

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 85/MP/2013

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri M. Deena Dayalan, Member

Shri A.K. Singhal, Member

Ms. Neerja Mathur, Member (EO)

Date of Hearing: 27.05.2014

Date of Order : 08.08.2014

In the matter of

Sasan UMPP- Declaration of COD and scheduling

And

In the matter of

Consideration of the declaration of COD and scheduling of Sasan UMPP in terms of the judgement dated 12.8.2013 in Appeal No.149/2013 of Appellate Tribunal for Electricity

And

In the matter of

Western Regional Load Despatch Centre, Mumbai

Petitioner

Vs

1. Sasan Power Limited, Mumbai
2. Lahmeyer International (India) Pvt. Ltd.

Respondents

1. MP Power Management Company Limited, Jabalpur
2. Pashchimanchal Vidyut Vitran Nigam Limited, Meerut
3. Purvanchal Vidyut Vitran Nigam Limited, Varanasi
4. Madhyanchal Vidyut Vitran Nigam Limited, Lucknow
5. Dakshinchal Vidyut Vitran Nigam Limited, Agra
6. Punjab State Power Corporation Limited, Patiala
7. Tata Power Distribution Limited, New Delhi
8. BSES Rajdhani Power Limited, New Delhi
9. BSES Yamuna Power Limited, New Delhi
10. Haryana Power Generation Corporation Limited, Panchkula
11. Ajmer Vidyut Vitran Nigam Limited, Ajmer
12. Jaipur Vidyut Vitran Nigam Ltd, Jaipur



13. Jodhpur Vidyut Vitran Nigam Ltd, Jodhpur
14. Uttarakhand Power Corporation Ltd, Dehradun
15. Central Electricity Authority, New Delhi

Proforma Respondents

Following were present:

For Petitioner: Shri Sitesh Mukherjee, Advocate, POSOCO
Shri Gautam Chawla, Advocate, POSOCO
Ms. S. Usha, POSOCO
Shri Arun Dhillon, POSOCO
Shir P. Pentayya, WRLDC
Shri S.S. Barpanda, POSOCO
Shri V.K. Agarwal, POSOCO
Ms. Jyoti Prasad, POSOCO

For Respondents: Shri J.J. Bhatt, Sr. Advocate, SPL
Shri Radhika Gautam, Advocate, SPL
Shri Suresh Nagarajan, SPL
Shri R. Kigwade, SPL
Shri N.K.Deo, SPL
Shri Mayank Gupta, SPL
Shri V.K. Reddy, SPL
Shri A.K. Asthana, SPL
Shri P. Venkatarao, SPL
Shri G. Umapathy, Advocate, MPPCL
Ms. Anushree Bardhan, Advocate, HPGCL
Ms. Poorva Saigal, HPGCL
Shri Ruth Elwin, Advocate, Lahmeyer International
Shri C.N. Murty, Lahmeyer International
Shri Tarun Agarwal, Lahmeyer International
Shri R.K. Soni, Lahmeyer International
Shri Alok Shankar, Advocate, TPDDL
Shri Rahul Dhawan, Advocate, BRPL and BYPL
Shri Anand K. Ganesan, Advocate PSPCL
Ms. Swapna Seshadri, Advocate, PSPCL
Shri Padamjit Singh

ORDER

The petitioner, Western Regional Load Despatch Centre (hereinafter “WRLDC”) has filed the instant petition on 25.4.2013 with the following prayers, namely:

“(a) Look into the veracity of the certificate issued by the Independent Engineer in view of deliberate suppression and misrepresentation of the facts and issue suitable direction to Respondent no. 2 to desist from such acts.

(b) Kindly look into the matter of Respondent No. 1 indulging into intentional mis-declaration of parameters related to commercial mechanism in vogue and has purported to declare the part (de-rated) capacity of 101.38 MW as commercial on the grounds of load restriction by WRLDC and issue suitable directions in the matter.

(c) Issue specific guidelines with respect to declaration of COD of the generators who are not governed by the CERC (Terms and Conditions of Tariff) Regulations, 2009 to be in line with CERC regulations so that the same can be implemented in a dispute free manner and eliminate any possibility of gaming by generator;

(d) The Commission may give any further directions as deemed fit in the circumstances of the case.”

2. Taking into consideration the submissions made by the petitioner and respondents and proforma respondents (procurers of power from Sasan UMPP) and after having heard the learned counsel for the parties on 9.5.2013 and 23.5.2013, the Commission disposed of the petition vide its order dated 20.6.2013 with the following directions:

"27. In view of the above discussion, we are of the view that the certificate given by the Independent Engineer for declaration of COD for 101.38 MW cannot be sustained. Consequently, we direct that SPL shall undertake fresh testing of the unit to achieve the tested capacity in accordance with the provisions of Article 6.3.1 read with Schedule 5 of the PPA. The power injected by the generating station till declaration of COD by SPL shall be treated as infirm power in accordance with the regulations of the Commission.

28. In view of our directions in Para 24 above, there is no requirement to any directions on the first and second prayer of the petitioner. As regards, the third prayer for issue of specific guidelines with declaration of COD in respect of the generators other than those governed by the tariff regulations of the Commission, we are of the view that there is need for clarity and accordingly direct the staff to examine the

issues and submit a proposal for consideration of the Commission. The guidelines issued by Central Electricity Authority/Ministry of Power and the existing provisions of the 2009 Tariff Regulations should be kept in view."

3. Sasan Power Limited (SPL) filed an Appeal No.149 of 2013 on 1.7.2013 against the said order before the Hon'ble Appellate Tribunal for Electricity (hereinafter "the Appellate Tribunal"), wherein the following prayers were made:-

"(a) The Central Commission without giving the Appellant opportunity of being heard on merits passed the impugned order.

(b) The Central Commission decided the issue on merits only, without considering the issue of maintainability raised by the Appellant".

4. The Appellate Tribunal in its judgement dated 21.8.2013 set aside the Commission's order dated 20.6.2013 and remanded the matter back to the Commission to decide the issues afresh after hearing the parties concerned. The relevant part of the order is extracted below:-

"13. We noticed in the impugned order that the Central Commission has observed that considering the urgency of the matter it was disposing of the main petition at the admission stage itself. However, no circumstances were shown in the impugned order with reference to the nature of urgency of the matter. We do not understand why the Central Commission decided the matter on merits hurriedly at the admission stage itself without deciding the issue on maintainability raised by the Appellant and without hearing the Appellant and the procurers of power (R-3 to R-16) on merits of the case. Thus, we find that it is a clear case of violation of principles of natural justice.

14. We are not convinced by the arguments of Shri Sitesh Mukherjee that the matter should be heard on merits and decided by the Tribunal. Firstly, we do not want to usurp the powers of the Central Commission. Secondly we do not want to deny the opportunity to the Appellant of being heard by the first court and the right of first Appeal. Therefore, we deem it fit to remand the matter to the Central Commission to reconsider the issue afresh including the issue of maintainability raised by the Appellant and decide the same after hearing the Appellant and other concerned parties without being influenced by its earlier findings. Accordingly ordered.

15. We make it clear that we have not examined the matter on merits and as such we do not express any opinion on this issue. As stated earlier the Central Commission is

directed to consider the issues afresh without being influenced by its earlier findings in the matter.

16. Accordingly, the Appeal is allowed. The impugned order is set aside and the matter is remanded back to the Central Commission to decide the issues afresh after hearing of the Appellant and other concerned parties. No order as to costs."

5. Subsequent to the remand, the Commission heard the parties on 24.9.2013. Since the issue of the maintainability of the petition was linked to the facts of the case, the Commission decided to hear the petition both on maintainability and merit. Accordingly, the Commission directed the parties to file their replies on maintainability as well as on merit. In response, Respondent No.1 (SPL), Respondent No.2 (Lehmayar International), Madhya Pradesh Power Management Company Limited(MPPMCL), Tata Power Delhi Distribution Limited(TPDDL), Haryana Power Purchase Centre (HPCC) have filed their replies on 19.11.2013, 15.10.2013, 4.1.2014, 9.1.2014 and 15.10.2013 respectively. The petitioner has filed its rejoinders to the submission of Respondent Nos.1 and 2 on 15.12.2013 . The matter was heard by the Commission with Coram of Shri Gireesh B. Pradhan, Chairperson, Shri V.S. Verma, Member, Shri M. Deena Dayalan, Member and Shri A.K. Singhal, Member on 26.12.2013 and 7.1.2014 both on maintainability and on merit. Though the order in the petition was reserved thereafter, the order could not be issued and in the meanwhile, Shri V.S. Verma, Member demitted the office on 22.2.2014. Therefore, it was decided to rehear the submissions of the petitioner and the parties along with the new Member (Technical) or Chairperson, CEA & ex-Officio Member of the Commission. Accordingly, the case was listed for hearing on 6.5.2014 but was adjourned due to non-availability of the ex-Officio Member of the Commission. The



petition was heard on 27.5.2014 with the Coram of Shri Gireesh B. Pradhan, Chairperson, Shri M. Deena Dayalan, Member, Shri A.K. Singhal, Member and Ms. Neerja Mathur, ex-Officio Member of the Commission. The respondents made their oral submissions and have confirmed their written submissions submitted earlier. The petitioner and the respondents have filed final submissions in the matter.

