

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 321/MP/2019

**Coram:
Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K Singh, Member**

Date of Order: 3.6.2022

In the matter of

Petition for modification of transmission License in terms of Commission's order dated 2.5.2019 in Petition No.102/TT/2018.

And in the matter of

Essar Power Transmission Company Limited,
Lower Ground Floor,
Hotel Conclave Boutique,
A-20, Kailash Colony,
New Delhi – 110 048

....Petitioner

Vs

1. NTPC Limited,
NTPC Bhawan,
SCOPE Complex, Institutional Area, Lodhi Road,
New Delhi-110003
2. Essar Power M. P. Limited,
Lower Ground Floor,
Hotel Conclave Boutique, A-20, Kailash Colony,
New Delhi – 110 048
3. Power Grid Corporation of India Limited,
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi – 110 016
4. Power System Operation Corporation Limited,
National Load Despatch Centre,
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi – 110 016
5. Western Region Power Committee,



F-3, MIDC Area, Marol,
Opposite SEEPZ, Central Road, Andheri East,
Mumbai – 400 093

6. Essar Steel India Limited,
27th KM on Surat – Hazira Road,
Hazira District,
Surat – 394270
7. M. P. Power Management Company Limited,
Block No.11, Shakti Bhawan, Vidyut Nagar,
Jabalpur – 482 008

....Respondents

Parties Present: Shri Alok Shankar, Advocate, EPTCL
Ms. Swapna Seshadri, Advocate, NTPC

ORDER

The instant Petition is filed by Essar Power Transmission Company Limited (“EPTCL”) which is granted a transmission license by the Commission vide order dated 10.4.2008 in Petition no. 157/2007.

2. The Petitioner has made the following prayers:

“

- (a) Admit the present petition;
- (b) Modify the inter-state transmission license granted to the Petitioner to remove 2 No. 400 KV bays at Jhanor Gandhar GPS of NTPC Limited from the list of licensed assets and direct NTPC to submit the data of the bays to CTU/NLDC for claiming the transmission charges through POC and file tariff petition independently after modification of the transmission license of EPTCL;
- (c) Direct NTPC to not to raise invoice on EPTCL from the time direct payment is being made by CTU to NTPC;
- (d) Direct NTPC to release the Bank Guarantee forthwith.
- (e) pass any other order, which this Hon’ble Commission may deems necessary and reasonable.

”

Submissions by the Petitioner

3. Petitioner vide Affidavit dated 19.9.2019 has submitted as follows:



(a) The Petitioner (EPTCL) is a company engaged in the business of establishing, commissioning, setting up, operating and maintaining electric power transmissions systems forming part of the Inter-State Transmission System (“ISTS”). EPTCL had filed an application vide Petition no. 157/2007 before the Commission praying for grant of transmission license for transmission assets as below:

Transmission lines

Sr. No.	Transmission lines	Approximate line length (kms)
1.	400 kV D/C (triple conductor) transmission line from Mahan to Sipat Pooling sub-station	315
2.	LILO of existing 400 kV S/C Vindhyachal-Korba transmission line of Powergrid at Mahan	20
3.	400 kV D/C (twin conductor) transmission line from Gandhar NTPC switchyard to Hazira	97

Sub-stations

Sr. No.	Sub-stations
4.	3X500 MVA 400 /220 kV sub-station at Hazira
5.	2x50 MVAR line reactors at Sipat pooling sub-station
6.	2x50 MVAR line reactors at Mahan

(b) However, the Central Transmission Utility of India Limited (CTUIL) proposed addition of following elements into the scope of the work for EPTCL. The relevant part of the order dated 10.04.2008 is extracted hereunder for ready reference:

“7. The Central Transmission Utility by virtue of provisions of sub-station (4) of Section 15 of the Act has not raised any objection to grant of transmission licence to the applicant for the construction, operation and maintenance of the proposed transmission system. The Central Transmission Utility in its letter dated 18.1.2008, has advised the list of elements to be included in the proposed transmission system, according to which following are required to be added in the scope of the applicant:

- (i) 1x80 MVAR, 420 kV switchable bus reactor at Mahan TPS along with its associated 400 kV bay;*
- (ii) 2 nos 400 kV line bays at Sipat pooling station;*
- (iii) 2 nos 400 kV line bays at Gandhar (NTPC) switchyard;*
- (iv) 4 nos 400 kV line bays at Mahan TPS.”*



- (c) Pursuant to the recommendation of the CTUIL and no objection from any other party, the Commission vide order dated 10.4.2008 granted transmission license to EPTCL for developing the lines and bays as mentioned in its application and those directed to be included in its scope by CTUIL. At the time of grant of license itself it was clear that EPTCL was required to set-up bays in the switchyard of Jhanor Gandhar GPS of NTPC Ltd.
- (d) Since, 2 numbers bays at Gandhar end were to be constructed in the switchyard of Gandhar GPS of NTPC; an agreement vide dated 11.2.2010 was entered into between NTPC Limited and EPTCL for construction of the said bays. The said agreement was entered into to ensure compliance with the transmission license order dated 10.04.2008 passed by the Commission. As per the agreement dated 11.2.2010, 2 numbers 400 KV bays which were licensed assets of EPTCL would be constructed, owned and operated by NTPC.
- (e) Pursuant to the said agreement, NTPC agreed to build two 400 kV bays at Gandhar Substation. In terms of the said agreement, EPTCL was required to pay monthly transmission charges calculated by NTPC as per the CERC Tariff Regulations.
- (f) The Commission vide combined order dated 15.6.2016 in Petition No. 173/TT/2013 and Petition No. 111/TT/2015 for approval of transmission tariff of combined assets of LILO of 400 kV S/C Vindhyaachal-Korba Transmission line and 400 kV D/C Gandhar-Hazira Transmission line and 400/220 kV GIS sub-station at Hazira and associated bays and 400 kV D/C Quad Moose Transmission line from Mahan Thermal Power Plant-Sipat Pooling Substation and associated bays observed as under:

71. It is observed that the transmission licence was granted to the petitioner for two 400 kV line bays at Gandhar (NTPC) switchyard, which was also agreed by NTPC in 9th meeting of WR constituents held on 3.7.2007 at Indore regarding long term access applications. Later, the petitioner and NTPC have agreed that NTPC would own, construct and maintain these bays and recover the annual transmission charges from the petitioner. Accordingly, NTPC has completed these two 400 kV line bays at Gandhar (NTPC) switchyard

72. We direct NTPC and the petitioner to jointly approach the Commission for approval of tariff of two 400 kV line bays at Gandhar(NTPC) switchyard. After approval of the tariff, the petitioner shall recover the same through PoC and reimburse it to NTPC.



