

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 10/MP/2017**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

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

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

**Dr. M. K. Iyer, Member**

**Date of Order: 3<sup>rd</sup> of August, 2017**

**IN THE MATTER OF:**

Application under Section 79 (1) (b), (c), (f) and (k) with Section 142 of the Electricity Act, 2003, read with Regulation 24 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for direction to Respondents to comply with the order dated 21.6.2013 in Petition No. 83/TT/2012 and hold that the Respondent has contravened the direction of the Commission

**And in the matter of**

Power Grid Corporation of India Limited  
'Saudamini', Plot No. 2, Sector 29  
Gurgaon, Haryana-122001

**....Petitioner**

Versus

Bharatiya Rail Bijlee Company Limited  
Nabinagar Thermal Power Project  
Jain Bunglow, Dalmia Nagar  
Dehri-one-Sone  
Distt. Rothas, Bihar-821305

**...Respondent**

**Parties Present:**

- 1) Shri A.M. Pavgi, PGCIL
- 2) Ms. Swapna Seshadri, Advocate, BRBCL
- 3) Ms. Saloni Sacheti, Advocate, BRBCL
- 4) Shri Sanjeev Kumar Varshney, BRBCL
- 5) Shri Prashant Chaturvedi, NTPC

**ORDER**

This petition has been filed by the Power Grid Corporation of India Limited (Petitioner/PGCIL) seeking directions against the Respondent namely, Bhartiya Rail Bijlee Company Limited (BRBCL) to comply with the order dated 21.6.2013 passed



by this Commission in Petition No. 83/TT/2012 under which the tariff of 400 kV D/C Nabinagar-Sasaram Transmission Line was determined and BRBCL was directed to pay the transmission charges of the said transmission line till the generating units of Nabinagar Transmission Power Project (Nabinagar TPP) are commissioned. The Petitioner has claimed the transmission charges from 21.6.2016 till 14.1.2017 alongwith the surcharge thereon and payment security mechanism as required under the regulations of the Commission.

2. Brief facts of the case have been capitulated as under:

(a) Associated Transmission System (ATS) for evacuation of power from Nabinagar TPP consisting of 400 kV D/C Nabinagar-Sasaram Transmission Line (87 Km) alongwith 400 kV sub-station at Nabinagar and Extension of 400 kV bays at Sasaram (hereinafter “transmission system”) was planned to be executed by PGCIL. Investment Approval for the “Immediate Evacuation System for Nabinagar TPS” was accorded by the Board of PGCIL vide letter dated 8.2.2010.

(b) The Petitioner and the Respondent entered into an Indemnification Agreement for construction of the transmission system. As per the Indemnification Agreement, the schedule of commissioning of generating units along with the ATS (the zero date from which the indemnification mechanism shall be applicable) shall be worked out for each generating unit vis-a-vis ATS and mutually agreed in the Quarterly Director level coordination meeting between POWERGIRD and BRBCL within 3 months of investment approval. As per Annexure appended to the Implementation Agreement, the commissioning schedule of Unit 1 of Nabinagar TPP was March 2013 and



commissioning schedule of ATS was June 2012.

- (c) The transmission system was put under commercial operation by the Petitioner on 1.7.2012. The Petitioner approached the Commission in Petition No. 83/TT/2012 for determination of tariff. The Commission vide order dated 21.6.2013 determined the tariff of the transmission system. Since Unit 1 of Nabinagar TPS was not commissioned as on 1.7.2012, the Commission approved the COD of the transmission system from 1.7.2012 in exercise of power under second proviso to Regulation 3(12) (c) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009. The Commission further directed that the transmission charges of the transmission system shall be borne by the Respondent from 1.7.2012 till the commissioning of the unit 1 of Nabinagar TPP and thereafter, the billing, collection and disbursement of transmission charges shall be governed by the provisions of Central Electricity Regulatory Commission (Sharing of inter-State transmission charges and losses) Regulations, 2010, as amended from time to time (hereinafter Sharing Regulations).
- (d) The Respondent paid around ₹135 crore (around @₹3crore/month) per month for the period of around 3 years and nine months (i.e. 1.7.2012 to 20.3.2016).
- (e) Unit-1 of the Petitioner's NTPP was synchronized and full load (257.63 MW) was achieved on 20.3.2016 and successfully completed its trial run of 72 hrs on 6.1.2017 as per procedure laid down in IEGC Regulations. RLDC vide letter dated 13.1.2017 certified the successful trial run of the generating station. Unit-1 (250 MW) of NTPP was declared commercial operation w.e.f. 0000 hrs of 15.1.2017.