Facts of the Case

6. The facts of the case as emerging from the pleadings of the parties and the documents on record are as under:

(a) Based on the competitive bidding carried out by Power Finance Corporation as the Bid Process Coordinator, Reliance Power Limited having quoted the lowest bid was declared as successful bidder for the development and implementation of a coal fired, ultra mega power project based on linked captive coal mine using super-critical technology with an installed capacity of 4000 MW (plus/minus 10%) at Sasan, District Singrauli, Madhya Pradesh (hereinafter referred to as "Sasan UMPP"). Accordingly, Letter of Intent (LoI) was issued to Reliance Power on 1.8.2007 which was accepted by Reliance Power. Consequently, in terms of the provisions of the Request for Proposal (RfP), Reliance Power acquired 100% shareholding of the SPV on 7.8.2007. PPA dated 7.8.2007 was executed between Sasan Power Limited(SPL) and 14 procurers who are the distribution companies in the States of Madhya Pradesh, Uttar Pradesh, Rajasthan, Punjab, Haryana, Uttarakhand and Delhi. On 15.10.2008 a Supplemental Power Purchase Agreement (SPPA) was

entered into between the petitioner and the procurers to pre-pone the scheduled date of commercial operation (CODs) of the various units of the Project. In the Joint Monitoring Committee meeting held on 17.9.2010, the dates of commercial operation of the various units of the project was revised by mutual consent as under:-

Sr. No.	Unit	COD as per PPA	COD as per SPPA
1	First	7.5.2013	31.12.2011
2	Second	7.12.2013	31.3.2012
3	Third	7.7.2014	30.6.2012
4	Fourth	7.2.2015	30.9.2012
5	Fifth	7.9.2015	31.12.2012
6	Sixth	7.4.2016	31.3.2013

(b) Sasan UMPP having an installed capacity of 6x660 MW falls within the control area jurisdiction of Western Regional Load Despatch Centre (WRLDC), in terms of Regulation 6.4.2(b) of Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (Grid Code). According to WRLDC, Sasan Power Limited (SPL) started its testing and commissioning activities of 1st Unit (GT No.3) with effect from 17.3.2012 and started drawing start up power from the Western Region grid in accordance with Clause 6.2 of the Detailed Procedure approved by the Commission vide its order dated 31.12.2009 under Central Electricity Regulatory Commission (Grant of connectivity, long term access, medium term open access in Inter State Transmission and related matters) Regulations, 2009 (hereinafter "Connectivity Regulations") for commissioning of the 1st unit of 660 MW.

(c) On 1.3.2013 at 0735 hrs, SPL sent a mail to WRLDC intimating that the commissioning activities of Unit 3 of Sasan UMPP were at an advanced stage and was expected to be test synchronized within 7 to 10 days time.

(d) SPL vide its letter dated 6.3.2013 sent a notice to Madhya Pradesh Power Management Company Ltd. (MPPMCL), the lead procurer of the project, with copies to other procurers and the Independent Engineer for commissioning test of Unit 3 of Sasan UMPP which was scheduled to commence from 20.3.2013.

(e) Unit-3 of Sasan UMPP was synchronized with the grid for the first time on 9.3.2013 at 2010 hrs and tripped at 2024 hrs the same night. SPL injected around 15 MW of infirm power into the grid. The station continued to do its commissioning activities of Unit 3 from 9.3.2013 onwards.

(f) SPL vide its mail dated 25.3.2013 at 1230 hrs informed WRLDC that it had planned to synchronize Unit 3 of Sasan UMPP at 1500 hrs on the same day and sought the code for synchronization. SPL submitted a testing program to WRLDC for increasing the load from zero to 660 MW within a span of 9 hrs (2100 hrs of 25.3.13 to 0600 hrs of 26.3.2013). Accordingly, synchronization code (LD/3/2108) was issued by WRLDC at 1756 hrs on 25.3.2013 and subsequently another code (LD/3/2120) was given at 2029 hrs on 25.3.2013 for increasing load up to 160 MW. The unit could not achieve the generation

level as per the plan given by SPL and tripped at 2130 hrs on 25.3.2013 and could generate a maximum of 66 MW of power only.

(g) SPL in its mail dated 27.3.2013 at 0013 hrs intimated that the unit would be synchronized at 0500 hrs on 27.3.2013 and submitted a testing program to WRLDC for increasing the load from zero to 660 MW within a span of 8 hrs (0500 hrs of 27.3.2013 to 1300 hrs of 27.3.2013) which could not be achieved.

(h) SPL in its mail dated 27.3.2013 at 0501 hrs intimated the proposed synchronization at 0700 hrs with a revised injection programme of increasing the generation from 0 MW to 660 MW within 8 hrs i.e. from 0700 hrs of 27.3.2013 to 1500 hrs of 27.3.2013. WRLDC issued code No. LD/3/2236 at 1148 hrs on 27.3.2013. However, the Unit could not achieve the generation level as per plan.

(i) SPL on 27.3.2013 at 15:31 hrs submitted a revised injection plan for achieving full load within 5 hours for increasing the load from 0 MW to 620 MW(15.15 hrs to 20.00 hrs of 27.3.2013) in steps as detailed below:

15:15 hours : Synchronisation

15:15 to 16:00 Hrs@ :100MW

16:00 to 17:00 Hrs@ :200 MW

17:00 to 18:00 Hrs@ :300 MW

18:00 to 19:00 Hrs@ :400 MW

19:00 to 20:00 Hrs@ :500 MW

20:00 Hrs onwards@ :620 MW (100%) for 72 hrs

(j) WRLDC in mail at 16:06 hours on 27.3.2013 has clearly indicated that the infirm generation can be allowed as per real time conditions of the grid. It was further intimated that due to Holi festival, infirm generation over 100 MW can not be permitted because of low demand till morning hours of 28th March 2013.

The message sent by shift In-charge, WRLDC to SPL is reproduced below :

"1.0 The generation while the unit is on COD is on infirm basis and the generation is allowed as per real time conditions of grid, and hence whenever generation is increased as per your plan, you may take code from WRLDC for the same;

2.0 To-day demand in grid is low due to Holi-festival day and WR constituents demand came down considerably and all generating stations are running on technical minimum (the demand condition is expected to be same till morning hours of tomorrow);

3.0 Accordingly considering your requirement, consent from WRLDC is given to generate only 100 MW. Further increase in generation will be allowed as per real time conditions and if the system permits only;

4.0 At present allowed infirm generation is only 100 MW and whenever you propose to increase please take code from WRLDC for the quantum of increase;

5.0 Further in case of system requirement you may have to back down generation as per WRLDC instructions."

(k) SPL in its mail dated 27.3.2013 at 1647 hrs intimated that "during a part of COD of Unit 3 for 72 hrs, presently ex-bus generation is 75 MW. Now we want to increase the ex-bus generation upto 200 MW from 1700 hrs to 1800 hrs. Please give the concurrence for the same."

(l) Further SPL in its mail on 27.3.2013 at 1736 hrs has informed WRLDC as under:

“Please refer to your trailing mails. We were required to raise the injection from Unit 3 of Sasan in steps upto 620 MW (ex-bus) for the fulfilment of 72 hours Performance Testing at full load to declare COD as per PPA.

However, due to grid constraints, as instructed by WRLDC, we are restricting our ex-bus injection upto 100 MW till your further instruction”.

According to the affidavit dated 19.11.2013 filed by SPL, WRLDC has denied stepping up in view of the reasons stated in its mail dated 27.3.2013 referred at para (j) above.

(m) SPL in its reply filed vide affidavit dated 19.11.2013 has referred to two verbal communications between SPL and WRLDC at 1302 hrs (initiated by WRLDC) and 2009 hrs (initiated by SPL) on 28.3.2013 wherein generation levels were stated to have been discussed and SPL was stated to have been denied permission for further increase of generation due to grid restriction. WRLDC in its affidavit dated 23.12.2013 has stated that in view of the restriction given by it through email at 1620 hrs on 27.3.2013 on account of Low demand of grid due to Holi festival all the subsequent email on 27.3.2013 at 1647 hrs and 1736 hrs for increase in generation and maintenance of load at 100MW were irrelevant. SPL has also referred to seven other verbal communications on 29.3.2013 (at 0810 hrs, 2153 hrs and 2219 hrs initiated by WRLDC, and at 0817 hrs, 0825 hrs, 2134 hrs, 2141 hrs initiated by SPL). WRLDC in its affidavit dated 7.1.2014 has stated that the contents of the verbal communications are general and routine in nature wherein status of generating units, etc. has been exchanged between the shift personnel. WRLDC has submitted that no firm testing plan was submitted by the respondent and the routine communication quoted by them is not relevant. The generator is required to submit a fresh plan since the

system conditions are different on different days. Further, verbal communications are not considered for allowing infirm generation during testing by any unit. WRLDC also submitted that between morning hours of 28.3.2013 to late evening hours of 29.3.2013, no written communication was received by WRLDC from SPL requesting for a code for increasing generation.

(n) SPL in its mail at 2136 hrs on 29.3.2013 requested WRLDC as under:

“This has reference to our earlier communication in his regard. Please refer to trailing mail and telecom we had with you yesterday evening and today morning. We are maintaining the load of 100 MW (Ex bus) from Unit 3 due to grid restrictions as per WRLDC instructions. We await your further instructions in this regard.”

(o) WRLDC in its mail dated 29.3.2013 at 2141 hrs asked SPL to give its tentative generation schedule programme. WRLDC at 2220 hrs issued code (LD/03/2452) permitting SPL to increase its generation from 110 MW to 200 MW. SPL in its mail at 0100 hrs on 30.3.2013 informed WRLDC that it had raised the load accordingly. As per WRLDC, the actual generation was only 153 MW at 0100 hrs and maximum of 165 MW on 30.3.2013.