(g) The said order was challenged by NTPC by filing a Review Petition No. 55/RP/2016. The Commission vide order dated 30.01.2018 in Review Petition No.55/RP/2016 disposed-off the review petition holding as under:

“10. As regards the contention of NTPC and MPPMCL that the transmission charges of the two bays at Gandhar Switchyard should not be included in the PoC charges, it is clarified that the two bays formed part of the licence granted to EPTCL and therefore are considered as ISTS. Therefore, the tariff shall be reimbursed in accordance with the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (2010 Sharing Regulations).”

(h) The Commission rejected the contention of NTPC that the 400 kV Gandhar-Hazira line which terminates at Gandhar Gas Power Station switchyard and for which the two 400 kV bays have been constructed, are dedicated in nature and do not form part of the meshed network of inter-State transmission system.

(i) In terms of the orders passed by the Commission, EPTCL after receiving all the relevant inputs from NTPC, filed the tariff Petition No.102/TT/2018 for the 2 numbers of 400 KV bays at Jhanor Gandhar Gas Power Station of NTPC Limited.

(j) While the present petition was pending, NTPC filed an Application No. 43/IA/2018 in Petition No. 102/TT/2018 inter alia praying that payment from the POC pool be made directly to NTPC. In pursuance to order of the Commission in IA No. 43/IA/2018 dated 11.6.2018, direct payment of transmission charges are being made by PGCIL from the POC pool to NTPC. Such payments are based on the AFC approved by the Commission and therefore, the Petitioner EPTCL has no role in determination and payment of amounts due to NTPC. Thus, the bank guarantee furnished by EPTCL in terms of the agreement between NTPC and EPTCL has become redundant.

(k) Since, the order dated 11.06.2018 passed by the Commission did not give any finding in relation to the payment security (bank guarantee) furnished by EPTCL, EPTCL filed an Application No. 60/IA/2018 in Petition No. 102/TT/2018 seeking return of the BG furnished in terms of the Commercial Agreement. The application filed by the Petitioner and the Tariff Petition were disposed-off by the order of the Commission dated 02.05.2019 (modified by order dated 20.05.2019).



(l) CERC vide its order dated 11.06.2018, has directed CTU to make direct payment to NTPC for the Gandhar Bays and subsequently CERC vide its order dated 02.05.2019 has determined the AFC for the two bays. The payment of transmission charges for the bays is being presently directly made to NTPC from the POC pool by the CTU. Further, the submission of data for Bill-1, Bill-3 etc for the said asset is being carried out by EPTCL. However, NTPC is raising the monthly bills for usage charges to EPTCL along with applicable GST/service tax. As the payments are being released by PGCIL to NTPC directly and claims are raised under Bill-1 and Bill-3 which does not attract tax and hence there should not be separate billing of GST on EPTCL by NTPC from the time direct payment is being made by CTU.

(m) Considering the existing nature of the asset (2 numbers bays) being owned by NTPC as the part of ISTS, the Commission may make provisions facilitating NTPC to carry on filing of the petition for determination of tariff and continue getting transmission charges through POC, after removal of the asset from the license of EPTCL. Accordingly, the Commission may direct CTU/NLDC to consider these assets (2 numbers bays) under POC for reimbursement of transmission charges to NTPC.

(n) The Petitioner has no objection with regards to the bays at NTPC station being removed from the license of the Petitioner and be treated as part of the NTPC generating station. No proceeding against EPTCL is pending before NCLT under the Insolvency Code.

Hearing dated 8.4.2021

4. The Petitioner submitted that the instant Petition has been filed for modification of transmission licence granted to the Petitioner, in terms of the Commission's order dated 2.5.2019 in Petition No. 102/TT/2018. The representatives of Respondent No.1, NTPC and Respondent No.7, MPPMCL accepted the notice and did not object to admission of the Petition. Accordingly, the Commission admitted the Petition.



Submissions by Respondent No. 7, Madhya Pradesh Power Management Company Limited (MPPMCL)

5. MPPMCL vide Affidavit dated 26.4.2021 has submitted as follows:

- (a) In case the assets i.e. 2 nos. 400kV bays at Gandhar GPS are excluded from the licence of the Petitioner, it may fall into the share of NTPC. In the facts and circumstances, that NTPC has not sought for and has not been granted a transmission licence in respect of said assets, it would be necessary to reasonably hold as to who may be the transmission licensee for the said assets. The Petitioner has not suggested anything on this issue. The license for the said assets may be vested with the CTU.
- (b) The Commercial Agreement dated 11.2.2010 was not approved by the CTU or by the Commission. Therefore, instead of approaching the Commission for exclusion of the respective assets from its licence, the Petitioner should have sought appropriate specific performance of the Commercial Agreement against NTPC Ltd. In case the respective assets are excluded from the licence of the Petitioner, the same may form a part of dedicated transmission system of NTPC contrary to the order dated 10.4.2008. The assets sought to be excluded from the Petitioner's licence form part of the meshed network of inter-State transmission system and not a dedicated transmission system of NTPC, cannot be left de-licensed in any manner.
- (c) The transmission licence granted in favour of the Petitioner was not transferable. Even then, the Petitioner permitted NTPC to construct, maintain and operate the respective assets in violation of the terms and conditions of the transmission licence. Therefore, the said assets ought not be excluded from the Petitioner's licence. The Petitioner once having taken licence for the same and entered into a Commercial Agreement with NTPC without approval of the CTU and the Commission, should take the responsibility of the said assets on its shoulders and cannot seek to wriggle out of it.
- (d) The said Commercial Agreement is ab-initio void in as much as it permitted NTPC to construct, maintain and operate the respective transmission assets which were not licensed in favour of NTPC. The said agreement did not provide for any arrangement of tariff approval of the respective assets. Thus, the said agreement cannot be acted upon and taken into consideration for the purpose of adjudication of present petition.



(e) The Petitioner and NTPC have not approached the Commission by way of a joint Petition as was desired of them vide orders passed in Petitions No. 111/TT/2015 and 173/TT/2013. The Petitioner has approached the Commission claiming reliefs in peace-meals. The present Petition is bereft of merits and is a calculated effort on the part of the Petitioner to wriggle out of the terms and conditions of the transmission licence in the garb of its unenforceability and ab-initio void Commercial Agreement with NTPC Ltd.

