 2.2.45 of the PPA;
 - (ii) that the Board has not submitted discharge measurement and record of outages of Andhra Stage-I for working out the generation potential of the Andhra river during the disputed period;
 - (iii) that whereas Andhra-I HEP is a peaking station, the Andhra-II HEP is a run of the river Station; and no reliance can be placed on the data submitted by the Board in support of their version that the PLF of two Power Houses are proportionate to each other. The petitioner also submits that PLF of Andhra-II HEP on 13.7.2009 & 14.7.2009 was 72.21% and 97.38% as compared to 48.23% and 68.14% for Andhra-I HEP for the same dates.
 - (iv) that generation was restricted at Andhra-II HEP in view of letter dated 14.7.2009 and the Minutes of the Meeting of 17.7.2009 and that the Board was aware about the outage of Gumma HEP(3 MW) even at the time of issuance of letter of 14.7.2009 and the minutes of the meeting of 17.7.2009.
11. The respondent controverts the petitioner's arguments by saying:-
- (i) that since the claim before the Commission is for the saleable deemed generation only, the petitioner is estopped from raising the controversy of responsibility/ obligation to replace the CTs and cost of replacement including cost of CTs;
 - (ii) that even though the submissions made by the petitioner in this regard are not required to be looked into in the absence of prayer, the respondents reassert that it was the duty of IPP to bear the cost of replacement of CTs and that the respondent replaced the CTs when nothing was heard from the IPP;
 - (iii) that the generation of petitioner's project was evacuated smoothly from the date of commercial operation (CoD) and there was no grievance of the petitioner qua the capacity of CTs installed at the Sub-station;

- (iv) that it is the petitioner, who is claiming admissibility of the claim of deemed generation, but has not placed on record the discharge measurements during the disputed periods for which it is claiming benefit of deemed generation. In fact it was for the petitioner to place on record the data pertaining to discharge measurements (i.e. in short hydrology) during the disputed period as the onus to prove the claim was on the petitioner and not on the replying respondents. The petitioner has not placed any such proof to show that as to how the petitioner is entitled to deemed generation;
- (v) that the APH-I HEP being a peaking station shall generate more power (i.e. at a higher PLF) as compared to APH-II HEP and since APH-I HEP could not achieve maximum generation, the APH-II HEP could also not have not achieved full generation;
- (vi) that at no point of time, the petitioner was called upon to restrict the load from 2 to 3 MW and the petitioner is misinterpreting the letter dated 14.7.2009 and MOM of 17.7.2009 for its own benefit without going through the conclusions of MOM. The petitioner cannot take the benefit of the points just for discussion;
- (vii) that despite the decision taken in the meeting on 17.7.2009 at no time the R.E. Andhra power House-I has in any manner restricted the load of the petitioner from 2 to 3 MW nor the petitioner has placed on record any such instruction issued by the R.E. after 17.7.2009 to the petitioner for restricting its load.

Commission's view

12. The respondents have pleaded that since the petition pertains to the claim for deemed generation, it should not be linked with the issue regarding responsibility of augmentation of CTs. The Commission feels that since the petitioner has claimed that it suffered a loss of generation due to inadequate capacity of the CTs installed on 66 kV outgoing feeder at Andhra-I HEP, the matter shall also have to be addressed in so far as it is relevant to the claim for deemed generation.

13. The respondents have not placed on record any document containing specific demand sent to the petitioner for depositing the cost of the CTs before

