

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 381/MP/2014**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri A.K. Singhal, Member**

**Shri A.S. Bakshi, Member**

**Date of Hearing: 19.5.2015**

**Date of Order : 09.2.2016**

**In the matter of**

Petition under Section 79 (1) (f) of the Electricity Act, 2003 read with Regulations 111 and 119 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for adjudication of dispute in regard to matter connected with applicability of Generic Tariff for 5 MW Solar PV project of NTPC limited at Garacharama in South Andaman district of Andaman and Nicobar Island.

**And**

**In the matter of**

NTPC Limited  
NTPC Bhawan, SCOPE Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi- 110003.

**....Petitioner**

**Vs**

Electricity Department,  
Andaman and Nicobar Administration  
Vidyut Bhawan, Port Blair- 744101

**....Respondent**

**Following were present:**

Shri M.G. Ramachandran, Advocate, NTPC Ltd.

Ms. Poorva Saigal, Advocate, NTPC Ltd.

Shri Ranjitha Ramachandran, Advocate, NTPC Ltd.

Shri S.K. Mandal, NTPC Ltd.

Shri M.K. Malviya, NTPC Ltd.

Shri R. Chhabra, NTPC Ltd.

Ms. Ruchi Sindhvani, Advocate for the respondent

Ms. Megha Bharara, Advocate for the respondent

Shri Mahesh Lal, Junior Engineer, Electricity Deptt., A&N Administration.

## ORDER

The petitioner, NTPC Limited, has filed the present petition under Section 79 (1) (f) of the Electricity Act, 2003 read with Regulations 111 and 119 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for adjudication of dispute in regard to matter connected with applicability of generic tariff for 5 MW Solar PV project of NTPC Ltd. at Garacharama in South Andaman District, Andaman and Nicobar Islands. The petitioner has made the following prayers:

- “(a) Declare that the Respondent, Electricity Department, A&N Administration is required to pay to NTPC the tariff for generation and sale of power from the Solar Power Project of 5 MW established by NTPC at Garacharama in South Adnaman District as per the tariff terms and conditions contained in the Order dated 9.11.2010 passed in Petitioner No. 256 of 2010 (suo moto) by the Hon’ble Commission;
- (b) Direct the Respondent, Electricity Department, A & N Administration to pay tariff at the rate applicable as per the Order dated 9.11.2010 passed by this Hon’ble Commission at all times and direct them to pay all outstanding arrears including the amount adjusted by the Respondent in the past with Late Payment Surcharge at the rate as provided in the Power Purchase Agreement;
- (c) Direct the Respondent, Electricity Department, A&N Administration to duly pay and discharge all amounts for the generation and sale of solar power as per the applicable tariff terms and conditions contained in the Order dated 9.11.2010 passed in petition No. 256 of 2010 (suo moto);
- (d) Direct that the Respondent, Electricity Department, A&N Administration shall be liable to pay exemplary damages to NTPC for the willful act on their part in denying the legitimate payment due to NTPC; and
- (e) Pass such further order/orders as this Hon’ble Commission may deem just and proper in the circumstances of the case.”

2. The petitioner has submitted as under:

- (a) On 27.11.2009, NTPC singed Memorandum of Understanding (MOU) with Electricity Department, Andaman and Nicobar to promote Non-Conventional

Energy. In pursuance of MOU, on 14.7.2011, NTPC entered into a Power Purchase Agreement with the Electricity Department, Andaman and Nicobar Administration for setting up a 5 MW Solar PV Power Station (Project) at Garacharma in South Andaman District, Andaman and Nicobar Islands on the terms and conditions contained in the Power Purchase Agreement.

(b) The setting up of the solar power project in Andaman Nicobar involved different logistic and supplementary higher cost of transportation of materials and overheads.

(c) The Commission vide order dated 9.11.2010 in Petition No. 256/2010 (suo motu) determined the terms and conditions of tariff for determination of tariff for the Renewable Energy Generating Stations, namely Wind Power Project, Small Hydro Projects, Bio-mass Projects, Non-Fossil Fuel based Co-Generation Plants, Solar PV Projects and Solar Thermal Power Projects in terms of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 (RE Tariff Regulations) as amended from time to time.