Submissions by Respondent No. 1 NTPC

6. NTPC vide affidavit dated 26.5.2021 has submitted as follows:

- (a) EPTCL filed Tariff Petition No. 102/TT/2018. In the meantime, since the payments to NTPC were getting delayed, NTPC filed IA No. 43/IA/2018, wherein the Commission vide its interim order dated 11.06.2018 directed CTU to make direct payment to NTPC through POC for the said bays. However, the direction to CTU to pay the transmission charges to NTPC directly was nothing but rerouting the payment of transmission charges (i.e. direct payment to NTPC instead of arrangement of payment to NTPC through EPTCL) being collected through POC.
- (b) NTPC is not a transmission licensee and at no point of time assumed any of the responsibilities of a transmission licensee as contemplated by the Electricity Act, 2003 with regard to the 2 numbers 400 kV bays at the Jhanor Gandhar GPS. The relationship between NTPC and EPTCL was always a contractual one. At the time of grant of license to EPTCL, the said 2 numbers 400 kV bays, based on recommendation of CTU, were added to the transmission license of EPTCL. The construction of the bays by NTPC was on the representation of EPTCL that it had a valid transmission license. NTPC acted only on Build, Own & Operate basis subject to the terms contained in the Agreement dated 11.02.2010.
- (c) If the above bays are now to be removed from the license of EPTCL, the CTU should be consulted on the same. Further, since transmission is a licensed function, it cannot be that the bays will remain but without a license especially when the bays were added in the scope of the work of EPTCL and specific transmission license was granted to EPTCL.



- (d) With regard to the present petition, it may not be necessary for EPTCL to get the license amended and delete the bays from the license. The Commission has already directed that the tariff determined will be recovered through POC pool. Therefore, the present arrangements can be continued.
- (e) Further, EPTCL is seeking a direction that NTPC should directly file a tariff petition seeking tariff of these bays. This is completely uncalled for in the present condition, since NTPC is not a transmission licensee. NTPC developed these bays as a service provider for EPTCL and based on the bank guarantee given by EPTCL to secure the investment made by NTPC as well as the security for the monthly payments to be made by it. Even though the Commission has now directed that the payment be made to NTPC through POC pool, there is no impediment for EPTCL to file the tariff petition and get the tariff determined.
- (f) Another alternative is for the Commission to make arrangement as has been made in the Order dated 20.04.2015 in Petition No. 377/TT/2014 in the case of 400 kV Dadri - Loni Road Transmission Line. Further, by Order dated 02.05.2017 in Petition No. 324/GT/2014, the Commission has determined the tariff for Dadri Station including the cost of the Dadri-Loni line. In the case of the 400 kV Dadri-Loni transmission line, the Commission decided that the 400 kV line is a dedicated transmission line since it is not part of any other meshed network, the tariff of the said line has been determined as part of the generation tariff of the Dadri Generating Station and the transmission tariff pertaining to this line is billed directly to the beneficiaries.
- (g) In the present case, the Commission has already decided that the 400 kV bays are a part of ISTS and meshed network. Therefore, if the bays are treated as part of the generating station of NTPC, its costs must still have to be recovered through the POC pool since (i) the bays are part of ISTS network and it connects the ISTS lines both the sides, (ii) the beneficiaries of the Gandhar Station are different from the beneficiaries of the 400 KV bays, as it carries/transmits power flowing through EPTCL's ISTS lines.

- (h) In regards to payment of GST, being billed by NTPC Limited despite getting transmission charges through POC, it is mentioned that the recovery of transmission charges through POC is a rerouting arrangement and therefore, NTPC as service provider, is billing the usage charges along with GST on monthly basis to the transmission licensee i.e. EPTCL for providing the service, as per the Agreement dated 11.02.2010 entered into by both the parties. The billing of usage charges with GST cannot be stopped by NTPC in the current legal position of being a service provider, and it is also submitted that it is being billed to EPTCL from the beginning (right from commissioning of the asset) along with monthly usage charges.
- (i) As regards the Bank Guarantee, as per Clause 10 and Clause 11 of the Commercial Agreement dated 11.2.2010, BG is a security for payment of all the amounts due along with the security to protect the interest of NTPC in incurring the capital cost of installing 2X400 kV Bays. The due amount referred to includes not only the monthly charges but also the additional amount payable by EPTCL to NTPC directly (on a bilateral basis), on a monthly basis (at per kWh) towards the compensation for current transformer and potential transformer losses, all taxes and other outgoings incurred by NTPC from time to time, related to the above bays. Even if the transmission charges are to be recovered through the POC Pool, various elements of other charges and taxes referred to in Clause 8 of the Agreement need to be recovered from EPTCL.
- (j) The payment of monthly charges is only one of the elements. However, the payment of transmission charges is severable from the other elements/charges payable by EPTCL to NTPC in terms of Clause 8 of the Agreement. The severance of the obligation to pay the transmission charges, will not in any manner alter the scope of the whole contract, as to make it a new contract. Therefore, EPTCL continues to be liable to pay the other charges viz. Service Tax; Levies, charges, royalties, duties, cesses and other outgoings of NTPC; 2500 kwh per month at per kwh cost of the costliest fuel used at Gandhar Jhanor Station towards current and potential transformer losses etc.
- (k) Even with regard to the Bank Guarantee, the Commission will be putting in place a new mechanism. It would be that the transmission charges would be recovered through POC

pool but other charges would be billed directly by NTPC to EPTCL. This being the case, the Bank Guarantee cannot be discharged at this stage. It should be kept alive since EPTCL would continue to have additional obligations to NTPC directly apart from the transmission charges being recovered directly from the POC Pool.

- (l) Considering the peculiarity of the case, the Commission may provide NTPC all authorities as deemed transmission licensee for the sake of recovery of transmission charges of this asset as ISTS through POC for the life of the asset, with the condition that it cannot be quoted as precedence.
- (m) Before deciding the modification of transmission license of EPTCL by excluding the 2 numbers 400 kV bays at Gandhar GPS, the following issues may be taken into consideration by the Commission:
 - (i) If the license is modified, the investment by the NTPC is protected for the asset constructed by it and serving as an element of meshed network.
 - (ii) The bays may be considered/continued as part of ISTS network for the life of the asset, and its ISTS status as part of meshed network shall remain immune from the existence of EPTCL transmission asset(s) in future.
 - (iii) The recovery of transmission charges through POC must be continued to NTPC along with the payment security mechanism in place, as applicable for other transmission licensees, as per applicable regulations.
 - (iv) Issue of billing of GST may please be addressed in view of the modified positions of EPTCL & NTPC (if license is modified) as well as the Agreement in place
 - (v) The availability factor for the asset may be considered as declared by the generator or the average availability factor of Western Region ISTS network.
 - (vi) The commercial liability towards the asset(bays) (including GST), as arises to be payable till the date of effect of license modification, the same shall be paid by EPTCL to NTPC, to the satisfaction of NTPC. Till then, EPTCL shall not be absolved of the liabilities towards payment of charges for the 2 numbers 400 KV bays (if license is modified).
 - (vii) The sanctity of Agreement entered into by both the parties and its effectiveness post license modification.



Rejoinder of EPTCL to the replies of MPPMCL and NTPC

7. EPTCL vide affidavit dated 16.7.2021 has submitted the following:

(a) Vide order dated 2.5.2019 in Petition No. 102/TT/2018, the Commission directed that the transmission license of the Petitioner is required to be modified as the bays built in the Gandhar Jhanor GPS of NTPC, though are licensed asset of EPTCL but have been financed, built and operated by NTPC Limited.