the commissioning of the petitioner's plant. The demand was sent on 14.7.2009 only, except for the verbal request made in January 2009. Even if the petitioner would have deposited the cost of CTs within a reasonable period from raising the demand on 14.7.09, the situation would not have changed as the respondents would have taken certain minimum time to provide CTs. The respondents were responsible for providing the evacuation system beyond the interconnection point so as to facilitate smooth evacuation of power from the project. Even if, as per the respondent's version, the cost of the augmentation of CTs was to be recovered from the petitioner, it should have sent a demand to the petitioner well in time i.e. atleast 6 to 12 months before the expected commissioning date of the petitioner's plant. In that eventuality, the dispute, if any, regarding the payment of cost could have been sorted out well in time particularly keeping in view the fact that the cost involved is hardly ₹ 2 lacs. In any case, the responsibility of actually arranging and installing the CTs was that of the respondents only. The respondents were, therefore, responsible to ensure augmentation of the CTs before the commissioning of the petitioner's plant. The petitioner company can however, also not escape responsibility in this regard. It has been admitted by the petitioner that the respondents verbally requested it in January 2009 to deposit the cost of augmentation of the CTs. In case of any disagreement it was the bounden duty of the petitioner to approach the appropriate authorities. Instead of approaching them or even the Commission in this regard at that stage so as to ensure timely augmentation of CTs before the commissioning of the plant, the petitioner took up the matter with the functionaries of the Board on 27.6.2009 only i.e. after commissioning of their plant. The petitioner was also responsible to coordinate with the respondents during construction stage but failed to do so in so far as augmentation of the said CTs is concerned.

14. The Commission now proceeds further without linking it with the issues discussed in preceding paras 12 and 13, to ascertain as to whether the conditions and procedure which were required to be fulfilled/followed for establishing claim for deemed generation as per provisions of PPA were actually fulfilled and if so, to what extent.

15. Clause 6.4 of the PPA spells out the conditionalities for the entitlement of deemed generation to the generator. The loss of generation at the station due to

(i) Board's Grid System factor, and/or

(ii) non-availability and partial availability of evacuation system beyond the interconnection point; and/or

(iii) receipt of backing down instructions from the Control Centre as a result of merit order dispatch;

is to be counted towards deemed generation only if there is water spillage. Moreover, certain exemption limits have also been spelt out. Loss of generation due to interruptions/outages attributed to these factors for a period of less than 20 minutes at a time is not to be counted towards deemed generation. In addition to above, the loss of generation due to interruptions/outages attributed to these factors during the period in which the total power of such outages/interruptions is within the annual limit of 480 hours is also not to be counted towards deemed generation.

16. In order to set up the claim for deemed generation it shall, therefore, be necessary to establish that loss of generation actually occurred due to any of these reasons and the same has resulted to water spillage within the meaning of Clause 2.2.73 of the PPA. Moreover, the loss of generation, even if, attributed to these reasons is not to be counted towards deemed generation so long as the total durations of outages/interruptions does not exceed the exemption limits.

17. The petitioner has claimed that in view of the inadequate capacity of CTs installed on the out going 66 kV feeder at Andhra Power House, it was asked by the respondents to restrict the generation at the plant from 2 MW to 3 MW and as a result of the same, has suffered a loss of generation. The respondents have however, pleaded that during the period under dispute, the capacity of CTs did not pose any constraint and that the petitioner was not asked at any time to restrict the generation at its plant from 2 MW to 3 MW. In view of the conflicting position taken by the two sides, the Commission had made it clear to the petitioner that onus to prove its claim shall rest with it.

18. The Commission asked the petitioner, time and again, to furnish copies of the instructions, if any, received by it from the competent authority of the

respondent Board for restricting the generation at its plant during different time blocks in respect of the period under consideration. The petitioner has however, not been able to supply copies of any such instructions and instead have stated that instructions to back down power were received by it in the form of Board's letter dated 14.7.2009 and the Minutes of the Meeting dated 17.7.2009, which were duly acknowledged by the Board officers in the joint meter reading report dated 1.8.2009. The respondents, on the other hand, have pleaded that at no point of time the petitioner was called upon to restrict its load to 2 MW to 3 MW as alleged by the petitioner and that the petitioner is interpreting the letter dated 14.7.2009 as well as Minutes of the Meeting dated 17.7.2009 for its own benefit without going through the conclusion. It has been stated by the respondents that even though it was concluded in the meeting of 17.7.2009 that RE, Andhra will regulate the load of IPP keeping in view the generation of Andhra-I and Gumma HEPs and load to be transmitted on Andhra Samoli feeder (restricted to 150 Amp), but RE, Andhra Power House-I never restricted the load of petitioner from 2 MW to 3 MW as the need for the same did not arise due to breakdown of Gumma Power House and low generation at APH-1 in view of low river discharges. The petitioner has not placed on record any such instructions received by it from the RE, Andhra Power House-I after 17.7.2009 for restricting the generation. The petitioner has also submitted that there is no provision in PPA relating to back down instructions. This is not a correct statement and the term despatch instruction includes the back down instruction also as per Clause 2.2.27 of the PPA. The Commission otherwise also observes this statement of the petitioner is self contradictory as the petitioner on the one hand is stressing that it restricted the generation at its plant on instructions of the respondents and on the other hand is stressing that there is no provision in the PPA for back down instructions. The petitioner's plea that backing down instructions for different time blocks is relevant only for ToD/frequency linked accounting is also not correct.