- (f) The Respondent vide its letter dated 22.3.2016 informed the Petitioner that the transmission charges are payable till the commissioning of Unit 1 of NTPP which was achieved on 20.3.2016 and no further bills shall be raised by the Petitioner on the Respondent.
- (g) The Petitioner in the 2<sup>nd</sup> meeting of Validation committee held on 30.5.2016 raised the issue of non-payment of transmission charges and Chief (Engg.) of the Commission in his capacity as Chairman of the Validation Committee clarified that transmission charges of 400 kV D/C Nabinagar-Sasaram Transmission line is payable by the Respondent till commercial operation of Unit No. I.
- (h) The Petitioner took up the matter with the Respondent vide letter dated 16.6.2016. However, the Respondent vide its letters dated 10.8.2016 and 15.10.2016 replied that the transmission charges were payable till the commissioning of the unit as per the Commission's order dated 21.6.2013 in Petition No.83/TT/2012.
- (i) The Petitioner took up the matter in the 33<sup>rd</sup> Commercial Sub-Committee Meeting of ERPC held on 3.11.2016. The Petitioner was advised to approach the Commission for a clear direction in the matter. Accordingly, the Petitioner has approached the Commission by way of the present petition.

3. The Petitioner has submitted that as per Regulation 8(8) of the Connectivity Regulations and Clauses (5) and (6) of Regulation 8 of the Sharing Regulations, it has been clearly envisaged that the generator is liable to pay the transmission charges for the dedicated transmission system till the COD of the generator,

subsequent to which the transmission charges shall be included in the PoC mechanism and shared as per the provisions of the Sharing Regulations. The Petitioner has further submitted that even if the Respondent has been drawing start-up power over the dedicated transmission line, it is neither making payment of transmission charges since 20.3.2016 nor has extended the Letter of Credit as Payment Security Mechanism.

4. The Respondent in its reply dated 19.4.2017 has submitted that the Unit No. 1 of the NTPP was clearly commissioned on 20.3.2016 after following the due process. In this connection, the Respondent has relied upon the Ministry of Power OM dated 3.9.2009 which explains the requirements to be fulfilled for commissioning of thermal units. The Respondent has further submitted that as per second proviso under clause (2) of Regulation 12 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter Tariff Regulations, 2014), transmission charges are payable by the generator till the commissioning of the generating station. The Respondent by placing reliance on the judgement of the Appellate Tribunal for Electricity (Appellate Tribunal) dated 4.10.2012 in Appeal No. 185 of 2011 (Gujarat Urja Vikas Nigam Limited v Gujarat Electricity Regulatory Commission & Anr) has submitted that in the said judgement, the Appellate Tribunal has held that “commissioning” and “Commercial Operation” are two different concepts. The Respondent has submitted that in all contemporaneous documents including the Tariff Regulations, 2014, the words 'commissioning' and 'Commercial Operation Date' have been used differently and to denote two different concepts. The Respondent has further contended that in case of any doubts, the Petitioner could have approached this Commission for clarification at an earlier stage and therefore, it is incorrect on the part of the Petitioner to allege non-compliance by the

Respondent. The Respondent has submitted that due to the high handed attitude of the Petitioner (in its capacity as a CTU) in creating issues of giving Declared Capacity to the generating station of the Respondent despite having achieved commercial operation, the Respondent has deposited the amount being claimed in the present petition under protest and subject to the result of the present petition. With regard to the issue of 'Declared Capacity', the Respondent has approached this Commission by filing Petition No. 24/MP/2017. The Respondent has submitted that it has complied with the order dated 21.6.2013 and the Petitioner is now seeking a modification in the Order dated 21.6.2013 with the word 'commissioning' to be read as 'date of commercial operation'. The Respondent has submitted that there can be no question of surcharge and the Petitioner be directed to refund the amounts that was deposited by the Respondent under protest.

5. During the hearing, the representative of the Petitioner and learned counsel for the Respondent reiterated their submission made in the written pleadings and the same are not repeated for the sake of brevity.