(d) With regard to Solar PV Projects, the said order dated 9.11.2010, *inter alia*, provides as under:

**“Solar Power Projects whose PPA signed after 31st March 2011  
Tariff determined for the year FY 2011-12 shall be applicable”**

Particular	Levelling Total	Benefit of Accelerated Depreciation (if availed)	Net Levelling Tariff (upon adjusting for Accelerated Depreciation benefit) (if availed)
	Tariff (FY 2011-12)		
	(₹ /kWh)	(₹ /kWh)	(₹ /kWh)
Solar PV	15.39	2.45	12.94
Solar Thermal	15.04	2.34	12.69

(e) Clause 5 of the PPA provides that “the tariff for the electricity supplied from the Station would be applicable rate in Rs/kWh for the relevant year of commissioning as notified by the Commission from time to time based on the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time”.

(f) Since, the Project was commissioned during the financial year 2012-13 i.e. on 31.3.2013, the levelised tariff applicable to the project as per the order dated 9.11.2010 is ₹ 15.39 per kWh (without availing the benefit of accelerated depreciation) and ₹ 12.94 per kWh (with availing the benefits of accelerated depreciation).

(g) The Joint Electricity Regulatory Commission (JERC) vide its order dated 17.4.2013 approved the PPA dated 14.7.2011 at the tariff at the rate as per the Commission`s orders dated 9.11.2010, 27.3.2012, 25.10.2012 in Petition Nos. 256/2010, 35/2012 and 243/SM/2012. However, the respondent, during the proceedings, had not refuted the tariff of ₹ 15.39 per kWh payable to the petitioner as per the Commission`s orders. Accordingly, NTPC was billing the Respondent ₹ 15.39/Kwh (without availing the benefit of accelerated depreciation) which was subsequently revised (after finalization of NTPC accounts) to ₹ 12.94/Kwh (availing benefit of accelerated depreciation) retrospectively w.e.f. March, 2013. The extra amount along with applicable interest on this account has been adjusted in the bills raised on 1.10.2013 for energy supplied during September, 2013.

(h) Subsequently, JERC vide its letters dated 17.9.2013 and 1.10.2013 sought clarification from Electricity Department, Andaman and Nicobar administration on the basis of billing of tariff for 5 MW Solar PV Power project and stated that as per JERC's order dated 17.4.2013, the billing rate should have been ₹ 7.87/Kwh with accelerated depreciation benefits if availed or ₹ 8.75/Kwh (if accelerated depreciation is not availed).

(i) The respondent was regularly paying the bills raised by the petitioner for the energy supplied till August, 2013. However, consequent upon to clarification sought by JERC, the respondent stopped the payment of bills of NTPC.

(j) Subsequently, JERC vide its letter dated 10.12.2013 withdrew its letters dated 17.9.2013 and 1.10.2013 and clarified that the jurisdiction of tariff determination of NTPC lies with Central Commission. However, despite the clarification issued by JERC, the respondent has not resumed the payments against energy supplied by NTPC at ₹ 12.94/Kwh (with accelerated depreciation) and has rather, adjusted all the payments made so far at Rs. 7.87/Kwh retrospectively and is paying at the same rate for the energy being supplied presently. Therefore, the action of the respondent is contrary to the Commission's order dated 9.11.2010 determining the tariff for the Renewable Energy Generating Station.

(k) NTPC through various letters explained the respondent that verification and payment of bills at reduced rate is not only in violation of RE Tariff Regulations but also violates the provisions of the PPA. In addition, NTPC in the meetings held on 15.4.2014 and 27.5.2014 made all the efforts to settle the issue with the respondent.

(l) The respondent vide its letter dated 1.9.2014 informed NTPC that it has fixed the ceiling of tariff for the energy supplied from Solar PV Plant established by NTPC.

(m) Under the Electricity Act, 2003, the Central Commission has been assigned the work for fixation/determination of tariff for Central Generating Companies and accordingly, the Central Commission has issued terms and conditions of the generic tariff for the Solar Projects. The Andaman and Nicobar administration cannot determine or fix the tariff for the projects established by NTPC.

(n) As per the provisions of the PPA, the tariff has to be determined by the Regulations framed by the Central Commission. NTPC proceeded to establish the Solar PV Project at Andaman and Nicobar, with difficult logistics involving higher cost of transportation, men and material, based on the tariff applicable as being decided by the Commission. At this stage, after establishing the project, it would be unreasonable and unjust, to reduce the tariff from ₹ 12.94/kwh (with accelerated depreciation).