(b) No review or appeal has ever been filed against the said order dated 2.5.2019 and thus has become final and binding on all. NTPC and MPPMCL are now making an effort to get the order in Petition No.102/TT/2018 modified without having filed an appeal/ review on the issue (the review petition filed against this order was limited to additional capital expenditure of Rs.19.69 lakhs). The two directions of the Commission in the above mentioned order i.e. (a) modification of the license of the EPTCL and (b) bays be treated as part of generating station; have become final and binding.

(c) Despite being present at the time of grant of license to EPTCL for building the bays at Gandhar Jhanor TPS of NTPC; NTPC refused to allow entry to EPTCL and its contractors for construction of bays. As a result of such denial and still being required to commission the licensed asset as soon as possible, EPTCL was constrained to enter into an agreement for construction of the bays. NTPC agreed to construct the bays at its cost and risk and EPTCL was required to pay the tariff for the same, as determined by NTPC in terms of the applicable CERC Regulations.

(d) The entire understanding under the commercial agreement stood over-ridden by the order dated 15.6.2016 in Petition No. 173/TT/2013 of the Commission. The only arrangement surviving between EPTCL and NTPC was that EPTCL was required to reimburse the tariff determined once the same was recovered through the POC mechanism. It is thus no longer open to any party to argue that EPTCL was liable to pay anything more than the tariff determined after 15.06.2016. Since, tariff payments are being made directly from the POC pool, the obligation to make payment has also ceased.



(e) The Commercial Agreement was departed by the Commission directing determination of tariff by the Commission then by NTPC by seeking direct payments from the POC Pool and to completely do away with the agreement when this Commission directed modification of license to remove the bays from the licensed asset of the Petitioner and add it as part of the generating company. All the above events were beyond the control of the Petitioner.

(f) The direct payment to NTPC terminated the contractual relationship between NTPC and EPTCL and now nothing in the agreement survives. The two elements of the commercial agreement during the operation phase were NTPC determining tariff in terms of the CERC regulations and EPTCL paying the same. Both have been modified by the Commission now and accordingly, nothing in the Commercial Agreement survives now.

(g) Once the bays are treated as part of NTPC generating station, the legal difficulty of GST liability shall automatically extinguish.

(h) Once tariff for the bays are determined by the Commission, there can be no liability of "2500 Kwh per month at per Kwh cost of the costliest fuel" any insistence on the same should be a ground for action under Section 62(5) of the Electricity Act.

(i) "Jointly approach the Commission" cannot be given a constricted interpretation that both were required to be the petitioners. Since NTPC is keen to continue to retain the BG submitted under the Commercial Agreement, which as per the Petitioner is no longer valid, parties could not approach as co-petitioners.

Hearing dated 22.10.2021

8. The Petitioner submitted that the present petition has been filed for modification of transmission licence granted to the Petitioner in terms of the Commission's order dated 2.5.2019 in Petition No. 102/TT/2018. Petitioner relied upon its submissions which in brief are as follows:



(a) The Commission vide order dated 10.4.2008 in Petition No. 157/2007 granted the inter-State transmission licence to the Petitioner, based on the recommendation of CTU, to construct the 2 numbers 400kV bays at Gandhar GPS (NTPC). Subsequently, Petitioner entered into a Commercial Agreement dated 11.2.2010 with NTPC, under which NTPC undertook to construct the said bays at its own cost.

(b) Reliance was placed on the orders of the Commission dated 15.6.2016, 30.1.2018, 11.6.2018, 2.5.2019 in Petition No. 173/TT/2013, Petition No.111/TT/2015, Petition No. 55/RP/2016 and Petition No. 102/TT/2018 respectively. The brief of the submissions therein is as follows:

- i. Licence for the said bays is with Petitioner and after approval of the tariff, the Petitioner shall recover the same through PoC and reimburse it to NTPC.
- ii. It was decided to modify the licence of the Petitioner to exclude 2 nos. 400 kV bays at Gandhar from the licence of the Petitioner. These bays may be treated as part of generating station, thereby enabling NTPC to claim the transmission charges as part of generating station. NTPC and the Petitioner had to jointly approach the Commission in this regard.
- iii. NTPC may be directed to return the bank guarantee to the Petitioner as the payment against the tariff has already been re-routed by the orders of the Commission

9. NTPC reiterated the submissions made in its reply and submitted that since the Petitioner was before NCLT, the transmission charges for the said bays were paid to NTPC directly from CTU and it was decided by the Commission that the said bays may be excluded from the licence of the Petitioner, which will lead to modification of the licence. NTPC further submitted that due to the peculiarity of the case, the Commission decided the above which was not a final one.

10. NTPC further submitted that the beneficiaries of the Gandhar generating station have nothing to do with these bays and its relationship with EPTCL is only a contractual one. As a



service provider, NTPC has to charge GST from EPTCL as per the agreement entered into between the Petitioner and NTPC.

11. The learned counsel for MPPMCL reiterated the submissions made in its reply and submitted that the Petitioner should not be allowed to modify its licence and CTU may be directed to suggest the solution in the instant case.

12. The Commission directed the Petitioner to submit a copy of Commercial Agreement dated 11.2.2010 entered into between Petitioner and NTPC.

13. The Commission reserved order in the matter.

Additional Submissions by the Petitioner

14. The Petitioner has filed additional submissions vide Affidavit dated 26.10.2021 and has submitted as follows:

a) The averment of NTPC Ltd that in the event the bays are treated as part of the Gandhar GPS, the beneficiaries of the Gandhar GPS shall be unnecessarily burdened is without basis. The cost of bays is fractional compared to capital cost of the generating station. As per the tariff order dated 30.03.2017, the Average Capital Cost of the Gandhar GPS for the FY 2013-15 was INR 248687.02 lakhs whereas the capital cost of the bays as on 31.03.2014 as per the order dated 02.05.2019 was INR 1435.72 lakhs. Therefore, the burden on the consumers is going to be negligible.

b) In the alternative, in the event the Commission is of the view that the license of the Petitioner should not be modified and the bays remain as asset of EPTCL then the commission may either (a) direct NTPC to raise bills directly to CTU and stop raising bills for GST on the Petitioner and release the BG forthwith Or (b) cost incurred by EPTCL in maintaining the BG and GST liability on EPTCL be made pass through in tariff of EPTCL.



15. In pursuant to RoP for hearing dated 22.10.2021, the Petitioner vide affidavit dated 15.11.2021 filed a copy of the Commercial Agreement dated 11.2.2010 executed between NTPC and EPTCL.

Analysis and Decision

16. We have considered the submissions of Petitioner and Respondents placed on record. The Petitioner EPTCL has filed present petition seeking modification to the transmission license granted to it to remove 2 numbers of 400kV bays at Gandhar GPS (NTPC) from its license.