### **Analysis and Decision**

6. The transmission system consisting of 400 kV D/C Nabinagar-Sasaram Transmission Line and 400 kV sub-station at Nabinagar and extension of 400 kV sub-station at Sasaram were meant for evacuation of power from Nabinagar of the Respondent. Though the transmission system was in the nature of dedicated transmission line, the Petitioner has executed the said transmission system as part of coordinated transmission planning in terms of Regulation 8(8) of the Connectivity Regulations. The Petitioner filed Petition No. 83/TT/2012 for determination of the tariff of the transmission system with anticipated COD as 1.4.2012. The Petitioner

declared the commercial operation of the transmission system with effect from 1.7.2012. The Commission in order dated 21.6.2013 approved the COD of the transmission system as 1.7.2012 in terms of second proviso to Regulation 3(12)(c) of the Tariff Regulations, 2009. The Commission in the said order decided the sharing of the transmission charges of the transmission system as under:

“54. The petitioner has submitted that the transmission charges for the subject asset shall be recovered on monthly basis in accordance with Regulation 23 from BRBCL till the same is paid by the beneficiaries and it will be shared by the beneficiaries in accordance with the Regulation 33 of the 2009 Tariff Regulations after commissioning of the Nabinagar TPS. BRBCL in its reply has submitted that the transmission charges shall be paid by it only till the commissioning of the Nabinagar TPS and not till the same is paid by beneficiaries as contended by the petitioner.

55. We have considered the submissions of the petitioner and BRBCL. The transmission charges shall be borne by BRBCL, as per the arrangement entered into by BRBCL with the petitioner, till the commissioning of the Nabinagar TPS and thereafter the billing, collection & disbursement of the transmission charges shall be governed by the provision of Central Electricity Regulatory Commission (Sharing of inter-State transmission charges and losses) Regulations, 2010, as amended from time to time.”

This order has not been challenged and the parties have been complying with the directions contained in the said order. The Respondent has paid the transmission charges till 20.3.2016 on the ground that the commissioning of the NTPP occurred on 20.3.2016 and thereafter, the Respondent has no liability to pay the transmission charges. Accordingly, the Respondent stopped payment of transmission charges with effect from 21.3.2016. Admittedly, Unit 1 of NTPP was declared under commercial operation at 0000 hrs of 15.1.2017 after it was certified by RLDC that the unit has carried out successful trial run in accordance with the provisions of IEGC. Since the transmission tariff will be recovered under PoC mechanism after the commercial operation of the unit of the generating station, the transmission tariff for the transmission system remained unserved from 21.3.2016 till 14.1.2017. The Petitioner has submitted that in terms of proviso to Regulation 8(8) of Connectivity

Regulations and Clauses (5) and (6) of Regulation 8 of the Sharing Regulations, the Respondent is liable to pay the transmission charges till the commercial operation of the units of the generating station. Therefore, the dispute between the Petitioner and Respondent falls within a narrow compass i.e. whether the words “till the commissioning of Nabinagar TPS” appearing in para 55 of the order dated 21.6.2013 shall refer to the COD of the Unit 1 of the generating station or not.

7. The Respondent has submitted that in all contemporaneous documents including the Tariff Regulations, 2014, the words 'commissioning' and 'Commercial Operation Date' have been used differently and to denote two different concepts. Therefore, the words “till the commissioning of Nabinagar TPS” cannot refer to the COD of Unit 1 of NTPP. Let us first consider the contemporaneous documents relied upon by the Respondent.

8. The first document that the Respondent has relied upon is the Ministry of Power OM dated 3.9.2009. The said OM is extracted as under:

“This is in continuation of this Ministry's O.M. of even number dated 12" August, 2008 and to say that the issue regarding revision of definition of generation power projects for the purpose of capacity addition was further examined by a High Level Technical Committee (HLTC) headed by Chairman, Central Electricity Authority (CEA). On the basis of the recommendations of the HLTC and further examination of the issue by the Ministry, the following decisions have been taken regarding the definition of commissioning of power projects:

(a) Thermal Units (coal, Gas, Lignite)

A thermal unit may be considered as commissioned when the construction and commissioning of all plants and equipments required for operation of the unit rated capacity are complete and the unit achieves full rated load on the designated fuel.”