3. The petitioner has submitted that in view of the above facts and circumstances, there is absolutely no basis for the respondent to:

(a) Deny the applicable tariff to NTPC @ ₹ 12.94 per Kwh as per the order dated 9.11.2010 after approving the PPA by JERC;

(b) Retrospectively adjust the tariff @ ₹ 7.87 per Kwh; and continue to make default in the payment of the tariff.

4. The matter was admitted on 18.11.2014 and notice was issued to the respondent to file its reply to the petition.

5. The respondent in its reply dated 14.1.2015 has submitted as under:

(a) NTPC has set up technically viable solar power plant based on the competitive bidding and the respondent is purchasing all power from the project at the tariff rate approved by the Commission.

(b) JERC vide its order dated 17.4.2013 approved the PPA at the tariff rate fixed by the Central Commission.

(c) The project was commissioned in a phased manner i.e. by synchronizing its inverter Nos. 3 and 4 on 30.3.2013, 1 and 2 on 31.3.2013 and 5 and 6 on 1.4.2013 with the Andaman and Nicobar Electricity Grid.

(d) The Commission vide order dated 25.10.2012 in Petition No. 243/SM/2012 had observed as under:

Description of the relevant clause	Total Levelised Tariff ₹ /Kwh for Solar PV	Benefit of Accelerated depreciation for solar PC	Levelised Tariff in ₹ /Kwh if Accelerated Depreciation benefit is availed.
Regulation 5 of the RE Regulation provides that the control period for determination of tariff for RE projects shall be of 5 years. The first year of the control period is from 2012-13.	8.75	(0.88)	7.87

(e) Since the project commissioned on 15.4.2013, Electricity Department Andaman and Nicobar Administration paid the bill @ ₹ 7.87/kwh and same was

communicated to NTPC vide letter dated 6.11.2013. Therefore, the petitioner is not entitled for any relief as prayed.

6. The matter was next heard on 12.2.2015. The Commission directed the petitioner to file the following information:

- (a) Copy of inspection report issued by the regional office of CEA;
- (b) Copy of compliance report against the inspection report;
- (c) Copy of approval of the energization of the project;
- (d) Peak load and radiation data from (i) 30.3.2013 to 30.4.2013 and (ii) 30.3.2014 to 30.4.2014.

7. The petitioner vide its affidavit dated 19.3.2015 has submitted the information called for.

8. The respondent vide its reply dated 10.3.2015 has further submitted as under:

(a) The date of commercial operation or "COD" means the date on which the "entire station capacity" is commissioned and power injected from power station to delivery point. NTPC commissioned the project only on 15.4.2013.

(b) As per the status report dated 1.4.2013 submitted by Assistant Engineer-III, Electricity Deptt., to Executive Engineer, two inverters of blocks 5 and 6 were not charged till 1.4.2013. The COD declared by the petitioner with effect from 00:00 hrs of 31.3.2013 appears to be unilateral and predated. As per the inspection carried out on 5.4.2013, major works were still to be completed and the joint exercise of attainment of contracted quantity has not been carried out by the petitioner which is to be documented for audit purposes as it involves huge commercial ramification.



(c) The respondent vide its letter dated 10.6.2013 informed NTPC that as per letter dated 30.3.2013, NTPC has declared COD on 31.3.2013 which appears to be unilateral and predated and not in consonance to the clause 4.1.1 of the PPA.

(d) The data with regard to peak load from 1.4.2013 to 31.5.2013 and 1.4.2014 to 31.5.2014, clearly shows that the entire station capacity was not commissioned till 15.4.2013.

9. NTPC in its rejoinder dated 19.3.2015 to the reply of the respondent has submitted as under:

(a) As per clause 4.1.1 of the PPA, NTPC was allowed 12 months time for commissioning of the project from the date of letter of award .i.e. from 12.12.2011. Accordingly, the stipulated period for commissioning of the project was 12.12.2012.

(b) As per the clause 2 of the Land Lease Agreement signed simultaneously with the PPA on 14.7.2011, the respondent was to deliver the vacant possession of land free from all encumbrances to the lessee within one month from the date of signing of the agreement. However, there was considerable delay of more than one year, on the part of Andaman and Nicobar Administration, and the construction work on the land could be commenced only in the month of September, 2012. Therefore, as against the one year time available to NTPC from 13.8.2011, namely, by 12.8.2012, NTPC was left with only seven months up to 31.3.2013 to complete the project.

(c) The non-availability of the land from 13.8.2011 to September, 2012 was an event of default on the part of Andaman and Nicobar Administration, entitling NTPC extension of time as per clause 4.1.1 of the PPA. The non-availability of land to implement the Project constituted a Force Majeure event within the meaning of clause 8 of the PPA. Despite the above, NTPC made extra efforts to completed the project in all respects, by 30.3.2013.

(e) The respondent vide its letter dated 9.4.2013 observed that there are some major works still to be completed and requested NTPC to intimate the probable date of completion of each work. In the said letter, the respondent acknowledged the efforts taken by NTPC for commissioning the project. Subsequently, the power flow on the entire 5 MW - 6 nos of invertors began to flow to Andaman and Nicobar Administration admittedly from 1.4.2013 onwards which was possible only if the entire 6 Modules Blocks were completed in all respects and commissioned on or before 31.3.2013.

(f) The respondent had duly acknowledged its obligation to pay the tariff in terms of the Commission`s order dated 9.11.2010 for projects commissioned during the financial year 2012-13 without any objection or protest for the period from 1.4.2013. If the respondent had any issue on the commissioning of the project by or before 31.3.2013, it would have protested at the time of raising bills by NTPC.

(g) The project was commissioned and was completed in all respects by 31.3.2013 which was acknowledged by the respondent vide its letter dated 9.4.2013. Subsequently, the respondent vide its letters dated 9.4.2013 and 1.10.2013 reiterated the admission subsequently in proceedings before JERC.

The petitioner in support of its contention has relied upon the judgment of the Hon`ble Supreme Court in *Nagubai Ammal & Ors v B. Sharma Rao & Ors [AIR 1956 SC 593]* and has submitted that it is well settled principle of law that an admission made by a party is best evidence.

10. NTPC in its written submission dated 2.6.2015 has submitted as under:

(a) Since the project was commissioned by 31.3.2013, as per the order dated 9.11.2010 in Petition No. 256/2010 the generic tariff applicable for generation and sale of electricity would be ₹ 15.39 per Kwh. However, the respondent has contended that the petitioner had completed the commissioning works of the project on 15.4.2013,i.e. in the financial year 2013-14,. Therefore, NTPC is entitled for tariff at ₹ 8.75/Kwh as per the Commission's order dated 25.10.2012.

(b) As per clause 4.1.1of the PPA, the petitioner was required to commission the project within 12 months. Therefore, the step to be taken by NTPC in order to get the applicable tariff in relation to a particular financial year is that the project is commissioned by the stipulated date and not that COD has occurred. The COD is subsequent to the commissioning and occurs when the power flow starts.

(c) Regulation 8 of the RE Tariff Regulations provides for commissioning on or before 31st March of the specified year for the determination of the tariff and for the entire capacity to be commissioned.

(d) As per the Commission`s order dated 9.11.2010, the requirements for getting tariff should be based on 'commissioning' of the project. Therefore, the COD is not a condition precedent for the purpose of determining the specific tariff

applicable. Accordingly, the issue of applicable tariff based on the COD is not tenable.

(e) The respondent has mis-construed the COD and the commissioning of the project as one and the same. The COD is subsequent to the commissioning and occurs when the power is injected.

(f) The respondent has been vaguely alleging on the commissioning and/or commercial operation having delayed much beyond 31.3.2013 whereas the real issue is only whether the commissioning occurred on 31.3.2013 or 1.4.2013.

(g) The conduct of the respondent also disentitles it to raise any issue on the commissioning of the project. Due to delay of handing over of land by the respondent, the construction work on the land could be commenced only in the month of September, 2012 and NTPC still managed to complete the project by 31.3.2013.

(h) The respondent is mixing up the issue of COD and the delivery of power with the commissioning of the generating units. After commissioning, various modules of the generating project were removed and tested as a part of the inspection and correction. These problems do not in any manner affect the commissioning already done.

11. The respondent in its written submission dated 9.7.2015 has reiterated the submissions made in its reply and has submitted as under:

(a) As per the inspection report dated 1.4.2013, out of six inverters, four inverters (Blocks 1, 2, 3 and 4) were synchronized with the grid and remaining

Blocks 5 and 6 were not charged. Therefore, the entire station capacity was synchronized to the grid only on 1.4.2013.

(b) There were six invertors. Inverters 3 and 4 were synchronized with the electricity grid on 30.3.2013, inverters 1 and 2 were synchronized on 31.3.2013 and inverters 5 and 6 were synchronized on 1.4.2013.