(p) WRLDC in its mail at 0718 hrs on 30.3.2013 informed SPL as under:

“Please inform your plan of raising load on the subject matter. Accordingly, on real time grid condition, we will give code for raising load over phone against your requirement, so as to complete the testing timely and successfully.

Whenever you are ready to raise the load as per the machine parameters as usual contact us over phone, and according to real time situation, code will be given if system conditions permit.”

(q) SPL vide its mail dated 30.3.2013 at 1116 hrs informed WRLDC (vide affidavit of WRLDC dated 23.12.2013) as below:

“a) the Commissioning test has commenced on 27.3.2013 and since then the unit was operating at low load due to grid conditions.

b) in order to increase capacity, the boiler conditions need readjustment;

c) the load increase profile would be intimated to WRLDC after evaluating boiler and auxiliary conditions.”

(r) SPL vide its mail dated 30.3.2013 at 1132 hrs intimated WRLDC as under:-

"We will be completing the 72 hours Performance Test of Sasan Unit-3 by today evening (30/03/2013).

Sasan Unit-3 will be available for Commercial Operations from 00.00 Hrs of 31 March, 2013. Accordingly, attached herewith please find the Declared Capability of Sasan UMPP for 31 March 2013. Request kindly give us the Scheduled Generation.

The relevant page of PPA showing the entitlements of various procurers is attached herewith for your ready reference."

In this communication, SPL has submitted a DC of 620.4 MW round the clock for 31.3.2013 (DC revised at 1915 hrs on 30.3.2013 varying from 210 to 620.4 MW).

While SPL has intimated that the 72 hour performance test would be completed by the evening of 30.3.2013, they have not specifically asked for code for increasing the generation.

(s) The Independent Engineer in its letter no. GEIE12086/12-13/001/RKS dated 30.3.2013 addressed to MPPMCL, the lead procurer, with copy to SPL and other power procurers of the project, intimated about commercial operation of Unit-3 of Sasan UMPP as under:-

"In view of the above, the Unit-3 is certified to have achieved Commercial Operation, with a tested capacity of 101.38 MW (ex bus), since:

- (i) Commissioning Test was carried out in accordance with Article 6 and Schedule 5 of the PPA.

(ii) Results of the test show that Unit-3 has met functional specifications stipulated in Schedule 4 of the PPA."

(t) SPL vide its letter no. SPL/2012/COD dated 30.3.2013 and also mail at 2223 hrs on 30.3.2013 intimated WRLDC as under:-

"We have completed the 72 Hours Performance Test of Sasan Unit-3 today (30/03/2012) at 20:00 Hrs. The report of acceptance of COD by the Independent Engineer as per provisions of PPA is enclosed herewith.

Sasan Unit-3 is available for Commercial Operations from 0:00 Hrs of 30 March, 2013. Accordingly, we have sent our Declared Capability (Revision 1) to you vide e-mail dated 30.3.2013.

Request kindly give us the Scheduled Generation."

(u) On 31.3.2013 at 0034 hrs, WRLDC intimated SPL by mail that as per IE`s certificate and confirmation from lead procurer, the tested capacity is only 101.38 MW and therefore, the DC given by SPL for 220 to 620 MW is not in line with the certificate given by IE . WRLDC asked SPL to get consent from all procurers for scheduling to the stated de-rated capacity of 101.38 MW. SPL took code No. LD/3/2531 at 0113 hrs to SPL to increase the generation under testing to 300 MW and another code (LD/3/2352) at 0142 hrs to increase the load upto 400 MW, but the unit could not pick up the load and tipped at 0143 hrs on 31.3.2014.

(v) WRLDC in its mail dated 31.3.2013 at 2119 hrs has responded to the mail at 2223 hrs on 30.3.2013 of SPL as under:-

"Sub: Regarding Commercial Operation of Unit-3 of SASAN

As per the test certification enclosed by you in the trailing mail towards performance test for declaration of commercial operation (COD) of the first unit

(Unit-3), the unit i.e. Unit-3 at SASAN is certified to have achieved Commercial Operation, with a tested capacity of 101.38 MW (ex bus).

Since the DC (Declared Capability) furnished by you for 1.4.2013 is more than the COD certified quantum you are requested to obtain the requisite concurrence of the buyers/beneficiaries (MPPTCL, UPPCL, RPPC, NDPL, BRPL, BYPL, PSEB, UPCL, HPGCL, SPL) and forward the same to us to facilitate scheduling of SASAN generation."

(w) MPPMCL vide its letter dated 31.3.2013 intimated to WRLDC as under:

"It is to inform that as per the clause 6.3.1(a) and (b) of the PPA, the commissioning test should have been carried out in accordance with Schedule 5 of the PPA and that the result of the test should not have been less than ninety five (95%) percentage of its contracted capacity. The test results submitted by the Independent Engineer are not as per the performance test under clause and are therefore not acceptable to us. If the seller is agreeable to consider the Performance Test under Clause 6.3.4 of the PPA for a de-rated capacity of 101.38 MW, the same could be agreed by us."

Further, on account of the mentioned reason of insufficient demand in the grid, the Seller may retake the relevant Performance Test by giving advance notice in writing to the procurers, as per Clause 6.3.3 of the PPA".

(x) MPPMCL in its letter dated 2.4.2013 addressed to SPL with copy to WRLDC and other procurers has stated as under:-

"Please refer the Independent Engineer's letter dated 30th March, 2013 pertaining to "Test Certificate of Performance Test for the Commercial Operation Declaration of the First Unit (Unit-3 of 660 MW) of SASAN ULTRA MEGA POWER PROJECT (6X660 MW)" and e-mail dated 31.3.2013 at 12:39 AM sent by Western Region Load Despatch Centre regarding scheduling of power from Unit No. 3 of Sasan UMPP. As lead procurer, the Performance Test, as certified by the Independent Engineer for a capacity of 101.38 MW (ex-bus), is acceptable to us under Clause 6.3.4 of the PPA. You may kindly go for Performance Test under notice to us for increasing the capacity beyond certification by the Independent Engineer in accordance with Clause 6.3.3 of the PPA.

As provided in Article 6.3.4 of the PPA, in the period between this performance test and the next performance test, the unit's contracted capacity and available capacity would be considered as 101.38 MW (ex-bus) and its availability factor shall be calculated by reference to 101.38 MW. The charges payable for power shall be as laid down in Article 6.3.4 of the PPA. In case the unit is in a position to produce beyond 101.38 MW, the additional quantity would be scheduled in favour of the Procurers under proviso to Article 11.1 of the PPA, until the next Performance Test is conducted under Article 6.3.3".

(y) UPPCL in its letter dated 2.4.2013, Rajasthan Utilities in their letter dated 10.4.2013, Punjab State Power Corporation Limited in its letter dated 12.4.2013, Haryana Power Purchase Centre in its letter dated 12.4.2013, Tata Power DL in its letter dated 13.4.2013, Uttarakhand Power Corporation Limited in its letter dated 15.4.2013 have intimated SPL that in view of the MPPMCL acceptance of the Performance Test for a capacity of 101.38 MW, the distribution companies do not have objection to scheduling the power corresponding to the tested capacity, in accordance with Article 6.3.4 of the PPA between the period of the performance test and the next performance test.

(z) WRLDC in its letter dated 5.4.2013 addressed to SPL with copy to all the procurers has objected to the DC above the tested capacity given by SPL and has asked SPL to take up the matter with the lead procurer as under:-

"13. Even though the generator is certified for COD of 101.38 MW by the Independent Engineer and consented by lead procurer, declaration of DC above this i.e. 220 MW to 620 MW implied that generator is trying to schedule above the tested and certified level.

14. You are therefore requested to take up the matter with your lead procurer to consent for scheduling up to full load DC (620 MW)".

(aa) WRLDC in its letter dated 9.4.2013 addressed to SPL and MPPMCL has clarified that infirm power above 101.38 MW cannot be scheduled as per the CERC Regulations, since after declaration of the COD, infirm/unscheduled power will not be allowed to be injected into the grid. WRLDC has further asked SPL as under:-

"In view of lack of clarity of opinion and mutual consent on the issue of COD and scheduling up to 101.38 MW (as certified by Independent Engineer), the Seller & Procurers are requested to submit mutually acceptable schedule (signed by Seller & Procurers) till the full load testing of the unit is completed and COD declared, in accordance with PPA clauses, certification by Independent Engineer and acceptance of the lead procurer. M/s Sasan Power Ltd is therefore requested not to submit DC to WRLDC and submit only mutually agreed schedule with each of the procurers in order to have dispute free scheduling and operation".

(bb) WRLDC in its letter dated 5.4.2013 addressed to all the procurers as under:-

"This has reference to the consent letters received from procurers of SASAN, UMPP. It is hereby clarified that, as per clause 2 of Annex-I of IECG "In case of a deviation in actual generation from the dispatch schedule, the concerned ISGS shall receive or shall pay in accordance with UI Regulation of CERC". Accordingly, the claim by all the procurers that any additional quantum of generation need to be scheduled in favour of the procurer under provision to Article 11.1 of the PPA until next performance test is conducted under Article 6.3.3 is not possible as per the existing regulation in vogue. Since the tested/achieved capacity of Unit-3 is only 101.38 MW against the rated capacity of 660 MW, the generator is also directed to restrict the generation up to 101.38 MW only, which is the declared capability of Unit-3 as per the performance test".