In the above definition, two words namely, “commissioned” and “commissioning” have been used. While the word “commissioned” has been used in



the context of a thermal unit, the word “commissioning” has been used in the context of all plants and equipments. The commissioning of the unit not only requires construction and commissioning of plants and equipments for operation of the unit at rated capacity, it also requires achievement of full load at the designated fuel. Therefore, commissioning of plants and equipment will refer to readiness of the plants and equipments through testing and synchronization with the grid. However, commissioning of the unit will take place after the unit achieves full load at designated fuel. As per the above definition, while commissioning of the plants and equipments will refer to the testing and synchronization of the Unit with the grid, commissioning of the unit will take place after the unit undergoes trial operation and achieves the full load at designated fuel which is a necessary requirement for commercial operation of the unit. In case of the Respondent, commissioning of plant and equipment took place on 21.3.2016 when Unit 1 was synchronized and full load was achieved. However, the trial operation took place when trial run was carried out from 00:00 hrs of 3.1.2017 to 24:00 hrs of 5.1.2017. In terms of the above definition, the Unit was commissioned from 0000 hrs of 15.1.2017 i.e. it achieved the commercial operation with effect from that date. The words “commissioned” or “commissioning” have been used in the above definition in two different contexts. Therefore, the meaning of the word “commissioning” has to be gathered from the context in which it is used.

9. The Respondent has next relied upon the Regulation 12 of the Tariff Regulations, 2014. The said Regulation is extracted as under:

“12. Controllable and Uncontrollable Factors

(1).....

(2) The “Uncontrollable factors” shall include but shall not be limited to the following:

(i) Force Majeure

(ii) Change in Law

Provided that no additional impact of time overrun or cost overrun shall be allowed on account of non-commissioning of the generating station or associated transmission system by SCOD, as the same should be recovered through Implementation Agreement between the generating company and the transmission licensee:

Provided further that if the generating station is not commissioned on the SCOD of the associated transmission system, the generating company shall bear the IDC or transmission charges if the transmission system is declared under commercial operation by the Commission in accordance with second proviso of Clause 3 of Regulation 4 of these regulations till the generating station is commissioned:

Provided also that if the transmission system is not commissioned on SCOD of the generating station, the transmission licensee shall arrange the evacuation from the generating station at its own arrangement and cost till the associated transmission system is commissioned.”

The Respondent has submitted that the word “commissioned” has been used in the said regulation and not the words “Commercial Operation Date” and therefore, the word “commissioning” is different from COD and therefore, the Petitioner cannot insist that the Respondent is liable to pay the transmission charges till COD of Unit 1.

10. It is pertinent to mention that though the words “commissioning” and “commissioned” have been used in the provisos under Clause (2) of Regulation 12 of the Tariff Regulations, 2014, the said words have not been defined in the Tariff Regulations, 2014. The term “Date of commercial operation or COD” has been defined in Regulation 3(14) read with Regulation 4 of Tariff Regulations, 2014. Similarly, the term “Scheduled Commercial Operation Date” has been defined 3(54) of the Tariff Regulations, 2014. Definition of COD and SCOD are extracted as under:

“3(14) ‘Date of Commercial Operation’ or ‘COD’ shall have the same meaning as defined in Regulation 4 of these regulations”.

“4. Date of Commercial Operation



.....  
(1) Date of commercial operation in case of a generating unit or block of the thermal generating station shall mean the date declared by the generating company after demonstrating the maximum continuous rating (MCR) or the installed capacity (IC) through a successful trial run after notice to the beneficiaries, if any, and in case of the generating station as a whole, the date of commercial operation of the last generating unit or block of the generating station:"

"3(54) 'Scheduled Commercial Operation Date or SCOD' shall means the date(s) of commercial operation of a generating station or generating unit or block thereof or transmission system or element thereof as indicated in the Investment Approval or as agreed in power purchase agreement or transmission service agreement as the case may be, whichever is earlier"

11. In the light of the above definition, let us examine the provisos under clause (2) of Regulation 12 of Tariff Regulations, 2014. The first proviso says that no additional impact of time overrun or cost overrun shall be allowed on account of non-commissioning of generating station or transmission system by SCOD. Since SCOD refers to the COD as per the investment approval, non-commissioning by SCOD will only mean non-achievement of COD as on SCOD. If any other meaning is ascribed to commissioning, this will do injustice to the structure of the regulations. For example, if commissioning is considered as synonymous to synchronization as pleaded by the Respondent, then this proviso will mean that no additional impact of time overrun or cost overrun shall be allowed if the unit is not synchronized. It is common knowledge that synchronization is a technical requirement and does not have commercial implication in tariff and therefore, cost and time overrun cannot be calculated with reference to the date of synchronization. It is only the date of commercial operation based on which time overrun and cost overrun can be assessed. Second proviso has two parts. In the first part, it says that if the generating station is not commissioned as on SCOD of associated transmission system, it will be required to pay IDC to the transmission licensee. The second part says that if the Commission in exercise of its power under Regulation 4(3) declares