19. The Commission also does not find any merit in Petitioner's request that the claim should not be linked with the backdown instructions. The details relating to real time operations have to form a major parameter for deciding the question as to whether any loss of generation actually occurred due to any of the reasons spelt out in clause 6.4 of the PPA.

20. The Commission, after going through the letter dated 14.7.2009 and Minutes of the Meeting dated 17.7.2009, which are being quoted by the Petitioner as instructions to restrict the generation, finds that these two communications could not be construed as instructions to actually restrict the generation in absence of any further instructions from RE, Andhra on real time basis. Since the average generation at Andhra-I (16.95 MW) power house during the period of dispute was much less than its full capacity and also the Gumma power house (3 MW) remained closed throughout the disputed period, the situation obviously did not require any restriction on generation by the petitioner.

21. The Commission has also gone through the copies of the log-sheets supplied by the petitioner and finds that as per the remarks on the log-sheets for 14.7.2009, the petitioner had requested the Andhra power house to increase the load from 4.8 MW to 6 MW, which was not allowed. However, since the project capacity as per the contract is 5 MW, the petitioner could not have claimed it as a matter of right. In this connection it is interesting to note that the petitioner's plant also generated 6200 KW at 8 AM on the same date. As per the remarks on the log-sheet for 15.7.2009, the load was marginally reduced from 5060 kW to 4890 kW after getting message from Chirgaon power house. From the above, it is also clear that the restrictions, if any, imposed by the Andhra power house from time to time were supposed to be recorded on the log-sheets as per the standard practice which was followed on 14.7.2009 and 15.7.2009. However, except for these two remarks on the log-sheets, the Commission could not find any such remarks on log-sheets for restricting the generation to 2 – 3 MW in respect of the disputed period. This clearly indicates that the petitioner has failed to establish that he restricted the generation at its plant from 2 MW to 3 MW during the period under dispute on any instructions from the respondents.

22. The respondents, while contesting the petitioner's plea, have pleaded that capacity of CTs installed at 66 kV Andhra-Samoli feeder, was not a constraint for evacuation of power from APH-II during the period under dispute as APH-I did not generate full capacity due to low water discharge and Gumma HEP was under complete breakdown. The generation data given by the respondent also supports this plea. As such the Commission finds force in respondent's plea. The Commission does not find any reason as to why the

petitioner could not have evacuated full capacity in view of the fact that full capacity was generated at petitioner's plant on 14.7.2009 and 15.7.2009. The petitioner has also not been able to give any plausible reason as to why full capacity could not have been evacuated on other days also in view of above. On a pointed question, the petitioner has stated that it restricted the generation from 2 MW to 3 MW in view of letter dated 14.7.2009 and MOM dated 17.7.2009. As already discussed in the preceding paragraphs these two communications do not contain any instructions to the petitioner to actually restrict the generation unless called upon to do so in real time situation.