7. Against the above factual background, WRLDC has filed the present petition and the following main issues arise in this regard:-

- (a) Synchronization of unit and declaration of COD.
- (b) Veracity of Certificate issued by the Independent Engineer.
- (c) COD for derated/part capacity.
- (d) Operation of unit after 1.4.2013.

8. As regards the declaration of COD, WRLDC has submitted that the summary of the sequence during 72 hours testing period (from 1518 hrs on 27.3.2013 till 1600

hrs on 30.3.2013) shows that there was grid restriction till morning hours of 28.3.2013, i.e. for a period of about 15 hours. Thereafter, for the next 38 hours, SPL did not send any formal request for load increase. WRLDC had to keep grid parameters in view while allowing infirm injection in accordance Connectivity Regulations. Accordingly, infirm injection was allowed by WRLDC in steps based on request of SPL for raising load. After achieving the permitted level of generation, the generator had to ask WRLDC for raising the generation to the next step. On 29.3.2013 night, while WRLDC permitted injection of 200 MW, SPL could raise load only up to about 150 MW and could not reach the level of 200 MW. On 30.3.2013, despite clear message from WRLDC to submit plan for further raising load, SPL chose not to increase generation till end of testing period, i.e. 16:00 hours, in the final 19 hour period. WRLDC has submitted that from the above, it is clear that though ample opportunity was available to SPL to raise generation, SPL could not raise generation beyond 165 MW during the testing period, due to reasons attributable to unit 3 of the generating station. Despite, problems in the unit, SPL has declared COD without performing full load testing and by achieving only 16.34% of the contracted capacity against the requirement of 95% of the contracted capacity under the PPA and demonstration of 105% maximum continuous rating under the CEA's Technical Standards.

9. As regards the certificate of the Independent Engineer, WRLDC has submitted that the certificate issued by the Independent Engineer is not based on facts. Firstly, with regard to observation of the Independent Engineer in para 2 of the certificate that

WRLDC did not permit SPL to operate beyond 100 MW till the morning of 28.3.2013, WRLDC has submitted that the Independent Engineer has not mentioned that the generator was not debarred from requesting WRLDC for enhancement of generation subsequent to the morning of 28.3.2013. Secondly, with regard to observation in para 3 of the certificate that WRLDC only permitted 150 MW on 29.3.2013, WRLDC has submitted that it permitted the generator to raise the load to 200 MW which the generator failed to achieve. Thirdly, as regards the observation in para 4 of the certificate that load of 150 MW was maintained for remaining 22 hrs as per WRLDC instructions and grid conditions, WRLDC has submitted that it was ready to permit higher generation on 30.3.2013 morning which SPL did not avail. WRLDC has submitted that as per injection details from 25.3.2013 till 20.4.2013, SPL could not achieve a load beyond 220 MW as on 31.3.2013. WRLDC has submitted that SPL has declared commercial operation with effect from 0000 hrs on 31.3.2013 based on the certificate issued by Lahmeyer International (India) Private Limited (Independent Engineer) on 30.3.2013. While the tested capacity of Unit 3 as per the certificate of the Independent Engineer (IE) was 101.38 MW(ex-bus), SPL provided its declared capacity (DC) as follows:

Date	DC given		Details
	From	To	
31.3.2013	620	620	Revision 0
31.3.2013	210	495	Revision 1
1.4.2013	300	495	
2.4.2013	0	0	Unit out as the boiler tripped on 1.4.2013
3.4.2013	0	0	
4.4.2013	0	0	
5.4.2013	0	0	
6.4.2013	0	0	
7.4.2013	0	620	
8.4.2013	300	300	
9.4.2013	300	300	

10.4.2013	170	620	
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10. As regards the COD of part capacity, WRLDC has submitted that based on the certificate of Independent Engineer and confirmation from the lead procurer regarding tested capacity of 101.38 MW, SPL has given a DC for 220 to 620 MW on 31.3.2013. In order to avoid a stalemate WRLDC requested SPL and the procurers to submit mutually agreed schedule considering the de-rated capacity of 101.38 MW. In its written submission MP Power Management Co. Ltd (MPPMCL) has submitted that as per article 6.3.1 of the PPA, if a unit shall be commissioned on the day after the date, when all the procurers receive a final test certificate of the independent engineer stating that the commissioning tests have been carried out in accordance with Schedule 5 and are acceptable to him and the results of performance test show that the unit's tested capacity is not less than 95% of its contracted capacity as existing on the effective date. Provision of Schedule 5 of the PPA mandates the test to be carried out with respect to contracted capacity. For commissioning of a unit, the unit has to be operated for 72 hours continuously at output not less than 95% of the contracted capacity (95% of 620.4MW being 589.3 MW). MPPMCL has stated categorically that as the Unit No.III of Sasan UMPP operated at only 101.38 MW for the duration of performance test, the claim of COD by SPL at 101.38MW is not in accordance with the provision of PPA. However, being a extremely cheap source of power, MPPMCL vide mail dated 30.3.2013 and letter dated 2.4.2013 requested WRLDC and SPL to schedule the power. The same could not be scheduled by the petitioner in view of the respondent's mail dated 30.3.2013 and letter dated 2.4.2013 wherein fresh

performance test was insisted upon since the performance test conducted in March 2013 failed to meet the requirement of COD as laid down unambiguously in article 6.3.1 and Schedule 5 of the PPA. WRLDC has submitted that none of the Regulations of the Commission has any provision for COD for part capacity in case of thermal power stations. WRLDC has requested that in order to avoid different interpretation based on the PPAs and to bring uniformity and further clarity, the definition given in the 2009 Tariff Regulations may be made applicable to all types of generators. WRLDC in its short affidavit dated 7.1.2014 has submitted that allowing such declaration of commercial operation of part capacity of a unit can give rise to several techno-commercial implications in terms of grid operation as under:-

(i) After the COD was declared as part of contracted capacity (620 MW) at 101.38 MW, SPL was entitled for tariff as provided under the PPA for generation upto such level. However, for generation in excess of 101.38 MW, it would be entitled to earn UI as per the UI Regulations at the capped rates of ₹ 4.50/ unit or ₹ 1.65/unit, depending on the quantum of injection. This has the potential to incentivise mis-declaration by the generator by undermining the safety and security of the grid.

(ii) SPL was seeking to inject infirm/unscheduled power into the grid for the purpose of testing even after declaration of the COD. If SPL wanted to do retesting, then the proper course would have been to stop giving DC for firm scheduling and only inject infirm power for the limited purpose of testing.

WRLDC has clarified to SPL in its letter dated 9.4.2013 that under the extant regulations, infirm power above 101.38 MW cannot be scheduled.

(iii) The tendency to inject large quantity over and above scheduled capacity can have drastic effect in terms of grid security as it can lead to unwarranted overloading of lines resulting in tripping of grid. In terms of Regulation 6.4.25 of the Grid Code, WRLDC is duty bound to bring to the notice of RPC and as per Regulation 6(6) of the UI Regulations, to the notice of this Commission, any inconsistency on the part of any generating company or beneficiary which has the potential to adversely affect the functioning of the grid.

11. As regards the operation of Unit 3 of SPL after 1.4.2013, WRLDC has submitted that on 1.4.2013 at 1015 hrs, SPL submitted a declared capacity of Zero MW upto 5.4.2013. On 6.4.2013 at 0944 hrs, SPL informed WRLDC to synchronize the unit at 1800 hrs with the grid. However, SPL revised the schedule to zero till 14.4.2013. The unit was synchronized at 0124 hrs on 15.4.2013 and SPL started generating 101.38 MW which was scheduled by WRLDC based on the consent received from the procurers. WRLDC had informed SPL as well as the procurers that scheduling beyond 101.38 MW should not be increased and also further clarified that testing and scheduling of a unit cannot be done together. On 17.4.2013 at 0952 hrs the scheduling was discontinued for the purpose of testing of the unit. SPL submitted a fresh plan for full load testing from 1400 hrs on 17.4.2013 to 0100 hrs on 18.4.2013. WRLDC while giving the approval for testing had clarified that infirm power would not be scheduled to procurers which was agreed by SPL. However, SPL could not

generate more than 125 MW on 18.4.2013 and 19.4.2013 and more than 260 MW on 20.4.2013.

12. SPL, Respondent No.1, has submitted that the petition is not maintainable on the following grounds:

(a) The petition does not disclose any cause of action. The petition is based on mere conjectures and unsubstantiated allegations having no legal or factual basis. No evidence has been adduced by WRLDC to establish the allegations set out in the petition.

(b) WRLDC has no *locus standi* to file the present petition. As per the Electricity Act, 2003 (hereinafter “2003 Act”) and the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (hereinafter “the Grid Code”), the role of RLDC is limited to scheduling of power and grid management and does not include determination of COD which is a commercial decision between the generator and the procurers. The procurers have accepted the COD and given their consent in writing for scheduling of power. Based on the confirmations of the procurers, WRLDC has scheduled power up to 101.38 MW and is not treating power produced as infirm power. This in itself is evidence of the fact that WRLDC has accepted the COD.

(c) SPL has submitted that the following correspondences filed by WRLDC are pertinent to the fact that WRLDC and the Procurers have accepted the COD and the certificate of the Independent Engineer:

(i) Letter dated 5.4.2013 by WRLDC to SPL where WRLDC has accepted the fact that the first unit of Sasan UMPP is certified for COD of 101.38 MW.

(ii) Letter dated 9.4.2013 by WRLDC to SPL wherein WRLDC has stated that infirm power above 101.38 MW cannot be scheduled since COD has occurred.