17. EPTCL was granted transmission licence by the Commission vide order dated 10.4.2008 in Petition No. 157/2007 and modified vide order dated 15.9.2009. The transmission assets covered under the licence inter alia include 2 numbers 400 kV line bays at the Switchyard of Jhanor Gandhar GPS of NTPC. Subsequent to grant of license EPTCL entered into a Commercial Agreement dated 11.2.2010 with NTPC as per which the bays would be owned, controlled and maintained by NTPC at Gandhar Switchyard and EPTCL would pay the charges to NTPC in terms of the said Agreement. NTPC constructed the said two bays at its Gandhar Switchyard, which were put into commercial operation on 23.2.2013.

18. EPTCL had filed Petition No. 102/TT/2018 for the recovery of Transmission Tariff for 2 numbers 400kV bays at Gandhar GPS (NTPC) for period 2009-14 and 2014-19 under the applicable CERC Tariff Regulations.

19. NTPC filed Interlocutory Application No. 43/IA/2018 in Petition No. 102/TT/2018 seeking directions to CTU to transfer the money collected through PoC of the two bays at Gandhar to NTPC directly instead of through EPTCL. Commission vide order dated 11.6.2018 in I.A. No.



43/IA/2018 directed the CTU to make direct payment of the monthly PoC charges of the bays to NTPC till further orders.

20. Following issues arises for our consideration in the instant Petition:

Issue No. 1: Whether the transmission license granted to the Petitioner can be modified by excluding 2 numbers of 400kV bays at Gandhar GPS (NTPC)?

Issue No. 2: What is the status of Agreement dated 11.2.2010 between Petitioner and NTPC? What are the liabilities of the Petitioner in terms of its Agreement with NTPC?

Issue No. 3: What should be the treatment of Bank Guarantee furnished by the Petitioner to NTPC?

The aforementioned issues are discussed in the subsequent paragraphs.

Issue No. 1: Whether the transmission license granted to the Petitioner can be modified by excluding 2 numbers of 400kV bays at Gandhar GPS (NTPC)?

21. Petitioner has submitted that vide order dated 2.5.2019 in Petition No. 102/TT/2018 along with IA No. 60/IA/2018, the Commission directed that the transmission license of the Petitioner is required to be modified as the bays built in the Gandhar Jhanor GPS of NTPC, though are licensed asset of EPTCL but have been financed, built and operated by NTPC Limited.

22. The Petitioner has submitted that no review or appeal has ever been filed against the aforesaid order and thus has become final and binding on all.

23. The Petitioner stated that it has no objection with regards the bays at NTPC station being removed from the license of the Petitioner and be treated as part of the NTPC generating station. It has further submitted that no proceeding against EPTCL is pending before NCLT under the Insolvency Code as observed by the CERC vide order dated 02.05.2019 in Petition No. 102/TT/2018.



24. The Petitioner has submitted that as on date EPTCL has no role in relation to the bays at Gandhar Jhanor GPS of NTPC as operation and maintenance is being carried out by NTPC, tariff is determined by the Commission and is being paid directly to NTPC from the POC pool.

25. MPPMCL has submitted that in case the assets i.e. 2 numbers 400kV bays at Gandhar GPS are excluded from the licence of the Petitioner, it may fall into the share of NTPC. However, NTPC has not sought for nor has been granted a transmission licence in respect of said assets.

26. MPPMCL has further submitted that it would be necessary to decide the possible licensee for the said assets. The assets sought to be excluded from the Petitioner's licence form part of the meshed network of inter-State transmission system and not a dedicated transmission system of NTPC and therefore, cannot be left de-licensed in any manner.

27. MPPMCL has also submitted that the transmission licence granted in favour of the Petitioner was not transferable. Even then, the Petitioner permitted NTPC to construct, maintain and operate the respective assets in violation of the terms and conditions of the transmission licence. The Petitioner once having taken licence for the same and entered into a Commercial Agreement with NTPC without approval of the CTU and the Commission, should take the responsibility of the said assets on its shoulders and cannot seek to wriggle out of it.

28. NTPC has submitted that it is not a transmission licensee and has constructed the above bays on the specific representation of EPTCL that it has been granted a transmission license. Therefore, the relationship between NTPC and EPTCL was purely a contractual one wherein NTPC would get paid certain amounts in exchange for providing services to the Transmission Licensee (EPTCL) by constructing and maintaining the 2 number 400 KV bays for EPTCL.



29. NTPC has further submitted that the Commission has maintained that the 2 number 400 kV bays were part of the ISTS and its transmission charges ought to be recovered through the POC Pool. However, the direction to CTU to pay the transmission charges to NTPC directly was nothing but rerouting of payment of transmission charges (i.e. direct payment to NTPC instead of arrangement of payment to NTPC through EPTCL) being collected through POC.

30. NTPC has also submitted that in the present case, the Commission has already decided that the 400 kV bays are a part of ISTS and meshed network. Therefore, if the bays are treated as part of the generating station of NTPC, its costs still have to be recovered through the POC pool . NTPC has stated that considering the peculiarity of the case, the Commission may provide NTPC all authorities as a deemed transmission licensee for the sake of recovery of transmission charges of these assets as ISTS through POC for the life of the assets, with the condition that it cannot be quoted as precedence.

31. We have considered the submissions of Petitioner and Respondents. Let us peruse various Orders related to the instant petition. The Commission vide order dated 11.6.2018 in I.A. No. 43/IA/2018 in Petition No. 102/TT/2018 observed as under:

*“6. We have considered the submissions of NTPC and EPTCL. Though EPTCL has been granted licence for the 2 Nos. of 400 kV bays at Gandhar Jhanoor TPS of NTPC, the two bays have been constructed, financed, owned and maintained by NTPC. NTPC has entered into a bilateral agreement on 11.2.2010 with EPTCL according to which user charges for the bays would be paid by EPTCL computed as per the applicable tariff regulations. Since these bays are assets of NTPC, they have been financed by NTPC and not by the lenders of EPTCL. Therefore, there is no reason to route the tariff of these assets of NTPC through TRA which is the agent of the lenders of EPTCL and has been appointed to protect the interest of the lenders. **NTPC has submitted that routing the tariff of these bays through TRA is resulting in delay in getting the usage charges of the bays.** Considering the fact that the bays are assets of NTPC and EPTCL has an agreement to pay the usage charges of the bays at the applicable tariff of the Commission and the tariff of the bays shall be determined based on the cost details provided by NTPC from its books of account, **we consider it appropriate to issue directions to CTU to make direct payment of the monthly PoC charges to NTPC for the 2 Nos. of 400 kV bays at Jhanoor Gandhar TPS of NTPC till further orders”.***



As per above order, it is clear that the Commission had issued the directions to CTU to directly make the payment of PoC charges for 2 numbers 400kV bays at Gandhar GPS to NTPC due to the fact that there was a delay in the process of payment through TRA and also this process was an interim arrangement till further orders of the Commission.