the commercial operation of the transmission system, then the generator shall be required to pay the transmission charges till the generating station is commissioned. Use of the word “commissioned” in case of the generating station refers to COD of the generating station since after the COD only, the liability to pay the transmission charges passes on to the beneficiaries if the capacity of the generating station is tied up. If the word “commissioned” is read as synonymous with “synchronized”, then the liability of beneficiaries will not kick in and the transmission charges will remain unrecovered as the generator will be absolved from the date of synchronization till the date of commercial operation of the units of the generating station. The third proviso says that if the transmission system is not commissioned on SCOD of the generating station, the transmission licensee shall arrange the evacuation from the generating station at its own cost till associated transmission system is commissioned. Here the word “commissioned” has been used both in case of generating station and transmission system. If the word “commissioned” is interpreted as “synchronized” and not COD of the generating station or transmission system, it will lead to an anomalous position where the transmission licensee will be required to make alternative arrangement for evacuation which the generating station does not need for supply of power which will commence after the commercial operation. Considering all aspects, harmonious construction of various provisions of the Tariff Regulations leads us to the conclusion that the word “commissioning” or “commissioned” has been used in the proviso under clause (2) of Regulation 12 to denote COD of the generating station or units thereof or COD of the transmission system.

12. The Respondent has also relied on the judgement of the Appellate Tribunal for Electricity (Appellate Tribunal) dated 4.10.2012 in Appeal No. 185 of 2011

(Gujarat Urja Vikas Nigam Limited v Gujarat Electricity Regulatory Commission & Anr) in support of its contention that in the said judgement, the Appellate Tribunal has held that “commissioning” and “Commercial Operation” are two different concepts. The Respondent has relied upon para 15 of the said judgement which is extracted as under:

“15. Now, it has been argued very assiduously by the learned counsel for the appellant that COD occurs in relation to a unit as soon as commissioning is effected. This is another grey area in respect of which analysis is needed and the doctrine of harmonious construction, when applied, there is presented before us no problem. "Commissioning" means, in relation to a unit, that the unit has passed Commissioning Tests successfully. This Commissioning may take place in respect of all the units also. Now, Commissioning Test means the test as provided in Schedule 4. Schedule 4 deals with parameters or performance test, and when an Independent Engineer is satisfied that a unit has performed or achieved all the parameters of the test as laid down in Schedule 4 then happens successfully the test of Commissioning. Now, according to Mr. Ramachandran, when commissioning happens, the COD occurs because according to him, "Commissioned Unit" means the unit in respect of which COD has occurred. Mr. Ramachandran pushes his argument further with reference to Article 6.2.6 where it has been stipulated that a unit shall be commissioned on the day after the date when the procurer receives a final test certificate of the Independent Engineer in terms of Schedule 4. The words "on the day" as occur after the words "after the date", according to Mr. Ramachandran, clearly show that the commercial operation has to start on the day after the date when the procurer receives the final test certificate. Charming though the argument is, we are unable to endorse the argument when the doctrine of harmonious construction is invoked. For the Article 6.2.6 cannot be divorced from Article 6.4. The latter deals with commercial operation. The Independent Engineer's certificate has to be made available to the procurer by the seller. It is not that it is the Independent Engineer who will directly furnish the certificate to the procurer because in Article 6.4, there is a reference to the Article 6.2.6 with these words that the seller shall indicate a date as the COD of the concerned unit, and more particularly and expressly it has further been laid down that the unit for the purposes of this agreement shall achieve COD on the date indicated in such letter or the date on which such supply of power actually commences after commissioning of the unit whichever is later. Thus mere forwarding to the buyer a certificate of the Independent Engineer will not do. The seller has to issue a letter indicating a date when supply on commercial basis is intended. Again, between the date indicated in the letter and the date when actual supply on commercial basis commences it is the later that will count for the purpose of determining as to when COD has occurred. The words 'on the day' as they occur at the beginning of Article 6.2.6, if to be reconciled with Article 6.4 wherein there is reference to the Article 6.2.6, has to be read simply as meaning after the date when the procurer receives a final test certificate of the Independent Engineer together with a letter of the seller indicating a date for the purpose of commencement of supply. With this provision, we may now refer to the definition of the word "Commissioned Unit" which means the unit in respect of which COD has occurred. Therefore, mere "commissioning" does not invariably indicate that the unit has been commissioned commercially. Therefore, even when a unit has passed commissioning test there does not arise automatically the legal obligation on the part

of the seller to commence supply to the procurer.”