(iii) Letter dated 15.4.2013 by WRLDC to CEA where WRLDC has noted that the lead procurer has given acceptance for COD for de-rated capacity of 101.38 MW.

13. SPL in its affidavit dated 19.11.2013 has submitted as under:

(a) WRLDC's role is restricted to scheduling of power and grid management. It has no role to play in declaration of COD and COD is the prerogative of the parties to the PPA. WRLDC has itself submitted in its affidavit filed in Petition Nos. 289/2010 and 290/2010 that it is not concerned with the declaration of COD;

(b) WRLDC in Petition Nos.6/MP/2013, 14/MP/2013 and 75/MP/2013, pending before the Commission, has submitted that the declaration of COD

is purely governed by PPA and the RLDCs do not have any say in this regard;

(c) WRLDC is seeking specific guidelines regarding declaration of COD by the generators not governed by the 2009 Tariff Regulations so that possibility of gaming by generators could be eliminated. The Commission has held in various cases that an enactment or amendment or clarification of regulations or procedures should be taken up with the Commission through a representation and not through a petition. The present petition is not maintainable as it is not in the nature of representation seeking clarification on issues relating to COD;

(d) The unit was synchronized to the grid on 9.3.2013 and commissioning test was completed between 27.3.2013 and 30.3.2013 and the COD was declared on 31.3.2013. The commissioning test for the first unit began at 2000 hours on 27.3.2013 in the presence of Independent Engineer and representatives of the procurers;

(e) The Performance Test was re-taken between 10.6.2013 and 13.6.2013 with a notice to the procurers and in the presence of representatives of procurers. The performance test commenced at 0400 PM on 10.6.2013 and at the time of commencement of the retest, the unit was operating at a net generation of 594.14 MW. At 1244 AM on 11.6.2013, WRLDC directed it to reduce the generation to technical minimum and accordingly the

generation was reduced to technical minimum. Numerous requests were made to WRLDC for permission to increase the generation and the same was declined on account of grid conditions. The restriction on generation continued and finally on 12.6.2013 at 1025 AM, permission was granted to increase the load to 500 MW which was achieved and a confirmation to this effect was sent to WRLDC at 1218 PM on 12.6.2013. Further permission was granted to increase load to 550 MW and the same was promptly achieved and the same was confirmed to WRLDC at 0247 PM on 12.6.2013. The permission to increase generation to full load was granted on 12.6.2013 at 0309 PM and it was subject to real time grid conditions. Accordingly, full load of 660 MW was achieved at 0341 PM on 12.6.2013. After about six hours, WRLDC verbally directed on 12.6.2013 at 0955 PM to reduce the load to technical minimum and accordingly the load was promptly reduced to 400 MW. Requests were made seeking to increase the load and permission was granted to increase the load to 500 MW on 13.6.2013 at 1155 AM. Generation was accordingly increased and confirmation was sent to WRLDC on 13.6.2013 and also requested for permission to increase the generation to full load of 660 MW. WRLDC initially granted permission verbally followed by an e-mail at 1231 PM on 13.6.2013 to increase the generation from 500 MW to 550 MW and accordingly 550 MW of generation was achieved at 1230 PM on 13.6.2013. At 1248 PM on 13.6.2013, WRLDC granted permission to increase the load to 600 MW followed with permission to raise generation to full load at 0150

PM. Full load was achieved at 0215 PM on 13.6.2013 and a confirmation to this effect was sent to WRLDC at 0220 PM. The re-take of Performance Test was completed at 0400 PM on 13.6.2013 when the unit was operating above 95% of the contracted capacity;

(f) After completion of the retake of the Performance Test, WRLDC telephonically requested to seek the consent of the procurers to schedule power from the first unit of SPL. Based on the retake of Performance Test, the IE issued the Test Certificate on 17.6.2013. WRLDC once again asked to take the Performance Test having accepted the results of the Performance Test held on 17.6.2013 as full load testing for entire 72 hours between 10.6.2013 and 13.6.2013 did not take place;

(g) Pursuant to the meeting held with procurers and POSOCO on 3.8.2013, Performance Test was again taken between 11.8.2013 and 15.8.2013 in the interest of stakeholders;

(h) The petitioner and the procurers have accepted the COD of the first unit as 31.3.2013 and accordingly power was also scheduled as early as 1.4.2013. WRLDC in its letter dated 15.4.2013 to CEA has stated that the lead procurer has given acceptance for COD of the de-rated capacity of 101.38 MW;

(i) The procurers have exercised their right to waive the requirement of commissioning test to be carried out at 95% of the contracted capacity in terms of Article 18.3 of the PPA;

(j) Referring to the judgments of the Hon'ble Supreme Court in B.L. Sreedhar vs K.M. Munireddy [(2003) 2 SCC 355], Ramdev Food Products (P) Ltd. vs Arvindbhai Rambhai Patel [(2006) 8 SCC 726], Provash Chandra Dalui vs Biswanath Banerjee 1989 Supp [(1) SCC 487] and Joint Action Committee of Air Line Pilots' Assn. of India vs DG of Civil Aviation [(2011) 5 SCC 435], SPL has submitted that when a party consents to a certain act, it is precluded from challenging the act. In the present case, both the procurers and the WRLDC have accepted the constrained commissioning of the first unit of SPL and as such they are precluded from challenging the same;

(k) If the present petition is treated as a representation seeking clarification on issues relating to COD of units of generating stations, not covered under Section 64 of the Act but governed by the respective PPAs, information from WRLDC, CEA and other similarly placed generating stations should be sought. In a similar case of Coastal Gujarat Power Limited, four units of 800 MW each out of the five units did not operate continuously for 72 hours at or above 95% of the units contracted capacity during their commissioning tests because of grid restrictions or due to technical problems. Still, CODs of the units was accepted by the WRLDC. However,

in this case WRLDC has raised question issues regarding declaration of COD;

(l) SPL has denied the allegations of WRLDC regarding misrepresentation of facts. SPL has submitted that all plans and declared capacity were declared in right earnest without any intention of gaming and WRLDCs instructions for declaration and scheduling were followed.

14. The Respondent No.2, Lahmeyer International (India) Pvt. Ltd., has made the following submissions in its reply dated 15.10.2013:

(a) Respondent No.2 has been appointed by SPL and the procurers jointly as Independent Engineer (IE) and it does not have any identity in the context of the Electricity Act, 2003;

(b) The terms of appointment of IE includes witnessing of commissioning test, reviewing the test report submitted by SPL and certifying the result of commissioning test in terms of PPA;

(c) Test Certificate was issued for the Performance Test of the first unit of SPL on 30.3.2013 certifying COD with a tested capacity of 101.38 MW. IE discussed all the findings with the representatives of Lead Procurers before issuing the Certificate. This Certificate was accepted by SPL, all procurers and the WRLDC. The procurers accepted the Performance Test under clause 6.3.4 of the PPA;

(d) Performance Test was conducted again from 10.6.2013 to 13.6.2013 and the unit operated at or above 594.14 MW ex-bus (which is more than 95% of the contracted capacity) for 17 hours when there was no grid restriction and at or above 357.18 MW ex-bus for 55 hours, when there was grid restriction. The performance of the unit was found to conform to the Electrical Limits of the Functional Specifications, besides the Ramp-up and Ramp-Down Rates above 50% of the rated load and Supercritical Technology Parameters of the steam turbine inlet in accordance with Schedule 4 of the PPA.

(e) As the unit could not operate continuously for 72 consecutive hours on account of grid restrictions, a final Test Certificate was issued on 15.8.2013 for the test conducted from 11.8.2013 to 15.8.2013;

(f) The IE is required to issue a Final Test Certificate, as per Article 6.3.1 of PPA, when the Unit's Tested Capacity is not less than 95% of its contracted capacity. As per Schedule 5, the Performance Test shall be deemed to have passed if the unit operates continuously for 72 hours at or above 95% of the contracted capacity;

(g) The unit's Tested Capacity is more than 95% of the Contracted Capacity and accordingly Final Test Certificate was issued and there is no de-rating of the unit;

(h) Article 6.3.4. of the PPA indicated the calculation of Quoted Non-Escalable Capacity Charges in case Tested Capacity is less than 95% of its Contracted Capacity. The said Article allows commissioning of unit at a capacity less than 95% of its Contracted Capacity and accordingly Test Certificate after the Performance Test on 30.3.2013 was issued certifying commercial operation with a Tested Capacity of 101.38 MW ex-bus at the unit operated continuously for 72 consecutive hours at or above 101.38 MW as per the loads permitted by WRLDC; and

(i) The petitioner has failed to indicate under which provision of law a direction has been sought against it in the present petition. There has been no suppression or misrepresentation of facts and hence, the petition may be dismissed.

15. The lead procurer, Madhya Pradesh Power Management Company Limited (MPPMCL) in its written submissions dated 27.12.2013 has submitted that SPL conducted the Performance Test of Unit-3 from 27.3.2013 to 30.3.2013 and the Test could be conducted for maximum capacity of only 161.01 MW. However, IE has issued the test certificate indicating that Unit-3 achieved COD with a tested capacity of 101.38 MW. As per the PPA, a unit has to be operated for 72 continuous hours at output of not less than 95% of the contracted capacity. The Performance Test was conducted only at 17% of the contracted capacity and hence claim of COD at 101.38 MW is not in accordance with the provisions of PPA. Through mail dated 31.3.2013, WRLDC was informed that the Performance Test was not conducted as per the

provisions of PPA and therefore it is not acceptable. It was also stated in the letter that the SPL should consider the performance test under 6.3.4 for a de-rated capacity of 101.38 MW and SPL should retake the Performance Test with an advance notice to the procurers. The lead procurer has further submitted that as per Articles 6.3.4. of the PPA, a plant can be operated and power can be availed even when the tested capacity is less than 95% of the contracted capacity and further Article 11.1 of the PPA provides for availing power before declaration of COD. Since power was available under these provisions at very low rates to the procurers, MPPMCL requested through mail dated 30.3.2013 and letter dated 2.4.2013 to schedule power. However, power was not scheduled and WRLDC insisted on a fresh Performance Test as the Performance Test conducted in March, 2013 was not as per the provisions of PPA and its attempts to get cheap power failed. SPL's claims that the commercial operation commenced from 31.3.2013 is against the provisions of the PPA and hence it should be rejected.