32. The Commission vide order dated 2.5.2019 in Petition No. 102/TT/2018 along with IA No. 60/IA/2018 has observed as under:

*“56. The licence for the instant two bays is with EPTCL, but they were constructed by NTPC with its own funds. There is a Commercial Agreement between EPTCL and NTPC for payment of transmission charges for the said bays. Since the capital cost, etc. were not available with EPTCL, the Commission directed for joint application by NTPC and EPTCL and accordingly determined the tariff. The transmission charges for the instant bays are being paid to NTPC directly by CTU since **EPTCL is before NCLT under IBC**. This arrangement of licence being granted to EPTCL and the bays being constructed by NTPC is resulting in practical difficulties in filing of the tariff petitions and determination of tariff. **Taking into account the peculiarity of the case, we are of the view that since the bays were constructed, operated and maintained by NTPC, the licence may need to be modified to exclude the bays from the scope of the licence granted to EPTCL. The bays constructed by NTPC in its generation station with its own funds may be treated as part of the generating station, thereby enabling NTPC to claim the transmission charge as part of the generating station. NTPC and EPTCL are directed to jointly approach the Commission in this regard within two months from the date of issue of this order.**”*

As per above order, the Commission observed that the transmission charges for the said two 400 kV bays are being paid to NTPC directly by CTU since EPTCL is before NCLT under IBC. However, the Petitioner in the present petition has submitted that no proceeding against EPTCL is now pending before NCLT under Insolvency Code as observed in the order dated 2.5.2019. The Commission has opined that since the aforesaid bays were constructed, operated and maintained by NTPC, the Petitioner's license may be modified by removing the 2 numbers 400kV bays at Gandhar from the license and for that EPTCL & NTPC were directed to jointly approach the Commission for settlement.



33. The Petitioner has submitted that jointly approaching the Commission by the Petitioner and NTPC was not successful and hence the Petitioner has approached directly seeking amendment to its transmission license. Further, the Petitioner has argued that vide order dated 2.5.2019 in Petition No. 102/TT/2018, the two directions of the Commission viz modification of the license of the EPTCL and bays be treated as part of generating station have become final and binding. We do not agree to Petitioner's contention that there was any mandate of the Commission that license be modified and bays be considered as part of the generating station. The said observations of the Commission were only by way of suggestion for way forward, where both the Petitioner and NTPC were to jointly explore and work out a modality. We recognise that it has not worked in the instant case. In fact, NTPC has opposed any amendment of the license of EPTCL and has also opposed considering the bays as part of generating station, citing beneficiaries of station are different. We note that the said bays have been granted license by the Commission and is a part of ISTS.

34. We observe that amendment to the license of 2 numbers of bays at Jhanor Gandhar has been opposed by NTPC and MPPCL. Further, there is no recommendation of CTU on the proposed amendment of the license. NTPC has suggested that it be given a deemed transmission license for the 2 numbers of bays and the charges for bays be recovered from POC pool. We observe that NTPC being a generating company cannot be given a deemed transmission license. In case it desires to seek the transmission license, it has to follow the due process of law as per the Act. Further, in case the prayer of Petitioner to amend the license is acceded to, the unlicensed asset cannot be considered under POC pool since only assets of ISTS licensee are included in the pool. Once the license is amended to exclude the said bays, the charges for the said bays shall cease to be a part of ISTS charges pool. However, NTPC



shall still have the right to collect the charges from the Petitioner in terms of the Agreement between the Petitioner and NTPC. The Petitioner has prayed that the transmission charges of the said bays be recovered by NTPC from POC pool, which in our view cannot happen unless it is a licensed asset.

35. Keeping in view the above discussions, we are not inclined to modify Petitioner's transmission license granted vide order dated 10.4.2008 in Petition No. 157/2007. We hereby direct that the tariff Petition claiming transmission tariff for the aforesaid bays shall continue to be filed by the Petitioner and the approved transmission charges against the said bays shall be paid by the CTU to the Petitioner in terms of Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2020 ('2020 Sharing regulations), which shall be paid to NTPC in terms of the bilateral agreement dated 11.2.2010.

36. Accordingly, the issue is answered.

Issue No. 2: What is the status of Agreement dated 11.2.2010 between Petitioner and NTPC? What are the liabilities of the Petitioner in terms of its Agreement with NTPC?

37. The Petitioner has submitted that the entire understanding under the commercial agreement stood over-riden by the order dated 15.6.2016 of the Commission in Petition No. 173/TT/2013. The Petitioner has submitted that the Commercial Agreement was departed by the Commission in directing the Petitioner to file tariff petition for determination of tariff by the Commission, direct payments to NTPC from the POC Pool and modification of license to remove the bays from the licensed asset of the Petitioner and add it as a part of the generating company of NTPC. The direct payment to NTPC terminated the contractual relationship between NTPC and EPTCL and nothing in the Agreement survives. The two elements of the Commercial



Agreement during the operation phase were NTPC filing tariff petition for determining tariff in terms of the CERC regulations and EPTCL paying the same to NTPC. Both these elements have been modified by the Commission and therefore, nothing in the Commercial Agreement survives now.

38. The Petitioner has further submitted that it is baseless to now suggest that NTPC is continuing to provide any kind of service to EPTCL. The earlier contractual relationship between the Petitioner and NTPC stands overridden by the subsequent orders of the Commission. Accordingly, there is no basis to charge any GST on the Petitioner anymore.

39. The Petitioner has also submitted that NTPC is raising the monthly bills for usage charges to EPTCL along with applicable GST/service tax. As the payments are being released by PGCIL to NTPC directly and claims are being raised under Bill-1 and Bill-3 which does not attract tax, hence, there should not be separate billing of GST on EPTCL by NTPC and the same should be applicable from the time direct payment was started being made by the CTU.

40. NTPC has submitted that since the payments to NTPC were getting delayed by EPTCL, the Commission passed an interim order dated 11.06.2018 in I.A. No. 43/IA/2018 in Petition No. 102/TT/2018, wherein CTU was directed to make direct payment to NTPC through POC for 2 numbers 400kV bays.

41. NTPC has submitted that it has been raising the Service Tax/ GST bill to EPTCL despite getting transmission charges through POC due to the fact that NTPC as service provider is bound to raise billing for the usage charges along with GST on monthly basis to EPTCL for providing the services as per the Agreement entered into by both the parties. NTPC has further



submitted that it being a service provider, NTPC has to levy service tax/GST, as applicable from time to time, for the services provided/being provided to EPTCL as per the Goods and service Tax Act of the Government of India. Further, NTPC has been making payment of GST to Central/State Government in line with the provisions of the GST Act.

42. NTPC has further submitted that EPTCL continues to be liable to pay the charges other than transmission charges which are as under:

- (i) Service Tax
- (ii) Levies, charges, royalties, duties, cesses and other outgoings of NTPC
- (iii) 2500 Kwh per month at per kwh cost of the costliest fuel used at GandharJhanor Station towards current and potential transformer losses etc.

43. We have considered the submissions of Petitioner and Respondents. We observe that Petitioner has completely misconstrued the Orders of the Commission while concluding that agreement between Petitioner and NTPC is severed in terms of the orders of this Commission. The direct payment to NTPC was an interim arrangement till further Orders, since there was a delay in the process of payment through TRA. Further, there was no mandate in the orders of the Commission to consider the bays as a part of generating company. The Petitioner having obtained transmission license from this Commission was required to file tariff petition for determination of tariff of the assets including the two bays in question. Hence, we do not accept the Petitioner's plea that the orders of the Commission severed the agreement between the Petitioner and NTPC.

44. The Petitioner being a company which obtained transmission license from this Commission has entered into a bilateral commercial agreement with NTPC dated 11.2.2010 post the grant of license, wherein NTPC was to construct, own and operate the bays in question



which were part of the assets of the transmission licensee as per its transmission license. The relevant extracts of the contract dated 11.2.2010 are as below:

*“2. **EPTCL** hereby acknowledges and accepts that the services to be provided by NTPC shall be limited to making available 2 x 400 KV bays duly constructed, owned and operated by NTPC at the Switch Yard of the ‘**Jhanor Gandhar GPS**’. NTPC will not be required to render any other assistance/service whatsoever and will not be required to provide any other equipment or share any other facility.*

.....

*5. **EPTCL** hereby acknowledges and accepts that NTPC will be providing the above service of allowing the use of 2 x 400 KV bays only during the period when NTPC, as per its decision, can undertake to provide the service without in any way affecting its own business at the ‘**Jhanor Gandhar GPS**’.*

8. In consideration of the services to be rendered by NTPC, namely, allowing the use of 2 x 400 KV bays to be constructed by NTPC, EPTCL agrees to pay to NTPC monthly fixed charges to be calculated and billed by NTPC as per the terms and conditions contained in the CERC (Terms and Conditions of Tariff) Regulations, 2009 (Inter-State Transmission), as applicable from time to time, from the date of completion of these two bays. The capital cost to be adopted for the calculation of tariff shall be the same as capitalized in the books of accounts of NTPC for these to be constructed additional bays. EPTCL shall accept the capital cost of these bays as furnished by NTPC duly certified by auditors of NTPC. In addition, all taxes including service tax as applicable, levies, charges, royalties, duties, cesses, and outgoings incurred by NTPC from time to time on these 2 X 400 KV bays shall be reimbursed by EPTCL to NTPC.”

45. We observe that the Petitioner has entered into the Agreement knowing fully well that it is a part of the ISTS under the license granted by the Commission. After 11 years of the Agreement, the Petitioner cannot take a plea that it was constrained to enter into such Agreement due to the fact that NTPC refused to allow entry to EPTCL and its contractors for construction of bays. The Petitioner has entered into the Agreement fully conscious of the commercial terms and conditions and it is required to follow the terms and conditions of the Agreement. Hence, the contentions of Petitioner that nothing in the Agreement dated 11.2.2010 survives, which arises out of misinterpretation of the Petitioner, are fit to be rejected.

46. The Commission vide order dated 2.5.2019 in Petition No. 102/TT/2018 along with IA No. 60/IA/2018 has observed as under:



“Reimbursement of Service Tax

49. The Petitioner has prayed for the reimbursement of service tax paid by the petitioner to NTPC on the monthly payments of usage charges of the assets in the petition for the period from COD of the assets to June 2016 of `162.89 lakh. We have considered the submissions of the Petitioner. As per Clause 8 of the Agreement dated 11.2.2010 between the Petitioner and NTPC, EPTCL is required to pay besides the transmission charges, the taxes including the service tax as applicable. Therefore, the Petitioner’s claim for reimbursement of service tax from COD to June, 2016 is not allowed.”

As per above order, the Commission had observed that as per clause 8 of commercial agreement signed between NTPC and EPTCL, EPTCL is liable to pay taxes including service tax as applicable, besides transmission charges against 2 numbers 400kV bays at Gandhar GPS (NTPC).

47. Clause 8 of the Commercial Agreement dated 11.2.2010 signed between Petitioner and NTPC is as follows:

“

8. In consideration of the services to be rendered by NTPC, namely, allowing the use of 2 x 400 KV bays to be constructed by NTPC, **EPTCL agrees to pay to NTPC monthly fixed charges to be calculated and billed by NTPC as per the terms and conditions contained in the CERC (Terms and Conditions of Tariff) Regulations, 2009 (Inter-State Transmission), as applicable from time to time, from the date of completion of these two bays. The capital cost to be adopted for the calculation of tariff shall be the same as capitalized in the books of accounts of NTPC for these to be constructed additional bays. EPTCL shall accept the capital cost of these bays as furnished by NTPC duly certified by auditors of NTPC. In addition, all taxes including service tax as applicable, levies, charges, royalties, duties, cesses, and outgoings incurred by NTPC from time to time on these 2 X 400 KV bays shall be reimbursed by EPTCL to NTPC.**

Losses of 30000 KWh per year in the bay equipment including Current Transformers and Potential Transformers of these two bays have been preagreed as a fair estimate to be compensated by EPTCL to NTPC. Therefore, in addition to the charges billed as above, an additional amount shall be payable by EPTCL for 2500 KWh per month at per KWh cost of the generation at the costliest fuel of the ‘Jhanor Gandhar GPS’ Station applicable during the previous month towards Current Transformers and Potential Transformers losses.

.....”

As per above provisions, it is clear that EPTCL has agreed to pay transmission charges/ fixed charges against the services provided by NTPC for usage of 2 numbers 400kV bays at



Gandhar GPS constructed by NTPC, as per the CERC (Terms and Conditions of Tariff) Regulations, 2009 (Inter-State Transmission), as applicable from time to time. In addition, EPTCL has further agreed to pay taxes including service tax, levies, cesses etc as applicable from time to time. Further, EPTCL also has agreed to pay charges towards additional transformer losses @ 2500 kwh/ month.

48. As per above discussions, we find and hold that EPTCL is liable to pay transmission charges against the 2 numbers 400kV bays, along with charges such as taxes including service tax/ GST as applicable, levies, cesses and transformer losses with respect to the said bays to NTPC as per the Commercial Agreement dated 11.2.2010. Therefore, the prayer of the Petitioner for directing NTPC not to raise invoice on EPTCL has no legs to stand.

49. The order dated 11.6.2018 of the Commission in I.A. No. 43/IA/2018 in Petition No. 102/TT/2018 states as under:

“6.we consider it appropriate to issue directions to CTU to make direct payment of the monthly PoC charges to NTPC for the 2 Nos. of 400 kV bays at Jhanoor Gandhar TPS of NTPC till further orders”.

50. Thus, we observe that direction to CTU for direct payment to NTPC was an interim arrangement till further Orders. Now that various issues raised by the Petitioner have been answered in this petition, we find no reason to continue with the said interim arrangement.

51. Further, 2020 Sharing Regulations provide as under:

“Yearly Transmission Charges’ or ‘YTC’ means the annual transmission charges as determined or adopted by the Commission for the transmission elements of ISTS which have achieved COD up to the last day of a billing period, and for intra-State transmission lines used for inter-State transmission of electricity as approved by the Commission

.....

20. Collection and Disbursement (1) The Central Transmission Utility shall collect transmission charges on account of the first bill for transmission system covered under Regulations 5 to 8 of



these regulations and disburse the amount so collected to inter-State transmission licensees and intra-State transmission licensees in proportion to their Yearly Transmission Charges:

Provided that in case of shortfall in collection of transmission charges, the amount to be disbursed to inter-State transmission licensees and intra-State transmission licensees shall be reduced pro-rata from their share of Yearly Transmission Charges.”

As per the above provisions of the 2020 Sharing Regulations, the CTU disburses transmission charges to inter-state transmission licensees and intra-State transmission licensees in proportion to their Yearly Transmission Charges. Since NTPC is not an inter-State transmission licensee, transmission charges cannot be disbursed to NTPC.

52. Accordingly, we direct that there shall be no direct payment to NTPC from ISTS charges pool by CTU from the date of issue of this Order. The Petitioner shall obtain the approved transmission charges from the CTU in terms of the 2020 Sharing Regulations. The Petitioner and NTPC shall be bound by all terms and conditions of their mutual Commercial Agreement dated 11.2.2010.

53. The issue is answered accordingly.

Issue No. 3: What should be the treatment of Bank Guarantee furnished by the Petitioner to NTPC?

54. The Petitioner has submitted that in view of the Commission's order dated 11.06.2018 in I.A. No. 43/IA/2018 in Petition No. 102/TT/2018, direct payment of transmission charges are being made by PGCIL from the POC pool to NTPC and such payments are based on the AFC approved by the CERC. Therefore, the Petitioner/ EPTCL has no role in determination and payment of amounts due to NTPC. Thus, the bank guarantee furnished by EPTCL in terms of the Agreement between NTPC and EPTCL has become redundant and be returned back to the Petitioner.



55. NTPC has submitted that as per Clause 10 and Clause 11 of the Commercial Agreement dated 11.2.2010, BG is a security for payment of all the amounts due along with the security to protect the interest of NTPC in incurring the capital cost of installing 2X400 kV Bays.

56. The Commission vide order dated 2.5.2019 in Petition No. 102/TT/2018 along with IA No. 60/IA/2018 observed as under:

61. We have considered the submissions of EPTCL and NTPC regarding the BG. We are of the view that the BG has been provided by EPTCL to NTPC in terms of the Commercial Agreement between them. However, in the light of need to modify the licence of EPTCL to exclude the two bays, the decision regarding release of BG shall be taken alongwith the decision regarding modification of the licence. Accordingly, I.A. No.60/IA/2018 is disposed of.

As per above order, decision regarding release of BG shall be decided in the instant Petition.

57. Clause 10, Clause 11 and Clause 12 of the Commercial Agreement dated 11.2.2010 signed between Petitioner and NTPC is as follows:

"10. As security for the payment of the due amount and as security to protect the interest of NTPC incurring capital cost of installing 2 x 400 KV bays, EPTCL shall furnish a Bank Guarantee from a Scheduled Bank for a sum of Rs 13.50 Crs. The said Bank Guarantee shall be unconditionally enforceable at the option of NTPC and initially shall be valid for 5 (five) years and shall be duly maintained without interruption by appropriate advanced renewals from time to time for the duration of 25 years. The Bank Guarantee shall be furnished within one month of the execution of this Agreement. The amount of Bank Guarantee after initial period shall reduce by the amount of depreciation recovered as part of monthly fixed charges after commissioning of these bays and would reduce every three years accordingly. However, a Bank Guarantee equivalent to 2 months of billing shall be always maintained as payment security. The Agreement shall also be liable for termination in the event of EPTCL failing to maintain the Bank Guarantee.

11. In case of termination of the agreement due to default on the part of EPTCL, the un-serviced cost of the bays shall also be recoverable under the Bank Guarantee. The un-serviced cost of bays would mean capital cost of bays minus depreciation recovered during the service of the asset. In case of un-serviced cost of 400 KV Gandhar-Essar bays being recovered by NTPC through Bank Guarantee for whatsoever reasons, EPTCL shall be allowed to remove/dismantle and take away the equipment of the 400 KV Gandhar-Essar bays, wherever feasible, on 'as is where is' basis at their own cost without in any case affecting the operation of the plant and switch yard of NTPC.

Termination:

12. The parties acknowledge and accept that the above arrangement of NTPC providing the



use of 2 x 400 KV bays is a special dispensation agreed to by NTPC on non exclusive and non assignable basis for a specific purpose as detailed in the item No 1 of the MOM. In case of use of these bays for other purposes except under the condition as detailed in clause 6 above, this arrangement may be terminated by NTPC at any time by giving one year notice to 'EPTCL'. In the event of NTPC giving such notice, EPTCL shall immediately make alternative arrangements and shall cease to use the 2 x 400 KV bays upon the expiry of the period mentioned above. However, in case of termination of the agreement in the event of EPTCL failing to pay any money due to NTPC or EPTCL failing to maintain any Bank Guarantee in the agreement, the agreement shall be liable for termination after a notice of one month.

In the event the Agreement is terminated due to breach on the part of 'EPTCL', NTPC shall be entitled to forfeit the amount of the Bank Guarantee towards damages incurred on account of costs of establishing, operating and maintaining the 2 x 400 KV bays at 'Jhanor Gandhar GPS'.

As per the above Commercial Agreement between EPTCL and NTPC, it is clear that BG shall always be maintained by EPTCL as a payment security mechanism for NTPC. In case of default on the part of EPTCL, the un-serviced cost of the 2 numbers 400kV bays shall be recoverable NTPC from the BG submitted. It is also understood from the aforesaid agreement that in the event the Agreement is terminated due to breach on the part of EPTCL, NTPC shall be entitled to forfeit the amount of the BG towards damages incurred on account of costs of establishing, operating and maintaining the 2x400 KV bays at 'Jhanor Gandhar GPS' in terms of the said Agreement.

58. In view of the above discussions, we hold that the BG needs to be maintained by the Petitioner as per the Commercial Agreement dated 11.2.2010 between the Petitioner and NTPC.

59. Accordingly, the issue is answered.

60. Petition No. 321/MP/2019 is disposed of in terms of the above.

Sd/
(P. K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(I. S. Jha)
Member

Sd/
(P. K. Pujari)
Chairperson