The Respondent has relied upon last two lines of the para 15 of the judgement which says that commissioning does not invariably indicate that the unit has been commissioned commercially. First of all, the above judgement has been rendered in the context of the PPA dated 2.2.2007 entered into between Adani Power Limited (APL) and Gujarat Urja Vikas Nigam Limited (GUVNL) pursuant to competitive bidding under Section 63 of the Act. In that case, Appellate Tribunal was considering whether in terms of the provisions of the PPA, APL had any obligation to supply power to GUVNL prior to SCOD of Units 5 and 6 of Mundra Power Project. After going through the architecture of the PPA, the Appellate Tribunal came to the conclusion that APL had no such obligations under the PPA to supply power to GUVNL prior to SCOD. Secondly, the Appellate Tribunal noticed that mere commissioning i.e. synchronization of the units to the grid and completion of full load testing and trial operation do not automatically lead to commercial operation of the unit. The Appellate Tribunal noted that as per the PPA, the Project Developer is not only required to share copy of the report of Independent Engineer with the beneficiaries but is also required to issue a letter to the beneficiaries indicating a date when supply on commercial basis is intended. The Appellate Tribunal came to the conclusion that between the date indicated in the letter and the date when actual supply on commercial basis commences, the later date will count for the purpose of determining as to when COD has occurred. This distinction made by the Appellate Tribunal between commissioning and commercial operation in the context of the specific provisions of the PPA between APL and GUVNL is not applicable in the case of the Respondent. We have noticed that the word ‘commissioning’ and ‘COD’ have been used interchangeably in the Tariff Regulations, 2014 and the tariff of both



Nabinagar TPP and the transmission system of PGCIL are governed in accordance with the said regulations.

13. Next we consider about the understanding of the parties with regard to the term 'commissioning' when they entered into the Indemnification Agreement dated 29.4.2010 between the Petitioner and Respondent. On perusal of the Implementation Agreement which has been placed on record by the Respondent, we notice that throughout the agreement, the word "commissioning", and not the word "date of commercial operation or COD" has been used. The following are the examples from the Indemnification Agreement:

(a) In para 4 of the Preamble of the IA, the following has been agreed:

"AND WHEREAS both "BRBCL" and POWERGRID are desirous of matching the commissioning schedule of the generating units' vis-a-vis the associated transmission system."

(b) Para 1 of the IA begins with the heading "SCHEDULE OF COMMISSIONING" and in Para 1(a) it goes on to describe the mechanism for working out the commissioning schedule of the generating units vis-a-vis the ATS.

(c) Para 2(a) talks about the delay in commissioning schedule of generating units vis-a-vis ATS.

(d) Para 2(b) uses both the words "commissioning" and "commissioned". It says that "In the event that actual commissioning of both the generating unit(s) and ATS occurs beyond the mutually agreed zero date, the actual date of commissioning of Generating unit(s) or ATS, whichever is commissioned earlier, shall be considered as the zero date for the purpose of this

agreement.”

(e) Para 3 of the IA provides that the compensation “shall be worked out based on the audited expenditure of the Commissioned Generating units or ATS as the case may be.

(f) Annexure to the IA talks about the commissioning schedule of Unit 1 of Nabinagar TPP and the transmission system.

Thus, both the Petitioner and Respondent have consciously used the words “commissioning” and “commissioned” in the IA and both the words have been used in the sense of operation of the generating station of the Respondent and the transmission system of the Petitioner on commercial basis.

14. The Petitioner has referred to Regulation 8(8) of the Connectivity Regulation. It may be explained that the said regulation deals with the situation where the CTU is required to undertake development and operation of the dedicated transmission line or associated transmission system for a generator having a thermal capacity of 500 MW and above as is the case with the Respondent. The last proviso under the said regulation provides as under:

“Provided also that the transmission charges for such dedicated transmission line shall be payable by the generator even if such generation project gets delayed or abandoned.”

This provision clearly puts beyond doubt that in case of delay of the generation project, it will be required to pay the transmission charges of the dedicated transmission line or associated transmission system.

15. The Petitioner has relied upon third proviso to Regulation 8(5) and Regulation



8(6) of the Sharing Regulations. Clauses (5) and (6) of Regulation 8 of the Sharing Regulations are extracted as under:

“(5) Where the Approved Withdrawal or Approved Injection in case of a DIC is not materializing either partly or fully for any reason whatsoever, the concerned DIC shall be obliged to pay the transmission allocated under these regulations:

Provided that in case the commissioning of a generating station or unit thereof is delayed, the generator shall be liable to pay withdrawal charges corresponding to its Long Term Access from the date the Long Term Access granted by CTU becomes effective. The Withdrawal Charges shall be at the average withdrawal rate of the target region:

Provided further that where the operationalization of LTA is contingent upon commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial, the generator shall pay the transmission charges for LTA operationalized corresponding to the transmission system commissioned:

Provided also that where the construction of dedicated transmission line has been taken by the CTU or the Transmission Licensee, the transmission charges for such dedicated transmission line shall be payable by the generator as provided in the Regulation 8(8) of the Connectivity Regulations:

Provided also that during the period when a generating station draws start-up power or injects infirm power before commencement of LTA, withdrawal or injection charges corresponding to the actual injection or withdrawal shall be payable by the generating station and such amount shall be adjusted in the next quarter, from the ISTS transmission charges to be recovered through PoC mechanism from all DICs:

Provided also that CTU shall maintain a separate account for the above amount received in a quarter and deduct the same from the transmission charges of ISTS considered in PoC calculation for the next application period.

(6) For Long Term Transmission Customers availing power supply from inter-state generating stations, the charges attributable to such generation for long-term supply shall be calculated directly at drawl nodes as per methodology given in the Annexure-1. Such mechanism shall be effective only after commercial operation of the generator. Till then it shall be the responsibility of the generator to pay the transmission charges.”

According to the third proviso under Clause (5), where CTU or any transmission licensee executes the dedicated transmission line, the generator shall be liable for payment of the transmission charges of the said transmission line till the COD of the generating station or unit thereof.

16. On analysis of the provisions of the Ministry of Power OM dated 3.9.2009, the

provisions of the IA between the Petitioner and Respondent, and the Tariff Regulations, 2014, we have come to the conclusion that the words “commissioning” and “commissioned” have been used in the sense of date of commercial operation of the units of the generating station or transmission system as the case may be. The judgement of the Appellate Tribunal dated 4.10.2012 in Appeal No. 185 of 2011 (Gujarat Urja Vikas Nigam Limited v Gujarat Electricity Regulatory Commission & Anr) was in the context of the PPA between the parties thereto and is not applicable in the present case. As per the Connectivity Regulations as well as Sharing Regulations, the generator is liable to pay the transmission charges till the commercial operation of the generating station or units thereof as the case may be.

17. In view of the above discussion, it is clarified that the words “till the commissioning of the Nabinagar TPP” used in para 55 of the order dated 21.6.2013 in Petition No. 83/TT/2012 have been used in the sense of “till the date of commercial operation of Nabinagar TPP”. Therefore, the Respondent shall be liable to pay the applicable transmission charges from 21.3.2016 till the date of commercial operation of Unit 1 of Nabinagar TPP. Accordingly, it is directed that the Respondent shall pay the outstanding transmission charges alongwith the applicable surcharge to the petitioner within the period of one month from the date of issue of this order. The Respondent has paid the transmission charges for the disputed period under protest during the pendency of this petition. The Petitioner is directed to adjust the said amount while raising the bills. The Respondent is further directed to maintain the payment security mechanism with the petitioner in accordance with the applicable provisions of the Regulations.

18. The Respondent has submitted that the Petitioner is not operationalizing the

LTA even though Unit 1 of Nabinagar TPP has been commissioned. The Commission in order dated 29.6.2017 in IA No. 20/2017 in Petition No. 20/MP/2017 (Bharatiya Rail Bijli Company Limited Vs East Central Railway & Others) has already directed the CTU to operationalize the LTA for evacuation of power from Nabinagar TPS.

19. Petition No.10/MP/2017 is disposed of in terms of the above.

**sd/-**  
**(M.K. IYER)**  
**MEMBER**

**sd/-**  
**(A. S. BAKSHI)**  
**MEMBER**

**sd/-**  
**(A. K. SINGHAL)**  
**MEMBER**

**sd/-**  
**(GIREESH B. PRADHAN)**  
**CHAIRPERSON**