16. Tata Power Delhi Distribution Ltd while generally agreeing with the averments made by the other respondents in stating that the developer is required to undertake performance test and the test shall be deemed to have been passed only if the unit operates continuously at not less than 95% of capacity for 72 hours has submitted that WRLDC is the apex authority to ensure integrated operation of the power system in its region. It is also required to keep track of quantity of the electricity transmitted through the grid. Since, accounts of firm and infirm power are required to be maintained separately, WRLDC has a role in determining whether a

generating station is commissioned or not. It has also contended that a generating station cannot be allowed to schedule power more than the certified tested capacity. As regards the Sasan UMPP, a unit is to be commissioned in the event it passes the commissioning test and the same is certified by the IE. The IE without taking into account the requirements under the PPA and the applicable regulations certified the unit to have passed the commissioning test. WRLDC has to ascertain the veracity of the certificate issued by the Independent Engineer and it has rightly approached the CERC bringing the facts to its notice as it is the authority to regulate the inter-state transmission of electricity. The certificate provided that the unit has demonstrated 101.38 MW. It is pertinent to note that though the capacity demonstrated was only 101.38 MW, SPL was proposing to schedule the entire contracted capacity. TPDDL has prayed that it is essential that CERC adjudicates the issues in the present petition and declare that the certificate issued by the Independent Engineer was based on incorrect understanding of the PPA and the applicable regulations.

17. Punjab State Power Corporation Limited (PSPCL) has submitted that SPL had claimed COD on 31.3.2013 for Unit 3. PSPCL has contended that before declaring or claiming COD of any unit at Sasan UMPP, it is essential to ensure that all components and items of equipment which are related to power generation and evacuation/injection of the power to the grid are commissioned. However, the works directly relating to unit 3 (including evacuation of power from 765 kV bus) are still incomplete even as late as January 2014. PSPCL has submitted that IE has grossly

failed though he was present in all the 3 tests to point out the high voltage problem in the 765 kV switchyard and other deficiencies and incompleteness in 765 kV system. The IE has further failed to test/certify the FGMO/ RGMO system of unit 3 and AVR operation as per requirements of Grid Code which was mandatory under Grid Code. PSPCL has prayed that the claim of COD of unit 3 on 31.3.2013 may be rejected by the Commission. Engineer, Shri Padamjit Singh, retired CE of PSEB in individual capacity as member of the Public and Consumer , has in addition to the facts brought out above, has also stated that non-achievement of super critical parameters is alone sufficient to debar any declaration of COD. He contended that the unit was incapable of sustained operation at 100% capacity during March 2013 and hence the claim of COD unit 3 on 31.3.2013 deserves to be rejected.

18. The petition was heard on 26.12.2013 and 7.1.2014 on the issue of maintainability and on merit. Learned counsel for WRLDC maintained that the petition is maintainable against IE and SPL as they have failed to act in accordance with the Grid code, CEA Grid Standard and provisions of the PPA. Both SPL and IE have denied the allegations. On perusal of the documents on record and the submission of parties during the hearing, the following issues arise for our consideration and decision:

(a) Whether the petition filed by WRLDC is maintainable?

(b) Whether the Certificate issued by IE is in accordance with the PPA and if not, whether IE has made deliberate suppression and representation of facts while issuing the certificate?

(c) Whether COD of the station as declared by SPL is in accordance with the PPA?

(d) Whether the Respondent No.1 has indulged in mis-declaration of parameters relating to commercial mechanism in vogue?

(e) Guidelines with regard to the commercial operation of a generating station which is not regulated by the tariff regulations of the Commission.

(A) Maintainability of the petition

19. Learned counsel for WRLDC submitted that the petition is maintainable against Respondent Nos.1 and 2 for the following reasons:

(a) WRLDC is required to exercise control area jurisdiction over the Sasan UMPP under Regulation 6.4.2 of the Grid Code. Regulation 2.3.1 of Grid Code specifies the role and functions of RLDC as per section 28 and 29 of the 2003 Act. Regulation 1.5 of Grid Code enjoins upon RLDC to report to the Commission instances of serious and repeated violation of any of the provisions of Grid Code and incidences of persistent non-compliance of the directions of RLDC issued in order to exercise supervision and control required for ensuring stability of grid operations and for achieving the maximum economy and efficiency in the operation of the power system in the region under its control.

(b) PPA defines commercial operations date "in relation to a unit, the date one day after the date when each of the procurers received a Final Test Certificate of the Independent Engineer as per the provisions of Article 6.3.1 and in relation to the Power Station shall mean the date by which such Final Test Certificates received by the procurers for all the Units". Article 6.2.1 of the PPA provides that the seller shall be responsible for ensuring that each unit is commissioned in accordance with Schedule 5 at its own cost, risk and expenses. Article 6.2.4 of the PPA provides that testing and measuring procedures applied during each commissioning test shall be in accordance with the codes, practices and procedures mentioned in Schedule 5 of the PPA. Article 6.3.1 of the PPA provides that a unit shall be commissioned on the day after the date when all the Procurers receive a Final Test Certificate of the Independent Engineer stating that (a) the Commissioning Test has been carried out in accordance with Schedule 5 and are acceptable to him; and (b) the results of the Performance Test show that the Unit's Tested Capacity is not less than ninety five (95) percent of its Contracted Capacity as existing on the Effective Date. Para 1.1 (i) (d) of the PPA provides that the seller shall perform in respect of each unit a performance test which such unit shall deem to have passed if it operates continuously for 72 consecutive hours at or above 95% of the contracted capacity as existing on the effective date and within the electrical system limits and functional specification. Para 1.2 of Schedule V of the PPA provides that the testing and measurement procedure applied during Performance Test shall be in accordance with codes, practices or procedures

or generally/normally applied for the performance tests. This shows that WRLDC has the *locus standi* to raise the issue of commercial operation if it does not conform to the provisions of the PPA and the Grid Code. Similarly, since the IE has not given the certificate in accordance with the PPA and the Grid Code and since the IE has raised the question of denial of injection of power by WRLDC in the certificate which is not based on facts, the WRLDC has the *locus standi* to approach the Commission for appropriate relief. Moreover, there is no clarity regarding the commercial operation of the generating stations which are not governed by the Regulations of the Commission and WRLDC being a system operator is justified in approaching the Commission for appropriate directions.

20. Learned counsel for SPL submitted that the petition is not maintainable as there is no intentional mis-declaration by SPL as soon as WRLDC asks SPL to reduce its schedule it has complied with the directions of the WRLDC. Senior Counsel for IE submitted that the certificate given by the IE for COD was an interim certificate and the final certificate was issued after the unit as successfully completed the performance testing.

21. In response to our directions dated 27.5.2014, the petitioner has filed its written submissions on 30.5.2014.

22. We have considered the submissions of the parties. First, we consider the role of RLDC in the matter of COD of a generating station. Sub-section (1) to (3) of section 28 of the Act deal with the functions of the Regional Load Despatch Centre which is extracted as under:

"Section 28. (Functions of Regional Load Despatch Centre): ---

(1) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.

(2) The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.

(3) The Regional Load Despatch Centre shall -

(a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;

(b) monitor grid operations;

(c) keep accounts of quantity of electricity transmitted through the regional grid;

(d) exercise supervision and control over the inter-State transmission system; and

(e) be responsible for carrying out real time operations for grid control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and the Grid Code."

23. Regional Load Despatch Centres has been vested with the function of the apex body to ensure integrated operation of the power system in the concerned region. Moreover, it is responsible to exercise supervision and control over the inter-State transmission system to monitor the grid operation. Regulation 8(7) of the Connectivity Regulations provide as under:

“(7) Notwithstanding anything contained in clause (6) of this regulation and any provision with regard to sale of infirm power in the PPA, a unit of a generating station, including a captive generating plant which has been granted connectivity to the grid shall be allowed to inject infirm power into the grid during testing including full load testing before its COD for a period not exceeding six months from the date of first synchronization after obtaining prior permission of the concerned Regional Load Despatch Centre:

Provided that the Commission may allow extension of the period for testing including full load testing, and consequent injection of infirm power by the unit, beyond six months, in exceptional circumstances on an application made by the generating company at least two months in advance of completion of six month period:

Provided further that the concerned Regional Load Despatch Centre while granting such permission shall keep the grid security in view:

Provided also that the onus of proving that the injection of infirm power from the unit(s) of the generating station is for the purpose of testing and commissioning shall lie with the generating company, and the respective RLDC shall seek such information on each occasion of injection of power before COD. For this, the generator shall provide RLDC sufficient details of the specific testing and commissioning activity, its duration and intended injection etc.:

Provided also that the infirm power so injected shall be treated as Unscheduled Interchange of the unit(s) of the generating station and the generator shall be paid for such injection of infirm power in accordance with the provisions of the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and related matters) Regulations, 2009, as amended from time to time.”