23. The petitioner has not provided any evidence to establish its intention to generate power corresponding to full capacity during the period under consideration, particularly after fully knowing that the system actually evacuated full power on 14.7.2009 and 15.7.2009 and should have been capable of doing so on other days also in absence of any change in the situation. The petitioner has simply tried to build up its claim on the basis of possible inadequacy of the capacity under the worst scenario, which did not exist even remotely during the disputed period. Gumma Power House (3 MW) was under total breakdown and generation at APH-1 (16.95 MW) was less than its full capacity. No outage of 22 kV system has been reported. Even though the need for augmentation of the said CTs to meet any worst conditions is not ruled out, but the same is an altogether different aspect and for the purpose of considering the claim for deemed generation, the adequacy of the system has obviously to be examined w.r.to the conditions that actually existed on real time basis during the disputed period and not with reference to the conditions that could only appear only in the worst scenario that never existed. The fact that the said CTs were augmented can not be construed to mean that the capacity of existing CTs posed any constraint in evacuation of full capacity of APH-II during the disputed period. Accordingly the Commission has sufficient reasons to accept the respondent's plea that CTs installed on 66 kV Feeder or any other system beyond the interconnection point did not pose any constraints for evacuation of full capacity of 5 MW and that the then existing system was adequate for evacuation of full capacity from the petitioner's plant during the disputed period. Moreover it is clear that the respondents did not ask the petitioner at any time during the disputed period to

restrict the generation at petitioner's plant from 2 MW to 3 MW. The Commission accordingly concludes that the low generation at the petitioner's plant could have been due to low water discharge or any other reasons not disclosed by the petitioner and not due to full or partial non-availability/ constraints in the system beyond the interconnection point or due to any instruction issued by the respondents for restricting the generation.

24. The respondent Board has stressed that there is a correlation between the generation at Andhra- I HEP and Andhra -II HEP and in support of the same has referred to the daily generation data of the two power houses. The petitioner company, however, has contested that no such correlation exists and has pointed out certain discrepancies. On comparison of the daily generation data and other related data, the Commission finds that there does exist a correlation between the generation at the two power houses. Certain discrepancies/ odd entries have always to be ignored for establishing such correlations. It is also interesting to note that as per the Chapter-IV entitled (Hydrology) of the DPR, as submitted by the petitioner, the power potential of the APH-II has been worked out by the petitioner by adopting the observed discharges for five years for Andhra khad which were also adopted for deciding the capacity of existing Andhra-I HEP. The Commission thus observes that the views of respondent Board, supported by actual facts, cannot be ignored. It is also interesting to observe from the daily rainfall data compiled by the petitioner for the period 1.7.2009 to 18.8.2009 that the rainfall during the second half of July 09 (i.e. 16-07-2009 to 31-07-2009) was only about 31% of the total rainfall during the month. Moreover, during August, 2009 (01-08-2009 to 18-08-2009), the rainfall during the period 15-08-2009 to 18-08-2009 (when both the machines were under shut down) was proportionately higher. Based on above, the Commission finds strong merits to believe that sufficient discharges were not available for generating power to the full capacity during the disputed period and particularly on the days when both the machines were stated to be available for generation.

25. The petitioner was also asked to furnish a copy of the statement prepared under Clause 7.16 of the PPA, but the petitioner has stated that the requisite statement was not prepared in view of the conflicting stand of the

parties in the matter of entitlement of the petitioner company to the benefit of deemed generation. The Clause 7.16 of the PPA provides as under:-

“7.16 On the last day of each month, the Company shall prepare a statement in respect of Water Spillage and loss of generation, if any, at the Station to be considered for determination of Saleable Deemed Generation during the month. The above statement duly signed together with the copies of the relevant log book(s) and other supporting data shall be supplied at the time of recording of joint meter reading on first day of each month. This statement shall be reconciled and signed by the designated officers of the Board and the Company.”

26. A bare reading of the Clause 7.16 of the PPA, as reproduced in the preceding para, reveals that on the last date of each month the Company is required to prepare a statement in respect of Water Spillage and loss of generation, if any, at the power house to be considered for determination of saleable deemed generation during the month and the said statement is to be reconciled thereafter on the first date of each month. The existence of conflicting stand did not in any way stop the petitioner from preparing the requisite statement. It was rather much more important for the petitioner to do so in view the fact that the petitioner had already expressed its intention, during the meeting of 17.7.2009, to approach the Commission on the issue of saleable deemed generation. In that meeting it was also agreed that generation loss of IPP on account of regulation of load will be recorded and signed by R.E Andhra-I Power House and authorized representative of the IPP for record purpose.

27. The petitioner has also pleaded that the statement prepared afterwards on the basis of JMR will not harm the administration of justice. The plea of the petitioner would have had some degree of validity if the basic data about receipt of instructions for restricting the generation and Water Spillage from time to time etc. would have been reflected in the basic record in the log-sheets etc. The Commission observes that the data given in JMR is not sufficient for preparing the statement, as per Clause 7.16 of the PPA as explained above. As such the Commission does not find any merit in this plea of the petitioner.

28. The term “Water Spillage” used in aforesaid Clause 7.16 of the PPA has been assigned the following meaning as per Clause 2.2.73 of the PPA.

“ 2.2.73 “Water Spillage” means the amount of water downstream of weir (without obtaining power generation benefits) on account of factors described in Section 6.4, but shall not include the minimum releases required to be ensured immediately downstream of the weir and shall also not include the water which would have spilled otherwise also even in absence of such factors.”

29. The petitioner has not submitted requisite statement showing details of “Water Spillage”. As such, the petitioner has failed to establish that any Water Spillage, within the meaning of the definition given in PPA, actually occurred. Even though the actual generation was less than that estimated for 75% dependable year but, it cannot mean that water spillage actually took place.

30. As mentioned in the foregoing paragraphs, the benefit of deemed generation is available to the generators subject to fulfillment of certain conditions specified in Clause 6.4 of the PPA read with other relevant provisions. In this case, neither there was any Board’s Grid System failure, nor there was any constraint/non-availability (full or partial) of the evacuation system beyond the interconnection point during the period under dispute as mentioned above. The respondent Board also did not issue any back down instructions. Moreover, the petitioner has also not been able to establish that there was any Water Spillage during the disputed period. This clearly shows that the petitioner has not been able to establish the actual existence of even a single condition that shall entitle it for the deemed generation during the period under consideration. As such, the petitioner is not entitled to any deemed generation during the period under dispute.

31. Even if the entitlement of the petitioner in this regard is presumed, just for argument sake only, the Commission finds that the claim for saleable deemed generation was required to be prepared on the basis of statement under Clause 7.16 of the PPA and after excluding the loss of generation in respect of the events and exemption limits specifically excluded under the provisions of Clause 6.4 of the PPA interalia including the loss in generation at the Station due to interruption/outages to the extent of annual limit of 480 hours in a year. Moreover for the purpose of working out the saleable deemed generation, the

deductions were to be made in accordance with the Clause 2.2.6, 2.2.40, 2.2.62, 2.2.71 and 2.2.72 etc. No such claim in conformity with these provisions has been prepared. The petitioner has not touched these aspects while computing amount claimed by it. The petitioner has claimed amount of ₹ 57,53,750/- in its original petition, which has been re-worked out to ₹ 43,15,598/- based on the presumption that it was entitled to over load its project by 15% i.e. upto 5.75 MW. The Commission, however, finds that the PPA has been executed for 5 MW capacity and does not permit the petitioner to generate extra power as a matter of right. Moreover even if the note given in the JMR of June and July 09, referred to by the petitioner in support of his plea that generation was restricted on instruction of the respondent; is given cognizance, the same for period 14.7.2009 to 31.7.2009 shall get adjusted in the exemption limit of 480 hours and the same shall not make any difference particularly when no such note has been given in the JMR for August, 2009.

32. Keeping in view of the circumstances of this case, pleadings made, documents and information furnished and arguments advanced on behalf of the parties, the Commission concludes that the petitioner company has not been able to set up its claim for saleable deemed generation, inspite of the fact that the Commission repeatedly clarified that onus to set up the claim rests with petitioner (claimant) and thus the amount claimed by the petitioner is not permissible to it in accordance with the provisions of the PPA.

In view of the foregoing conclusion, the Commission declines to allow any amount to the petitioner on account of the claim raised for saleable deemed generation during the period under dispute (14.7.2009 to 19.8.2009).

The petition is disposed of accordingly.

(Yogesh Khanna)
Chairman.