(c) An inspection was carried out on 5.4.2013 and as per the Executive Engineer's letter dated 9.4.2013 addressed to the General Manager (NTPC), 124 PV modules structure (2976 modules) were not connected to the respective invertors and there were several defects. Since the defects were rectified on 15.4.2013, the entire station capacity was commissioned on the same day.

(d) The Commission vide its orders dated 9.11.2010, 27.3.2012 and 25.10.2012 in Petition Nos. 256/2010, 35/2012 and 243/SM/2012 respectively approved the levelised tariff for RE projects which was accepted by JERC while approving the PPA dated 14.7.2011.

### **Analysis and Decision:**

12. We have considered the submissions of the petitioner and the respondent and perused documents on record. The issue for our consideration is that whether the petitioner is entitled for tariff as per the Commission's order dated 9.11.2010 in Petition No. 256/2010.

13. The petitioner has set up a 5 MWp Solar PV Power Station at Garacharama in district South Andaman. On 14.7.2011, the petitioner entered into a Power Purchase

Agreement with the Respondent. The petitioner has submitted that since the project was commissioned on 31.3.2013 i.e. during the financial year 2012-13, the levelised tariff shall be at ₹ 15.39 per kWh (without availing the benefit of accelerated depreciation) and at ₹ 12.94 per Kwh (with availing the benefits of accelerated depreciation) as per the Commission`s order dated 9.11.2010 in Petition No. 256/2010. The respondent has submitted that the petitioner has unilaterally declared the date of commercial operation of the project w.e.f. 00.00 hrs. of 31.3.2013. According to the respondent, the petitioner had commissioned the project in a phased manner i.e. by synchronizing its inverter Nos. 3&4 on 30.3.2013, 1&2 on 31.3.2013 and 5&6 on 1.4.2013 with the Andaman and Nicobar Electricity Grid and completed the commissioning only on 15.4.2013. Therefore, the tariff shall be applicable @ ₹ 8.75/kWh as per the Commission`s subsequent order dated 25.10.2012 in Petition No. 243/SM/2012.

14. Let us examine the relevant clause of the PPA dated 14.7.2011. Clause 1.2 (viii) of the PPA defines date of commercial operation of the station as under:

“(viii) ‘Date of Commercial Operation, or ‘COD’ of the station means the date on which the entire station capacity is commissioned and power injected from power station to delivery point.”

Clause 4.1.1 of the PPA further provides as under:

“4.1.1 The solar power should be commissioned by NTPC within 12(twelve) months from the date of letter of Award of the project. The NTPC shall give 60 (Sixty) days advance preliminary written notice to GSS/ Electricity Department of the date on which it intends to synchronize the power project to the grid system.”

Clause 5.1 of the PPA provides as under:

“5.1 The tariff for the electricity supplied from the Station would be applicable rate in Rs./kWh for the relevant year of Commissioning as notified by CERC from

time to time based on the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy sources) Regulations, 2009 as amended from time to time.”

A close reading of above provisions of the PPA reveals that the date of commercial operation of the station can be declared if the entire station capacity is commissioned and power starts flowing from power station to delivery point. On 14.7.2011, the petitioner entered into a PPA with the respondent. As per clause 4.1.1 of the PPA, the project is required to be commissioned within 12 months from the date of Letter of Award of the project. The Letter of Award was issued on 12.12.2011 and accordingly, the project was to be commissioned by 11.12.2012 as per the provision of the PPA. The petitioner has submitted due to delay in handing over the land by the respondent and heavy rain during the construction period, the project could not be commissioned by 11.12.2012. As per clause 2 of the Land Lease Agreement dated 14.7.2011, the respondent was required to deliver vacant possession of land free from all encumbrances to NTPC within one month from the date of signing of the agreement i.e. by 13.8.2011. However, after handing over the land by the respondent, the petitioner could start the construction work of the project only during September, 2012. In other words, the petitioner could start work on the project after expiring of the period as per the PPA. The petitioner has submitted that it executed the project within seven months i.e. by 31.3.2013 in order to complete the project during 2012-13. However, RE Tariff Regulations do not provide any relaxation or benefit to the petitioner due to such delay, namely handing over of land and delay due to heavy rain even if same are not attributable to the petitioner. Therefore, no relief is granted to the petitioner in this regard.

15. The Regulation 14 of the Central Electricity Authority (Technical Standard for Connectivity to the Grid) Regulation, 2007 as amended from time to time provides as under:

*“In case of solar photo voltaic generating station, each inverter along with associated modules will be reckoned as a separate generating unit.”*

As per the above provision, connectivity, in case of solar photo voltaic generating station, each inverter along with associated modules, would be reckoned as a separate generating unit. Though the CEA regulations provides for necessary for each inverter with associated modules as a separate generating unit. We have to go by the provisions of the PPA with regard to the commercial operation of the generating station.

16. However, RE Tariff Regulations do not provide any relaxation or benefit to the petitioner due to such delay, namely handing over of land and delay due to heavy rain even if same are not attributable to the petitioner. Therefore, no relief is granted to the petitioner in this regard.

17. The 5 MWp SPV Power project consisted of 6 (Six) inverters and entire capacity of total six inverters is connected along with SPV modules. As per the information available on record, the project was energised in a phased manner i.e. by synchronizing its inverter No. 3&4 on 30.3.2012, 1&2 on 31.3.2012 and 5&6 on 1.4.2013. As per peak load data submitted by the petitioner and the respondents for the period 30.3.2013 to 30.4.2013 and 30.3.2014 to 30.4.2014, it is noticed that during the year 2013, the peak injection has gradually increased from 0.85 MWp on 30.3.2013 to 4.902 MWp on 22.4.2013. For the year 2014, for the same period the peak injection was from 3.814



MWp to 4.950 MWp. These details have also been corroborated from the respondent's letter dated 9.4.2013, where in 2496 Nos. of modules had not been connected along with other pending works. This has not been refuted by the petitioner in its submission. *Prima facie*, the gradual increase in injection of solar power from 0.85 MWp on 30.3.2013 to 4.902 MWp on 22.4.2013 leads to the conclusion that the modules were getting connected gradually. Perusal of data regarding peak load submitted by the petitioner and the respondents reveals that the project was fully synchronized on 15.4.2013. The petitioner was directed to submit the solar radiation data. However, the petitioner has not filed information in this regard. In absence of such information, it is difficult to take any view regard to with the petitioner's contention that entire capacity was commissioned on 31.3.2013.

18. We have examined the inspection report of CEA dated 24.3.2015 regarding compliance of provisions/stipulations of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 (CEA Safety and Electric Regulations) by the petitioner's project. CEA in its initial inspection report dated 24.3.2013 had observed that the petitioner has not complied with the provisions of Regulations 3, 5, 12, 18, 19, 24, 27, 28 29, 41, 44, 45, 45, 49 and 74 of the CEA Safety and Electric Regulations. CEA in its said report directed the petitioner to comply with the provisions of CEA Safety and Electric Regulations within 30 days and submit compliance report in this regard. However, the petitioner vide its letter dated 25.3.2015 addressed to the Director, Regional Electrical Inspector, CEA submitted that the project is of very much importance and has to be commissioned in March, 2013 and requested to provide clearance for charging, pending compliance of Regulation 44 of CEA Safety

and Electric Regulations. Regional Electrical Inspector, CEA vide its letter dated 25.3.2015 accorded provisional approval for energisation to the petitioner's project under Regulation 43 of CEA Safety and Electric Supply Regulations. Relevant portion of said letter dated 25.3.2015 is extracted as under:

"Whereas inspection of NTPC's 5 MW Solar PV project at Port Blair (A & N) was carried out by the undersigned on 24.3.2013. The non-compliance of certain provisions/stipulations of CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010 were conveyed to you vide our letter (inspection report) under reference at SL. No. 2 (letter dated 24.3.2013) above. Whereas NTPC Limited vide their letter cited above at Sl.No. 3 (letter dated 25.3.2013) has furnished the compliance report, complying all the observation raised in the inspection report except Regulation 11 (1) & (2). However, keeping in view the urgency of the system expressed by NTPC Limited, vide their letter referred at Sl. No. 4 (letter dated 25.3.2013) above, the provisional approval is hereby accorded for energisation of above mentioned electrical installation of NTPC's 5 MW Solar PV Project at Port Blair (A& N), subject to consistent compliance of relevant provisions of CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010. This Provisional Approval is valid for Three Month (upto 24.6.2013) from the date of issue of this letter."

19. Perusal of said CEA's inspection report dated 25.3.2013 reveals that provisional approval valid upto 24.6.2013 for energisation of 5 MWp SPV plant was accorded pending compliance of relevant provisions of CEA Safety and Supply Regulations. In the above report nowhere has stated that the station is energized. Only, the provisional approval was accorded subject to compliance with the provisions of CEA Safety and Supply Regulations at the earliest to ensure regular approval. The respondent in its affidavit dated 10.3.2015 has placed on record a copy of the Inspection report dated 1.3.2013 submitted to the Executive Engineer of Electricity Department, A&N Administration. NTPC in its rejoinder has not refuted the veracity of the inspection report submitted by the respondent. The status of energisation of energy meters as under:

"As detailed in chronology above on 30.3.2013 of the six block, two blocks (namely Block 3 & 4) were charged. However, in the evening at 5.30 P.M. it was found that the check Meter of Feeder-1 was showing WARNING SIGN (^) and showing the erroneous readings;

On 31.3.2013, the block 1&2 charged, in the evening at 1730 hrs readings on Main meter was jointly noted

Remaining Block 5 &6 were not charged

SCADA SYSTEM is not inter phase with the meters.

The power generated through the plant on 30.3.2013-1MWp(1010hrs) and 31.3.2013 was 2.3 MWp(1130hrs.)”

It is, therefore, evident that Blocks 5 & 6 were not charged as on 30.3.2013. As already stated, the project was fully synchronized on 15.4.2013. Therefore, taking into consideration the definition of commercial operation of the PPA that the COD shall occur for the date on which the entire station capacity is commissioned and power injected from power station to be delivery point, the power station is said to have achieved the commercial operation on 15.4.2013. In view of the above discussion, we are of the view that the entire capacity was commissioned beyond 31.3.2013 i.e. in financial year 2013-14.

20. Regulation 8 of RE Tariff Regulations effective from 1.4.2012 to 31.3.2017 provides as under:

“8. Petition and proceedings for determination of tariff

(1) The Commission shall determine the generic tariff on the basis of suo- motu petition at least six months in advance at the beginning of each year of the Control period for renewable energy technologies for which norms have been specified under the Regulations.

(2) Notwithstanding anything contained in these regulations,  
(a) the generic tariff determined for Solar PV projects based on the capital cost and other norms applicable for any year of the control period shall also apply for such projects during the next year; and

(b) the generic tariff determined for Solar thermal projects based on the capital cost and other norms for the any year of the control period shall also apply for such projects during the next two years:

provided that

(i) the Power Purchase Agreements in respect of the Solar PV projects and Solar thermal projects as mentioned in this clause are signed on or before last day of the year for which generic tariff is determined and

(ii) the entire capacity covered by the Power Purchase Agreements is commissioned on or before 31st March of the next year in respect of Solar PV projects and on or before 31st March of subsequent two years in respect of Solar thermal projects.”

As per the above provisions, the generic tariff determined for solar PV projects shall apply for any year of the control period and also during the next year. The proviso under Regulation 8 (2) further amplifies that if the PPA in respect of Solar PV projects are signed on or before the last date of the year for which generic tariff is determined, the entire capacity covered under the PPA should be commissioned on or before 31<sup>st</sup> March of the next year. In other words, the COD of the Solar PV project shall occur during the year in which entire capacity is commissioned.

21. The intent of the regulation is clear, wherein the applicability of generic tariff determined for a particular year may only be valid for the following year, if the plant is fully commissioned before the end of next year. This will not be applicable if the PPA was signed in a financial year which was two years (or more) before the financial year in which commissioning of the Solar PV project took place. Accordingly, the following generic tariff determined by the Commission for Solar PV for the year 2013-14 vide order dated 28.02.2013 in Petition No. 243/SM/2012 shall be applicable to the petitioner:

Ref CERC's order dated in petition number	Description of the relevant clause	Total Levelised Tariff ₹ /Kwh for Solar PV	Benefit of Accelerated depreciation for solar PC	Levelised Tariff in ₹./Kwh if Accelerated Depreciation benefit is availed.
Dated 28.02.2013 in petition No. 243/SM/2012	Regulation 5 of the RE Regulation provides that the control period for determination of tariff for RE projects shall be of 5 years. The first year of the control period is from 2013-14.	8.75	(0.88)	7.87

22. The petition is disposed of with the above.

**Sd/-**  
**(A.S.Bakshi)**  
**Member**

**sd/-**  
**(A.K. Singhal)**  
**Member**

**sd/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**