24. The above provisions allow RLDCs to monitor the injection of infirm power during the testing and commissioning of a generating station before the COD and in that connection, WRLDC has the power to call for the specific details of testing and commissioning activity, its duration and the intended injection of infirm power and allow permission for such injection keeping in view the grid security. All these activities form part of the statutory duty of RLDC to monitor grid operation. Regulation 6.4.14 of the Grid Code provides that "the regional entities shall enter into separate joint or bilateral agreements to identify the beneficiaries' shares in ISGS (based on the allocation by Govt. of India, where applicable), scheduled drawal pattern, tariffs,

payment terms etc. All such agreements shall be filed with the concerned RLDCs and RPCs Secretariat for being considered in scheduling and regional energy accounting." Therefore, RLDC has a statutory responsibility to monitor the scheduling and energy accounting both before and after the commercial operation of the generating station.

25. SPL is an Ultra Mega Power Project whose tariff has been discovered through an international competitive bidding and has been adopted by this Commission. All aspects of the generating station including its commissioning, commercial operation and subsequent supply of power to the procurers during the period of the contract etc. are governed by the terms and conditions of the PPA between Sasan Power Limited and the procurers. It bears mention that the PPA forms part of the Standard Bidding Documents which has been prescribed by the Central Government under section 63 of the Act and any amendment to the PPA can be carried out with the mutual agreement of the parties and after the approval of this Commission. In other words, it is a statutory contract. Since as per the provisions of the Section 28 (3) of the Act and Regulation 6.4.14 of the Grid Code, RLDC is required to monitor the scheduling, despatch and energy accounting in accordance with the contract, in our view WRLDC as the System Operator has the power to look into the provisions of the PPA and ask the parties for compliance in relation to the matters relating to grid operation and scheduling and dispatch of power. Further, as per OM dated 3.9.2009 issued by the Ministry of Power, a thermal unit is to be considered as commissioned when the construction and commissioning of all plants and equipments required for

operation of the unit at rated capacity are complete and the unit achieves full rated load on the designated fuel. As the System Operator, RLDC should satisfy itself that the standard guidelines and provisions of the PPA relating to commissioning of a thermal unit are duly complied with.

26. WRLDC has approached the Commission with the prayers to look into the veracity of the certificates issued by the Independent Engineer and declaration of part (derated) capacity of 101.38 MW as commercial on the ground of load restriction by WRLDC. It is expected that both seller and procurers should comply with the provisions of the PPA with regard to the performance test and declaration of commercial operation of the generating station. In this case, the Independent Engineer has certified the unit under commercial operation on the basis of the tested capacity of 101.38 MW on the ground that the unit could not achieve 95% of the contracted capacity due to load restriction by WRLDC. Similarly, SPL acting on the certificate of the Independent Engineer has declared the commercial operation of the unit and has given the schedule for sale of power to the procurers. When WRLDC as a system operator has been alleged by both Independent Engineer and SPL to be responsible for the unit not achieving the testing of 95% of the contracted capacity due to load restrictions, WRLDC has approached the Commission to look into these allegations as such allegations have adverse impact on discharge of the statutory responsibility by WRLDC. In our view, WRLDC has exercised its statutory responsibility in bringing these important issues with regard to the compliance of the statutory PPA by the seller, the procurers and Independent Engineer to the notice of

this Commission. Moreover, WRLDC has also sought guidance of the Commission to issue necessary guidelines to deal with the issues of such nature in future. In our view the petition is maintainable and the issues raised in the petition are important and require detailed deliberation and decision for future guidance of the RLDCs.

Whether COD is as per PPA

27. Let us consider the provisions of the PPA with regard to testing, declaration of COD, etc. of the generating station. The provisions of the PPA with regard to the COD are as under:

"Commercial Operation Date or COD means, in relation to a Unit, the date one day after the date when each of the procurer received a Final Test Certificate of the Independent Engineer as per the provisions of Article 6.3.1 and in relation to the Power Station shall mean the date by which such Final Test Certificates received by the procurers for all the Units."

"6.3.1 A unit shall be commissioned on the day after the date when all the Procurers receive a Final Test Certificate of the Independent Engineer stating that:

- (a) The commissioning Tests have been carried out in accordance with Schedule 5 and are acceptable to him; and
- (b) the results of the performance Test show that the Unit's Tested Capacity is not less than ninety five (95) of its Contracted Capacity at existing on the Effective Date"

6.3.2 If a Unit fails a Commissioning Test, the Seller may retake the relevant test, within a reasonable period after the end of the previous test, with three (3) day's prior written notice to the Procurers and the Independent Engineer., Provided however, the Procurers shall have a right to require deferment of any such re-test for a period not exceeding fifteen (15) days, without incurring any liability for such deferment, if the Procurers are unable to provide evacuation of power to be generated, due to reason outside the reasonable control of the Procurers or due to inadequate demand in the Grid.

6.3.3 The Seller may retake the Performance Test by giving at least fifteen (15) days advance notice in writing to the Procurers, up to eight (8) times, during a period of one hundred and eighty (180) days ("Initial Performance Retest Period") from a Unit's COD in order to demonstrate

an increased Tested Capacity over and above as provided in Article 6.3.1 (b). Provided however, the Procurers shall have a right to require deferment of any such re-tests for a period not exceeding fifteen (15) days, without incurring any liability for such deferment, if the Procurers are unable to provide evacuation of power to be generated, due to reasons outside the reasonable control of the Procurers or due to inadequate demand in the Grid.

6.3.4 If a Unit's Tested Capacity after the most recent Performance Test mentioned in Article 6.3.3 has been conducted, is less than its Contracted Capacity as existing on the Effective Date, the Unit shall be de-rated with the following consequences in each case with effect from the date of completion of such most recent test.

.....
(ii) If at the end of initial Performance Retest Period or the date of the eighth Performance Test mentioned in Article 6.3.3, whichever is earlier, the Tested Capacity is less than the Contracted Capacity (as existing on the date of this Agreement), the consequences mentioned in Article 8.2.2 shall apply for a period of one year. Provided that such consequences shall apply with respect to the Tested Capacity existing at the end of Initial Performance Retest Period or the date of the eighth Performance Test mentioned in Article 6.3.3, whichever is earlier.

.....
8.2.2 (i) If a Unit's (or if all the Units have been Commissioned, of the Power Station's) then current Tested Capacity as established by the Repeat Performance Test and the Final Test Certificate issued by the Independent Engineer, is less than its Contracted Capacity as existing on the Effective Date, the Seller shall not be permitted to declare the Available Capacity of the Unit (or if all the Units have been Commissioned, of the Power Station's) at a level greater than its Tested Capacity, in which case :

a) The Unit's (or if all the Units have been Commissioned, of the Power Station's) Contracted Capacity shall be reduced to its most recent Tested Capacity and Quoted Capacity Charges shall be paid with respect to such reduced Contracted Capacity.

b) Further, the Quoted Non-Escalable Capacity Charge shall be reduced by the following:

$$\text{Rs.0.25/kwh} \times [1 - \{[\text{Tested Capacity of all Commissioned Units} + \text{Contracted Capacity as the Effective Date of all Units not Commissioned}]/\text{Contracted Capacity at the Effective Date of all Units}\}]$$

c) The Availability Factor of the de-rated Unit (or if all the Units have been Commissioned, of the Power Station's) shall be calculated by reference to the reduced Contracted Capacity, in each case with effect



from date on which all the Procurers jointly first notified the Seller of their intention to carry out a Repeat Performance Test of the Unit (or if all the Units have been Commissioned, of the Power Station's); and

d) the Capital Cost and each element of the Capital Structure Schedule shall be reduced in proportion to the reduction in the Contracted Capacity of the Power Station as a result of that de-rating (taking into account the Contracted Capacity of any Unit which has yet to be Commissioned);

(ii) The consequences mentioned in sub-Article (i) above shall apply from the completion date of each Repeat Performance Test. If at the end of second Repeat Performance Test conducted by the Seller or the last date of the end of the six month period referred to in Article 8.1.1, whichever is earlier, the Tested Capacity is less than the Contracted Capacity (as existing on the date of this Agreement), the consequences mentioned in Article 8.2.2 shall apply for a period of at least one year after which the Seller shall have the right to undertake a Repeat Performance Test. Provided that such consequences shall apply with respect to the Tested Capacity existing at the end of second Repeat Performance Test conducted by the Seller or the last date of the end of the six month period referred to in Article 8.1.1, whichever is earlier."

28. From the above provisions of the PPA, it emerges that the commercial operation date shall be reckoned from one day after the date when all the procurers received the Final Test Certificate from the Independent Engineer for having carried out the commissioning test in accordance with Schedule-5 of the PPA and the results of Performance Test establishes that the Unit Tested Capacity is not less than the 95% of the Contracted Capacity existing on the effective date. The PPA further provides if a unit fails the commissioning test, the seller may retake the relevant test within a reasonable period with advance notice to the procurer and Independent Engineer. The procurers may also require deferment of any such retest for a period not exceeding 15 days if they are unable to provide evacuation of power to be generated due to reasons outside the reasonable control of the procurers or due to

inadequate demand in the Grid. The seller may retake the Performance Test upto eight times during a period of one hundred and eighty (180) days to demonstrate the increased tested capacity over 95%. If the Unit's tested capacity after the most recent performance test is less than the contracted capacity as existing on the effective date, the unit shall be de-rated.

29. There is a clear-cut provision in the PPA that COD of the generating unit cannot be declared unless the results of the performance test show that the unit tested capacity is not less than 95% of its contracted capacity as existing on the effective date. Failure to achieve at least 95% of the contracted capacity shall be considered as failure in the commissioning test and the seller is required to retake the required test with notice to the procures and the Independent Engineer. It is noticed from the certificate of Independent Engineer dated 30.3.2013 (Annexure-11 to the petition) that the Independent Engineer has certified Unit-3 of the generating station to have achieved commercial operation with tested capacity of 101.38 MW (ex-bus).

Para 5 of the certificate is extracted as under:

"5. The Commissioning Test has been carried out in accordance with Schedule 5 of PPA and the results of the Performance Test are acceptable to IE. The results of the Performance Test show that the Unit's Tested Capacity is not less than 101.38 MW (ex bus), the maximum permitted load by WRLDC for injection into the grid. During the above stated period of continuous 72 consecutive hours, the performance of the unit was found to conform to the Electrical Limits of the Functional Specifications in accordance with Schedule 4 of PPA."

Further, in Para 7 of the report, the Independent Engineer has noted as under:

"7. The unit could not be tested for the following parameters of Supercritical Technology at the steam turbine inlet as defined in PPA due to grid restriction.

- i) Main Steam Pressure: 247 kg/cm² (abs).

- ii) Main Steam Temperature: 535 deg C.
- iii) Reheat Temperature: 565 deg C."

In our view, the certificate of the Independent Engineer is not in conformity with Article 6.3.1 read with Schedule-5 of the PPA as only after the unit was tested for 95% of its contracted capacity, it could be certified for declaration of COD. Moreover, Para 1.1 (iv) of Schedule-5 clearly provides that as a part of the performance test the unit shall be tested for compliance with parameters of supercritical technology. The certification by the Independent Engineer for COD without testing the capacity on the parameters of supercritical technology is not in keeping with the professional ethics expected of the Independent Engineer. We take strong exception to this action of the Independent Engineer and are constrained to make known our deep disappointment in the Independent Engineer in this regard.

30. Under the provisions of Article 6.3.2 of the PPA, if the commissioning test is not as per Article 6.3.1, the seller is required to retake the relevant test within a reasonable period with prior written notice to the procurers and Independent Engineer. It is noticed that SPL instead of taking appropriate remedial measures under the PPA has vide its email dated 30.3.2013 (Annexure-9 to the petition) to WRLDC intimated the commercial operation of the Unit from 0000 hrs of 31.3.2013 and sent the declared capacity of the Sasan UMPP for 31.3.2013 for 620.4 MW. In our view, SPL has not acted strictly as per the provisions of the PPA. We directed SPL to carry out the revised testing in accordance with the PPA to achieve the unit tested capacity of not less than 95% of the contracted capacity as existing on the effective date. SPL after 31.3.2013 has carried out Performance Test in June 2013

and finally from 11.8.2013 to 14.8.2013. The Independent Engineer has issued the final certificate for commercial operation stating that the plant has been in operation for 72 hours at above 95% of the contracted capacity. However, it has been noticed that there was a single dip to 575.627 MW in one time block between 1745 hrs to 1800 hrs on 12.8.2013. The Commission enquired from WRLDC as to whether such dip in generation during the period of 72 hours the machine is being put to test for achievement of super critical parameters could be considered as continuous operation for declaring COD. WRLDC has explained that in case of other generating stations also, intermittent variation for short durations have been allowed while declaring COD of the generating station. It has been stated by SPL that the procurers have accepted the final testing of the unit and declaration of COD in August, 2013. MPPMCL, lead procurer, vide its letter dated 16.8.2013 has accepted the performance test carried out by SPL. Therefore, we consider that the unit has complied with the testing requirement as per the Schedule 5 of the PPA and accept the COD as 16.8.2013.

Certificate of IE

31. The lead procurer, MPPMCL, in its written submissions dated 27.12.2013 stated that SPL conducted the Performance Test of unit-3 from 27.3.2013 to 30.3.2013 and the Test could be conducted for a maximum capacity of only 161.01 MW. However, IE has issued the test certificate indicating that unit-3 achieved COD with a tested capacity of 101.38 MW. As per the PPA a unit has to be operated for 72

continuous hours at output of not less than 95% of the contracted capacity. The Performance Test was conducted only at 17% of the contracted capacity and hence claim of COD at 101.38 MW is not in accordance with the provisions of PPA. Through mail dated 31.3.2013, WRLDC was informed that the Performance Test was not conducted as per the provisions of PPA and therefore it is not acceptable. It was also stated in the letter that the SPL should consider the performance test under 6.3.4 for a de-rated capacity of 101.38 MW and SPL should retake the Performance Test with an advance notice to the procurers. The lead procurer has further submitted that as per Articles 6.3.4. of the PPA, a plant can be operated and power can be availed even when the tested capacity is less than 95% of the contracted capacity and further Article 11.1 of the PPA provides for availing power before declaration of COD and power was available under these provisions at very low rates to the procurers and hence requested through mail dated 30.3.2013 and letter dated 2.4.2013 to provide power. However, power was not scheduled and WRLDC insisted on a fresh Performance Test as the Performance Test conducted in March, 2013 was not as per the provisions of PPA and its attempts to get cheap power failed. MPPMCL claims that the commercial operation commenced from 31.3.2013 is against the provisions of the PPA and hence it should be rejected.

32. The COD declaration on the basis of the certificate of Independent Engineer issued on 30.3.2013 was not as per the provisions of PPA. In addition to that, even for declaring a de-rated capacity, the concurrence of all the procurers is essential. Admittedly, the generating company (SPL) and the procurers both stand to benefit

from it, but such declaration of COD against the established norms and PPA provisions can't be allowed because it makes a mockery of the established system. Therefore, the certificate issued by the Independent Engineer on 31.3.2013 declaring COD at a lower capacity of 101.38 MW is not in order and hence cannot be sustained.

Mis-declaration by SPL

33. On perusal of Annexures-14, 15 and 17 of the petition, it is revealed that WRLDC has accepted COD of the unit for 101.38 MW based on the Independent Engineer's certificate. In our view, since WRLDC is required to schedule the power in accordance with the contract entered into with the licensees or the generating company operating in the region as per Section 28 of the Act, it is expected of WRLDC that it should satisfy itself about the COD of the generating station in accordance with the provisions of the PPA. We further notice that the lead procurer has also expressed its agreement to schedule 101.38 MW as DC knowing fully well that the unit has not been declared under commercial operation in accordance with the PPA.

34. SPL had given the declaration for 600 MW consecutively for 4 days. However, after being pointed out by WRLDC, it decreased the schedule to the declared capacity. It was admitted by the learned senior counsel for SPL that on account of lack of clarity, SPL had given declaration of 600 MW. However, it has subsequently given the correct schedule and hence, there is no intention of mis-declaration of

capacity. Considering the submission of the learned senior counsel for SPL, we presume that there is no intentional mis-declaration of capacity by SPL.

Guidelines with regard to the commercial operation

35. WRLDC has prayed for "issue of specific guidelines with respect to declaration of COD of the generators who are not governed by the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 to be in line with CERC regulations so that the same can be implemented in a dispute free manner and eliminate any possibility of gaming by generator". The Commission has taken note of the prayer of WRLDC and is of the view that in case of UMPP, the PPA contains the necessary provisions with regard to the performance testing and commercial operation of the unit of the generating stations and the same should be strictly complied with. In other cases, if adequate provisions are not made in the PPA, the RLDC shall be guided by the provisions in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 in this regard. We direct the NLDC and RLDCs to submit report in consultation with CEA which shall include specific difficulties experienced by RLDCs in dealing with the performance testing and commercial operation of the generating stations which are not governed by the Tariff Regulations of the Commission. The report shall be submitted within two months. We direct the staff of the Commission to study the the report of the NLDC/RLDCs and place it before the Commission along with its suggestions for consideration and necessary directions.

Treatment of the power scheduled after 30.3.2013 upto 15.8.2013

36. As a consequence of the above, the final question which remains to be answered is what treatment should be given to the power scheduled for the period 31.3.2013 to 15.8.2013. Since, we have held that the unit of the generating station has failed to qualify the performance test for 95% of the contracted capacity which is a pre-requisite for declaration of the commercial operation in terms of the provisions of the PPA, the power injected during this period shall be treated as infirm power.

37. Learned senior counsel for the petitioner suggested during the hearing on 27.5.2014 that an independent technical committee be appointed to look into the aspect of readiness of unit-3 of the generating station to achieve full load on 31.3.2013. The petitioner in its additional submission filed vide affidavit dated 27.5.2014 has reiterated the same suggestion and has submitted that appointing a independent committee will be in the interest of justice and no prejudice will be caused to the petitioner. We have considered the suggestion of the petitioner. In our view, the facts on record make it crystal clear that the load restriction was only on 27.3.2014 and thereafter, the petitioner had the opportunity to achieve the full load as its machine repeatedly tripped. In our view, readiness of the machine is not a relevant factor for declaration of COD under the PPA unless the machine actually achieves the 95% of the contracted load as per the provisions of the PPA. We do not find any requirement to constitute a committee as suggested by the petitioner in view of our finding that the unit-3 of the generating station was unable to achieve its full load on 31.3.2014.

38. The petition is disposed of in terms of the above.

Sd/-
(Neerja Mathur)
Member(EO)

sd/-
(A.K. Singhal)
Member

sd/-
(M Deena Dayalan)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson