CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Coram:

Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Date of Order : 29th September 2017

Petition No. 145/MP/2017

In the matter of:

Petition under Section 79(1)(f) of the Electricity Act, 2003 and Regulation 33B (Power to Remove Difficulty) alongwith Regulation 111 (Inherent Powers) of the CERC (Conduct of Business) Regulations, 1999 read with Regulation 2(3) of the CERC (Payment of Fees) Regulations, seeking directions for preventing underutilization of bays for Connectivity granted to Wind/Solar generation projects.

AND IN THE MATTER OF:

Power Grid Corporation of India Ltd

Corporate Office: 'Saudamini', Plot No.2,

Sector 29, Gurgaon, Haryana 122001

Petitioner

Versus

1. Green Infra Renewable Energy Limited
5th floor, Tower C, Building No. 8,
DLF Cyber city, Gurgaon -122002

2. Solar Energy Corporation of India Limited
1st Floor, D-3, A Wing,
Religare Building District Centre, Saket, New Delhi – 110017

3. Ministry of New and Renewable Energy

Block-14, CGO Complex,
Lodhi Road, New Delhi, India

4. Mytrah Energy (India) Pvt Ltd.
8001, Q-City, S. No:109,
Gachibowli, Hyderabad - 500032

5. Suzlon Power Infrastructure Ltd
One Earth opp. Magarpatta City, Hadapsar,
Pune-411028, Maharasthra

6. Inox Wind Infrastructure Services Ltd.
Inox towers, Plot 17,
Sector-16A, Noida – 201 301.

7. Orange Sironj Wind Power Pvt. Ltd.
#301B, 3rd Floor, D21 Corporate Park,
Sector-21, Dwarka,
New Delhi - 110075

8. Regen Wind Farm (TN) Pvt. Ltd.
S7, Krishna Arcade, Old No. 36, New No. 10,
Rajabathar Street, T. Nagar,
Chennai – 600 017

9. BLP Energy Private Ltd.
12th Floor, Crescent 1, Prestine Shantiniketan,
ITPL Main Road, Hoodi,
Whitefield, Begaluru – 560 048

10. Ostro Alpha Wind Pvt. Ltd.
Unit G-0, Ground Floor, Mira Corporate Suites,
1&2 Ishwar Industrial Estate, Mathura Road,
New Delhi – 110 065

11. Greenmint Power Pvt. Ltd.
One Indiabulls Centre, The Hub, 10th Floor,
Tower B, S.B Marg, Elphinstone (W),

Mumbai – 400 013

12. Gamesa Renewable Pvt. Ltd.
The Futura, IT Park, B- Block, 8th Floor,
No. 334, Rajiv Gandhi Salai,
Shollinganallur, Chennai

13. Wind World (India) Ltd. Mumbai
A-9, Veera Desai Road,
Laxmi Industrial Estate,Wind World Tower,
Andheri West,Mumbai-53

14. Clean Wind Power (Tuticorin) Pvt. Ltd.
212, GF, Okhla Industrial Estate Phase-III
New Delhi – 110020

15. Clean Wind Power (Bhavnagar) Pvt. Ltd.
212, GF, Okhla Industrial Estate Phase-III
New Delhi – 110020

16. Aspan Infrastucture Limited
Godrej Millennium,
5th Floor, 9, Koregaon Park, Pune,
Tamil Nadu

17. Anantapur Windfarms Pvt. Limited
The Futura IT Park,
B-Block, 8th Floor,No334,
Rajiv Gandhi Salai,
Shollinganallur,Chennai-119, Tamil Nadu

18. Sitac Kabini Renewables Pvt. Ltd.
507-508, Ashoka Estate,
24, Barakhambha Road,
New Delhi – 100 001

19. Kurnool Wind Farms Pvt. Ltd.
The Futura IT Park, B-Block, 8th Floor,No334,

Rajiv Gandhi Salai, Sholllinganallur,
Chennai-119, Tamil Nadu

20. Praptha Renewable Energy Pvt. Ltd.
No.34, 1st Floor,
Defence Officers Colony,
Ekkattuthangal,Chennai – 32, Tamil Nadu

21. Saffron Ecopower Venture Pvt. Ltd.
484, Kamaraj Road, Uppilipalayam P.O.- Coimbatore-641015,
Tamil Nadu

22. Ecoren Anemoi Winds Pvt. Ltd
8-2-293/82/A/1202, S.L. Jubilee, Road No 61,
Jubilee Hills, Hyderabad -500033,Telangana

23. Sitac Starcap buildwell Pvt. Ltd.
C/o, SITAC GROUP,
507-508 Ashoka Estate,
24, Barakhambha Road,
New Delhi- 110001

24. Srijan Energy Systems Pvt Ltd
102, El Tara Building, Orchard Avenue,
Hiranandani, Powai,
Mumbai, Maharashtra - 400076

25. Inox Wind Infrastructure Services Ltd.
Infrastructure Services Ltd.
Inox towers, Plot No.-17,
Sector – 16A, Film City,
Noida – 201 301

26. Orange Rajkot Wind Power Pvt. Ltd.
301B, 3rd Floor, D21 Corporate Park, Sector-21, Dwarka,
New Delhi-110075

27. Ostro Kutch Wind Pvt. Ltd.
Unit No. G-0, Ground Floor,
Mira Corporate Suites, 1&2, Ishwar Industrial Estate,
Mathura Road, New Delhi - 110065

28. Adani Green Energy Ltd.
3rd Floor Achalraj, Opp Mayor Bungalow,
Law Garden, Ahmedabad – 380006, Gujarat

29. Adani Green Energy MP Ltd.
3rd Floor Achalraj, Opp Mayor Bungalow, Law Garden,
Ahmedabad – 380006, Gujarat

30. Impeccable Power Solutions Pvt. Ltd
507-508, Ashoka Estate,
24, Barakhamba Road,
New Delhi-110001

31. KP Energy Limited
A-1/2, Firdous Tower,
Near Fazal Shopping Center,
Adajan Patia, Surat, Gujarat

32. Green Infra Wind Energy Ltd.
5th floor, Tower C, Building No. 8, DLF Cyber City, Gurgaon
- 122002, Haryana

33. Vaayu Renewable Energy (Yamuna) Pvt. Ltd.
Hare Krishna, Presidency Society, North South Road,No 8,
Vile parle (West) Mumbai-49

34. Vaayu Renewable Energy (Tapi) Pvt. Ltd.
Hare Krishna, Presidency Society, North South Road,No
8, Vile parle (West) Mumbai-49

35. Distinguished Consultancy Solutions Private Limited
C/o.SITAC GROUP, 507-508 Ashoka Estate,
24 Barakambha Road,New Delhi

36. Kintech Wind Park Private Limited
Kintech House, 8, Shivalik Plaza,
Opp. AMA, IIM Road, Ahmedabad – 380015

....Respondents

Following were present:

1. Ms. Suparna Srivasatava, Advocate, PGCIL
2. Ms. Jyoti Prasad, PGCIL
3. Shri Ramji Srinivasan, Sr. Advocate, GRPL & Ors.
4. Shri Tushar Bhardwaj, Advocate, GRPL & Ors.
5. Shri Rakesh Chandra, GRPL & Ors.
6. Shri Mayank, GRPL & Ors.
7. Shri Sanjay Sen, Senior Advocate, SPIL & GPPL
8. Ms. Ankita Bafna, Advocate, SPIL
9. Ms. Shikha Ohri, Advocate, SPIL
10. Shri Rajiv Srivastava, Advocate, UPPCL
11. Ms. Garima Srivastava, Advocate, UPPCL
12. Ms. Gargi Srivastava, Advocate, UPPCL
13. Shri Amit Kapur, Advocate, APL
14. Ms. Abiha Zaidi, Advocate, APL
15. Shri Rakesh S., APL
16. Shri Hemant Sahai, Advocate, OSWPPL, OAWPL, CWP(T)PL, CWP(B)PL,ORWPL,OKWPL, & ReNew Power
17. Shri Sahil Kaul, Advocate, OSWPPL, OAWPL,CWP(T)PL, CWP(B)PL,ORWPL,OKWPL, & ReNew Power
18. Shri Sakya Singha Chaudhari, Advocate, SESPL
19. Ms. Molshree Bhatnagar, Advocate, SESPL
20. Shri Soumya Prakash, Advocate, SESPL
21. Shri Ujjwal Surana, SESPL
22. Shri Pavan Gupta, Orange Renewable
23. Shri A. Pandey, Inox
24. Shri Vishal Gupta, Advocate, GIREL
25. Shri Alok Shankar, Advocate, GRPL
26. Ms. Swapna Seshadri, Advocate, BLP Energy
27. Shri Malav Deliwala, Adani Green
28. Shri Vikas, Adani Green
29. Shri Kapil, Green Infra
30. Shri Jaskaran Singh, Advocate, Sitac
31. Ms. Aanchal Basur, Advocate, Sitac
32. Shri Dheeraj Jain, Regen
33. Ms. Kiran V, MEIPL
34. Shri J.K. Jethani, MNRE

35. Ms. Sabhada, GIWEL
36. Shri Sandeep Rai, OSTRO Energy
37. Shri Sanjay Nagarare, SGIL
38. Shri Rakesh Garg, RPVPL
39. Shri Prateek Prasun, SECI
40. Shri Shibasish Das, SECI
41. Shri Vikalp Vats, Suzlon
42. Shri NSM Rao, SPIL
43. Shri Prateep Kamal
44. Shri Kovid Bhatt, Kintech Synergy

ORDER

The Petitioner, Power Grid Corporation of India Limited, (PGCIL) has filed the present petition under Section 79(1)(f) of the Electricity Act, 2003 and Regulation 33B (Power to Remove Difficulty) of the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (hereinafter called the "2009 Connectivity Regulations") alongwith with Regulation 111 (Inherent Powers) of the CERC (Conduct of Business) Regulations, 1999 seeking regulatory interventions to ensure efficient utilization and for preventing underutilization of bays for connectivity granted to Wind/Solar generation projects.

2. The Petitioner has been notified as the Central Transmission Utility (CTU) under Section 38 of the Electricity Act, 2003 and discharges functions of coordination and planning for the inter-State transmission of electricity. The Petitioner has also been designated as the nodal agency for processing applications received for grant of connectivity, long term access and medium term

open access to the inter-State Transmission System (ISTS) under the Connectivity Regulations.

3. The Petitioner has submitted that as per Regulation 2(1)(b)(i)(b) and 2(1)(b)(i)(c) of the Connectivity Regulations, the connectivity applications can be made by a generating station using renewable sources of energy of installed capacity between 50 MW and 250 MW or by a generating station having individual installed generation capacity of less than 50 MW but collectively having an aggregate installed capacity of 50 MW and above acting on behalf of the generating stations as lead generator and seeking connection at a single connection at the pooling station under CTU. The Petitioner has further submitted that Regulation 8(1) of the Connectivity Regulations provides that application shall provide details about proposed geographical location, quantum of power to be injected and other details as may be laid down by the CTU in the Detailed Procedure. Further, para 2.1 of the Detailed Procedure provides that in order to assess preparedness of the applicant making application for the connectivity to the ISTS, 'additional information', substantiated through relevant documents, has to be submitted regarding specific actions having been initiated for project preparatory activities in respect of site identification, land acquisition, environment clearance, forest clearance, fuel arrangement, water linkage etc. The Petitioner has submitted that though documents regarding project preparatory activities are meant for assessment of the preparedness of the applicants, these milestones were however devised with specific reference to conventional power generations

like hydro and thermal power and as such, the same are not ipso facto applicable in case of solar and wind generations where most of the milestones are not required. The Petitioner has clarified that in case of wind generation, even the requirement of land acquisition is not a necessary prerequisite as generally the land is held by an aggregator to whom the interested generation developers approach for setting up the project and the land as such is not acquired and is rather leased for the wind turbine mast area only. Thus, according to the Petitioner, the prescribed milestones do not give enough inputs for assessing the readiness of the applicants.

4. The Petitioner has submitted that under the extant Connectivity Regulations and Detailed Procedure, there are no enumerated reciprocal obligations on the connectivity applicant to sign any agreement or submit any BG or fulfill any other financial obligation. As a result, once the Connectivity is granted, often the grantees take no action towards making actual use of the connectivity so granted which results in the connectivity grantee blocking the available infrastructure at the ISTS sub-station for use by other entity, if the original grantee is not taking any substantive action for its usage.

5. The Petitioner has submitted that in recent times, specifically in the past 18 months or so, a large number of connectivity applications from wind generators and solar power park developers have been received by the CTU pursuant to the Government of India's initiative to promote new and renewable energy sources. Looking into the large number of connectivity applications seeking connectivity in

the ISTS sub-stations specially the sub-stations being implemented under Green Energy Corridor, the Petitioner considered it prudent to devise a new set of milestones to assess the readiness of the applicants with regard to project development. However, this exercise did not fetch any tangible or positive results as the reply by almost all Connectivity applicants to the queries were that the specified milestone would be fulfilled subsequent to grant of connectivity. The Petitioner has submitted that left with no other mechanism, CTU went on to grant connectivity in terms of Connectivity Regulations at the nearby existing/under construction sub-stations till the available bays space were completely exhausted, upon which new sub-stations in the vicinity in the sub-stations were planned and connectivity were granted at these new sub-stations.

6. The Petitioner has submitted that Ministry of New and Renewable Energy, Government of India (MNRE) on 22.10.2016 notified “Guidelines for Implementation of Scheme for Setting Up of 1000 MW ISTS Wind Power Projects”. The Scheme was aimed at facilitating transmission of wind power from 8 nos. of windy States to other States/UTs so as to facilitate the non-windy States/UTs to fulfill their non-solar renewable purchase obligations (RPO) as well as to boost investment in the sector so as to achieve the goal of reaching 60 GW of wind power capacity by 2022. The implementation of the Scheme has been assigned to Solar Energy Corporation of India (SECI) to carry out e-reverse auction for award of the wind projects. The generation projects under the Scheme are envisaged for commissioning within 18 months from the issuance of the Letter of Award by SECI.

7. Accordingly, SECI has undertaken the bidding process under a Request for Selection (RfS) issued on 28.10.2016. Under the scheme, Petitioner as the CTU has been assigned the role of providing connectivity and LTA to the ISTS to facilitate evacuation of power from the projects which may include coordination with concerned agencies for grant of connectivity and LTA upon application as per 2009 Connectivity Regulations.

8. Pursuant to the bidding process undertaken by SECI, the following five bidders have been declared as successful: -

Sl. No.	Project Name	Capacity (MW)	Location
1	Mytrah Energy India Pvt. Ltd.	250	Tirunelveli, Tamil Nadu
2	Green Infra Wind Energy Ltd.	249.9	
3	Inox Wind Infrastructure Services Ltd.	250	Bhuj, Gujarat
4	Adani Green Energy MP Ltd.	50	
5	Ostro Kutch Wind Pvt. Ltd.	250	Bachau, Gujarat

9. Out of the above five successful bidders, the bidders at serial nos. 1, 3 and 5 have been granted connectivity with the ISTS whereas connectivity applications of the bidders at serial nos. 2 and 4 are under process as per the queue drawn based on the month of application in line with the Connectivity Regulations. The wind project of bidder at serial no. 2 is located in Tirunelveli area in Tamil Nadu and that of serial no. 4 is situated in Bhuj area of Gujarat.

10. Based on the Review Meeting dated 27.6.2017 convened by Central Electricity Authority, 3 nos. of bays have become available at under-construction Tirunelveli 400/230 kV Sub-station. Similarly, 4 nos. of bays are available at under

construction Bhuj 400/220 kV pooling station for allocation to the connectivity applicants. The above-mentioned successful bidders are down in the queue in terms of their application month and therefore, they are being granted connectivity at the new sub-stations, which is expected in 36-40 months. However, the successful bidder is required to commission its project within 18 months from the date of LoA (5.4.2017) as per the terms of the bids. Thus, there is likely to be a mismatch between availability of the new sub-station for connectivity or LTA and commissioning of the wind power projects by the successful bidder.

11. Accordingly, to address this situation of mismatch between the commissioning of sub-station and the wind power projects, various meetings were convened by MNRE and the Central Commission. Subsequently, MNRE vide letter dated 15.6.2017 requested the Petitioner to approach the Commission to allow grant of connectivity to successful bidders on priority basis instead of prevalent first-come first-serve mechanism and thus using the vacancy so made available and also to move a Petition before the Commission with a proposal to amend the existing Regulations.

12. Accordingly, present Petition has been filed with a view to ensure efficient utilization of bays for connectivity by Wind/Solar generation projects and towards this end the Petitioner has sought regulatory intervention for addressing the immediate problem of bays allocation as well as devising a long term solution for the problems of sub-optimal utilization of the connectivity granted to the applicants. Towards this end, Petitioner has sought to invoke the inherent powers

of the Commission under Regulation 111 of the CERC (Conduct of Business) Regulations, 1999 to take cognizance of the present facts and pass appropriate directions for review of connectivity granted to Wind developers based on the physical and/or financial progress of the generation project so that squatting over the precious infrastructure in terms of bay space in ISTS sub-stations is curbed. Further, the jurisdiction of the Commission under Regulation 33B of the Connectivity Regulations, 2009 has also been invoked to permit the allocation of bays available at Tirunelveli and Bhuj Sub-stations to successful bidders in order to ensure effective utilization of the same.

Submissions of the Petitioner

13. The main submission of the petitioner is that the Connectivity, as a separate product, was introduced to facilitate the generation developers to undertake project preparation activities and it was expected that having received facilitation instrument in the form of connectivity, the applicants would take some concrete steps to proceed towards implementation of generation project in a time-bound manner and thus utilize the connectivity gainfully. However, at present, there is no provision in the Connectivity Regulations or the Detailed Procedure for cancellation or revocation of a connectivity once granted in accordance with the Regulations. Consequently, a connectivity once granted, may continue in perpetuity, irrespective of the fact whether the generator has made any progress towards project preparatory activities for capacity addition or not. This has led to issue under instant petition i.e. underutilization of bays allocated under a

connectivity grant. The Petitioner has submitted that prior to filing the present petition, the Petitioner on earlier occasions also had brought to the notice of the Commission the requirement for specifying prerequisites for grant of connectivity and also for putting in place a mechanism for monitoring the grant of connectivity.

14. In this regard, in the instant petition it is submitted that in the present situation, a ripe generation project may be allocated bay space in a new sub-station whose gestation period (36 to 40 months) is grossly higher than gestation period of a wind/solar generation project (12 to 18 months). In one such instance, SECI in October, 2016 invited bids under MNRE Scheme for setting up of 1000 MW ISTS connected Wind Power Projects. As an illustration of the issue under reference, the Petitioner has submitted the status of availability of bays vis-à-vis the pending application for connectivity in Tirunelveli and Bhuj Bachau Sub-stations as under :-

A. <u>Tirunelveli Sub-station</u>

(i) Tirunelveli Sub-station is being executed by CTU under the Green Energy Corridor and is likely to get commissioned by March, 2018. This is a 400/230 kV GIS Sub-station having a provision for 10 nos. of 400 kV bays and 19 nos. of 220 kV line bays. At Tirunelvelli, all the 19 Nos. 220 kV bays have already been allocated to 11 nos. of applicants with connectivity quantum of 3534 MW. However, only one applicant has signed the bay implementation agreement with CTU for construction of bays at the Tirunelveli pooling station despite the fact that few of these applicants have

been granted connectivity as long back as 2014-15. Even though there is no dearth of bays at the Tirunelveli Sub-station to accommodate the successful bidder(s) under MNRE scheme, since the bays have been previously allocated to aforementioned applicants, the same cannot be applied to any gainful use under the bidding route.

(ii) Subsequently, 7 Nos. of applications with connectivity quantum of 1350 MW were received during November and December 2016 and CTU agreed for grant of connectivity at new Tirunelveli 400/230 kV Sub-station. The intimation letter for grant of Connectivity is pending ratification of ISTS augmentation proposal in Standing Committee meeting of power system planning in Southern region.

(iii) Further, 9 Nos. of applicants filed Connectivity application for 2750 MW wind projects in the vicinity of Tirunelveli and the same are also under process. The pending applications include application from Green Infra Renewable Energy Ltd. (Respondent No. 1 herein), who is also a successful bidder in the SECI bidding process. In normal course, these applicants would have been granted connectivity at new 400/230 kV proposed sub-station at Tirunelveli. The new sub-station, however, shall take about 36-40 months for construction (i.e. could be available by about January, 2021) which would derail the bidding scheme of SECI which envisaged installation of the generation project by October, 2018.

(iv) Eleven applications which were granted connectivity at under-construction Tirunelveli pooling station includes three applicants with 300 MW

connectivity each who were granted connectivity with 230 kV D/C, however, they are yet to be started. The Connectivity of these 3 Applicants was reviewed in CEA meeting dated 27.6.17 and in view of new planning criteria, the condition of (n-1) contingency requirement for immediate connectivity for renewable generation has been dispensed with and it was further decided to revise the Connectivity from D/C to S/C thereby freeing up 3 nos. of bays space at Tirunelveli Sub-station. These freed up bays in normal course are to be allocated to applicants who are higher placed in terms of month in which applications were made. However, in the light of the above, the Petitioner has proposed that on the merit of the case, bays should be allocated to successful bidders in the SECI bid, ahead of the applicants in queue. The Petitioner has submitted that this shall address the immediate concern of connectivity at Tirunelveli Sub-station.

B. <u>Bhuj Sub-station</u>

(i) Bhuj Sub-station project is being implemented by CTU under the Green Energy Corridor and is likely to get commissioned by July, 2018. This is a 765/400/220 kV AIS Sub-station having a provision for 10 Nos. of 400 kV bays and 16 nos. of 220 kV bays.

(ii) Of these, 4 Nos. 400 kV bays and 12 nos. of 220 kV bays have already been allocated to 11 nos. of applicants with connectivity quantum of 5050 MW.

15. Subsequently, 15 nos. of new applications with connectivity quantum of 4450 MW have been received, for which new 400/220 kV sub-station is being

proposed. The new applications include application from M/s Adani Green Energy MP Ltd. who is one of the successful bidders in the SECI bid carried out under the aegis of MNRE. As per Clause 3.5 of the Detailed Procedure (Clause 3.8 after amendment) all applications are processed by giving priority as per the month of application, therefore, application of M/s Adani Green Energy MP, being lower placed among the applicant queue, shall lose out granting of connectivity against the 4 nos. of bays available at Bhuj pooling station. The successful bidders are to be given connectivity at new sub-station which may take 36-40 months for construction (i.e. could be available by about Jan, 2021) which will derail the bidding process of SECI where the generation project is required to be installed by October, 2018. However, based on the merit of the case, if the Commission permits to allocate the bay to successful bidder in the SECI bid carried out under the aegis of MNRE ahead of the applicants in queue, then this shall address the immediate concern of connectivity at Bhuj Sub-station.

16. In the above background, the Petitioner has prayed for regulatory intervention to ensure efficient utilization of bays for Connectivity by Wind/Solar generation projects for addressing the present problem as well as to devising long term solution for efficient utilization of Connectivity granted to the applicants as per the following mechanism:-

a. For addressing the present problem, the petitioner has sought directions to devise a mechanism for making available immediate connectivity to those

applicants who have emerged successful in the bids carried out by SECI under the initiative of MNRE ahead of the applicants that are in queue.

b. For a long term solution, the petitioner has sought directions to devise a mechanism for addressing the issue for similar anticipated problems by introduction of regulatory provisions in the Connectivity Regulations and Detailed Procedure for review of connectivity granted to Wind/Solar developers based on the physical and/or financial progress of the generation project so that squatting over the precious infrastructure in terms of bay space in ISTS sub-stations is curbed.

17. With regard to the solution of present problem, CTU has prayed for directions from the Commission as per methodology at para 16(a) above and regarding long term problem, CTU has prayed for incorporation of the following regulatory provisions under Regulation 33B of the 2009 Connectivity Regulations (Powers to remove such difficulties):-

> "Any project developer who is seeking intended facilitation through grant of connectivity would be expected to take substantive actions towards physical and financial milestones. Accordingly, while applying for connectivity, not only the seriousness at the application stage but its subsequent actions post-grant of connectivity also needs to be ensured as under :-
>
> (i) At the application stage, new connectivity applicants shall submit an application bank guarantee at the rate of ₹10,000/MW as required for the LTA application as per the extant Regulations.
>
> (ii) At post-grant stage of connectivity, the grant of connectivity shall be 'provisional' and the same shall be reviewed quarterly in the Joint Coordination Committee meetings for assessment of the actions taken by the connectivity grantee in achieving physical/financial milestones. The connectivity shall be revoked if at least two of the

following milestones are not achieved within 6 months of grant of connectivity (about 50% of the gestation period of the generation project) :-

(a) Affidavit for acquisition/lease hold of 25% land w.r.t to total requirement of connectivity quantum;
(b) Letter of award by bidding agency for at least 50% connectivity quantum authorized by the appropriate Government; and
(c) Letter of award for internal transmission infrastructure (pooling station etc.) and machines (turbine/inverter-modules).
(d) Signing of bay implementation agreement & advance deposit for bays implementation at ISTS substation end within stipulated time period

Note 1 : In case of revocation of connectivity as per grounds at Para (ii) above, the application bank guarantee shall be encashed. The connectivity application bank guarantee shall be discharged at the time of operationalization of the connectivity, however, till that time, the applicant shall be required to keep the bank guarantee alive, in default of which, the same shall be encashed by CTU.

Note 2 : For the cases where Connectivity is already granted, submission of BG may not be sought, however, their connectivity shall be reviewed against the above mentioned parameters. The Connectivity shall be cancelled if the above milestones are not achieved within the prescribed time frame.

(iii) In case an applicant has been granted connectivity as well as LTA and its Connectivity is revoked for not achieving milestones as indicated above (ii), such LTA shall also be revoked and LTA application bank guarantee shall be returned.

(iv) Directions are also sought for the situation where new bidder(s) becomes successful in the SECI/Govt. nominated bid at a given location (close to an ISTS substation) at which ISTS Sub-station, all the bays are already reserved and the review of connectivity is not possible for want of passage of minimum period of 6 months between the grant of connectivity and the declaration of bid winner.

18. On the issues of preventing underutilization of bays for Connectivity granted to Wind/Solar generation projects, MNRE has submitted its views as under:-

a) Government of India has set a target of reaching 175 GW of renewable power capacity in the country by 2022 of which 100 GW is targeted from solar, 60 GW from wind, 10GW from biomass and 5GW from small hydro.

b) As per assessment made by National Institute of Wind Energy, the total wind power potential in country at 100 meter above ground level is over 302 GW and most of this potential is concentrated in seven windy States namely Andhra Pradesh, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan and Tamil Nadu.

c) The targeted 60 GW of wind power will mainly come from these windy States. As the windy States can't absorb wind power beyond a certain limit due to its variable nature, the wind power from these States is required to be transmitted to other States for fulfillment of their RPO obligation. To facilitate inter-state transmission of wind power, Government made a provision in the Tariff Policy to waive off the ISTS charges and losses for inter-state sale of wind and solar power.

d) To further facilitate inter-state sale of wind power at a tariff determined through transparent process of bidding, MNRE sanctioned a scheme in June 2016 for setting-up of 1000 MW ISTS connected wind power projects.

e) After issuance of abovementioned scheme for ISTS connected wind projects and order for waiving off of ISTS charges and losses for wind

power in September 2016, a large number of applications for grant of ISTS connectivity for wind power projects started pouring in with CTU.

f) It is reported that, so far CTU had received applications for grant of connectivity for around 50 GW capacity wind power projects. At present there is no provision of prioritising such applications and hence CTU is granting connectivity on first cum first serve basis. This has resulted in squatting of connectivity by project developers who may not be serious to execute the project and thus depriving timely availability of connectivity to those who are much ahead of developing the project.

g) Understanding the need of resolving this issue through suitable regulatory intervention, Ministry vide letter dated 6 February 2017requested the Commission to discourage squatting of connectivity by prioritising grant of connectivity.

h) The development of a wind power project is generally completed within a period of three years depending upon from where they start. If wind resource assessment data are readily available for the site then this period could be less than two years.

19. On the issue of squatting of connectivity, MNRE has suggested the following:

a) A mechanism of giving priority is required to be evolved while granting connectivity. Criteria for prioritising could be acquisition of land,

signing of PPA, obtaining financial closure, placement of purchase orders for equipment, start of project work, etc.

b) To stop non-serious players applying connectivity, a provision of submitting bank-guarantee along with the connectivity application may be considered. It could be minimum Rs. 5 Lakh per MW.

c) Considering the low gestation period of wind power projects the connectivity should not be granted for the projects indicating commissioning of projects beyond a period of three years from the date of connectivity application.

d) Periodic review of projects granted connectivity should be carried out and connectivity should be revoked for not achieving certain milestones that are required for development of wind power projects. Suggested milestones are as under:

   i) Within a period of 12 months from the date of grant of connectivity, the applicant has to acquire at least 50% of land required for the project and also sign bay implementation agreement & deposit advance for bays implementation at ISTS substation.

   ii) Within a period of 18 months from the date of grant of connectivity, the applicant has to sign PPA for sale of 100% power from his project.

   iii) Within a period of 24 months from the date of grant of connectivity, the applicant has to complete the financial closure.

e) The mechanism suggested above to discourage squatting of connectivity to be made applicable for both new and applications pending for grant of connectivity.

f) For projects already granted connectivity, periodic review of projects as suggested above should be applicable, however, in such cases the achievement of required milestones will be from the date of issue of final order by the Commission in this regard.

g) In case of solar, most of the projects are coming in solar parks. For solar parks there are separate provisions for grant of connectivity and practically there is no issue of squatting

20. Notices were issued to the respondents to file their replies to the petition. In response to the aforesaid submissions of the Petitioner and suggested methodology for optimum utilization of the bays for granting connectivity to the WPDs, written submissions/replies have been filed by following Respondents:

1. Mytrah Energy (India) Private Limited (MEIPL) - Respondent No. 4
2. Inox Wind Infrastructure Services Limited-Respondent No. 6
3. Regen Wind Farm (TN) Pvt. Limited - Respondent No. 8
4. BLP Energy Private Limited - Respondent No. 9
5. Gamesa Renewable Power Private Limited - Respondent No. 12
6. Sitac Kabini - Respondent No. 18
7. Srijan Energy Systems Pvt. Limited-Respondent No. 24
8. Orange Sironj Wind Power Private Limited-Respondent No. 7
9. Ostro Alpha Wind Private Limited-Respondent No.10
10. Clean wind Power (Tuticorin) Private Limited-Respondent No. 14
11. Clean wind Power (Bhavnagar) Private Limited – Resondent No. 15
12. Orange Rajkot Wind Power Private Limited – Respondent No. 26
13. Ostro Kutch Wind Private Limited-Respondent No. 27
14. Adani Green Energy Limited – Respondent No. 28
15. Adani Green Energy (MP) Limited – Respondent No. 29

16. Solar Energy Corporation of India Limited (SECI)-Respondent No.2

In addition, replies have also been filed by Renew Power Ventures Private Limited, Renew Wind Energy (AP2) Private Limited and Renew Wind Energy (TN) Private Limited.

21. The Respondents have commonly raised the issues regarding maintainability of the petition and submissions on merits alongwith proposing schemes/models/suggestions for optimum utilisation of the bays and associated transmission corridor. The Petitioner has also filed rejoinder to the replies of the respondents. The issues thus arising in the petition are covered under the following captions:-

I. <u>Maintainability of the Petition</u>

21. The Respondents have challenged the maintainability of the instant petition on the following counts:-

A. Retrospective Amendment of Connectivity Regulations and Detailed Procedure

22. The Respondents have submitted that the instant petition seeks to introduce substantive changes in the mechanism for grant of connectivity with retrospective effect and specify certain follow-up steps to be taken by the entities seeking to develop wind energy projects. The Respondents have submitted that it is a settled principle of law that substantive rights cannot be altered retrospectively. By seeking to accord preferential allocation of connectivity to successful bidders from the SECI

bid in October 2016, the Petitioner has sought to distort the level playing field by changing order of priority for grant of connectivity to a hand full of entities who won the first SECI bid. This goes against the legitimate expectations of the Respondents as they are in the queue of applicants for connectivity. Respondents have submitted that had they known that the Petitioner would provide preferential treatment to successful bidders, they would have accordingly participated and quoted lower bids.

23. The Respondents have submitted that the law is well settled that a subordinate legislation in form of Regulation or Detailed Procedure issued thereunder cannot have retrospective application unless there is a specific power/provision conferred by the principal Act. It is also a settled position that all legislations are prospective in nature unless specifically retrospective application is clearly specified therein. In this regard, the Respondents have relied their contention on Allahabad High Court's decision in the case of Modi Food Products Ltd. Vs. Commr. of Sales Tax U.P., where it is inter-alia held that a legislature can certainly give retrospective effect to pieces of legislation passed by it but an executive Government exercising subordinate and delegated legislative powers, cannot make legislation retrospective in effect unless that power is expressly conferred. Further, reference is made of Hon'ble Supreme Court's decision in the case of State of Rajasthan and Ors. Vs. Basant Agrotech (India) Ltd., {(2013) 15 SCC 1}, where it was inter-alia held that a subordinate legislation can be given retrospective effect if a power in this behalf is contained in the principal Act. Further, in M.D. University v. Jahan Singh, (2007) 5

SCC 77, it has been clearly laid down that in the absence of any provision contained in the legislative Act, a delegatee cannot make a delegated legislation with retrospective effect." Further, in India Sugars & Refineries Vs. State of Mysore & Ors. ILR (1959) Mad 688, it was held that there is difference in this respect between the power of a Legislative body and that of the delegated authority e.g. executive Government. A Legislative body can always legislate retrospectively unless there is any prohibition under the Constitution which has created it.

24. Therefore, the rule-making power conferred upon the Commission flows from Section 178 of the Electricity Act, 2003 and as such is in the nature of delegated legislation. In the event where the said Act does not confer any power to make rules retrospectively upon CERC, any attempt to do so would be a clear and express violation of the intent of the Electricity Act.

B. Power to remove difficulty

25. The Respondents have submitted that the instant petition seeks a retrospective amendment in the Regulations promulgated by the Commission, in exercise of the power to remove difficulty or inherent powers vested with the Commission or both. Such a retrospective amendment in the Regulations is not legally tenable and as such the same is beyond the scope of the power to remove difficulty envisaged under Regulation 33B of the 2009 Connectivity Regulations. Any amendments in the Connectivity Regulations or in the Detailed Procedure can

only be prospective in nature and as such the same cannot take away the rights already vested in the existing IPPs who applied for connectivity earlier in time in favour of the selected bidders in the SECI bidding process. Any retrospective amendment in the said Regulations or in the Detailed Procedure will lead to an environment of uncertainty in the subsequent competitive bids of SECI.

26. The Respondents, along with the various other Wind Power Developers (WPD), have complied with all the extant rules and regulations in order to obtain connectivity to the grid. Further, even the existing applications for connectivity have been filed by the WPDs in compliance with the express provisions of the Regulation 7 and the Detailed Procedure, which provides that such connectivity is required to be granted within a period of sixty days from the date of application, clearly indicating that the said connectivity is granted on a first come first served basis. Thus, purported underutilization of bays cannot be construed as a difficulty arising in giving effect to the provisions of the applicable Regulations and at best it can be construed as an extraneous difficulty which cannot be taken care of by exercise of power to remove difficulties as envisaged under regulation 33B of the Connectivity Regulations.

27. A legislative body under its power to remove difficulty can only remove minor obscurities in order to make an Act or Regulation workable, however, such an authority cannot change, disfigure or do violence to the basic structure and primary features of the Regulations or the procedure issued thereunder. Further, in no case,

can such an authority, under the guise of removing a difficulty, change the scheme and essential provisions of the said Act/Regulation. In the instant case, all the prospective bidders, at the time of submitting their bids were aware of an established procedure for applying for grant of connectivity and the said bidders factored in the same at the time of stating their envisaged timeline for completion/ implementation of the project. None of the bidders were aware that there would be a subsequent amendment which would make the successful bidders eligible to jump the queue for the purpose of grant of connectivity ahead of the applications of the existing IPPs. Thus, the proposed amendment to the Connectivity Regulations is in the nature of a modification to the basic structure of the said Regulations and as such cannot be carried out under the guise of power to remove difficulty.

28. The Respondents have submitted that the Hon'ble Supreme Court in Mahadeva Upendra Sinai and Others v. Union Of India (1975) 3 SCC 765, has held that the "power to remove difficulties" is not uncontrolled and unfettered and observed that:

> "The existence or arising of a difficulty is the sine qua non for the exercise of power. If this condition precedent is not satisfied as an objective fact, the power under this clause cannot be invoked at all. Again the "difficulty" contemplated by the clause must be a difficulty arising in giving effect to the provisions of this Act and not a difficulty arising aliunde or an extraneous difficulty. Further, the Central Government can exercise the power under the clause only to the extent it is necessary for giving effect to the Act, etc., and no further. It may slightly tinker with the Act to round off angularities and smoothen the joints or remove minor obscurities to make it workable, but it cannot change, disfigure or do violence to the basic structure and primary features of the Act. In no case, can

it, under the guise of removing the difficulty, change the scheme and essential provisions of this Act."

In view of the above, the Respondents have contended that the approach of the Petitioner in invoking the power to remove difficulty and inherent powers of the Commission in the instant petition is contrary to the extant regulatory regime.

C. Inherent powers of Commission

29. The Respondents have submitted that the inherent powers of the Commission cannot be invoked to seek amendment of the existing regulations and give preferential treatment to certain class of power developers. Further, the Commission cannot invoke inherent power to substitute/supplant the law making functions of the Commission under Section 79 (1)(c) of the Act.

30. The Respondents have further submitted that regarding exercise of inherent powers by a court or judicial authority, it is a settled position that inherent powers are to be exercised by such an authority when the matter sought to be taken care of by exercise of inherent power is not covered by any other specific provision and exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the legislature. The Connectivity Regulations, in terms of Regulation 7, clearly state that connectivity shall be granted to an applicant within a period of sixty days from the date of application, thereby meaning that such connectivity is required to be granted on a first come first served basis. Thus, there is a specific provision which sets out

the manner of dealing with connectivity application and therefore, inherent power cannot be exercised in this scenario.

31. The Respondents have submitted that where the scope of the power of the court or the jurisdiction that it may exercise in relation to a matter is covered by a statute, the inherent power cannot be invoked in order to cut across the powers conferred by the said statute. While exercising the inherent powers conferred by a statute or regulation, a judicial body has to exercise caution, as there is no legislative guidance to deal with the procedural situation under consideration and the exercise of power depends upon the discretion and wisdom of the said judicial body and the facts and circumstances of the case. However, the said discretion granted to a court cannot be exercised as a carte blanche to grant any relief.

32. The Respondents have further submitted that the inherent power of a court can be used only in such manner that it does not in any way conflict with what has been expressly provided for in the Act or Regulations or against the intention of the legislature. The Connectivity Regulations and the Detailed Procedure having expressly provided for a procedure for grant of connectivity to the grid, which is on first come first serve basis, the Petitioner cannot seek exercise of inherent powers of the Commission for employment of a procedure such as preferential grant of connectivity, which is totally alien to the aforesaid express procedure provided in the said Regulations. The inherent powers of a court are in addition to the powers expressly provided by the relevant statute itself and as such are meant to

complement the existing powers of the said court. Therefore, the said powers cannot be used by the court in order to adopt a procedure which is completely de hors the express language of the said statute. Any departure of such nature from the established/prescribed procedure contained in a Statute/ Regulation can only be carried out by way of a prospective amendment to the relevant Regulations after inviting the comments/suggestions of all stakeholders.

33. The Respondents have submitted that Regulation 27 of the Connectivity Regulations provides the guidelines for issuing Detailed Procedure by the Commission whereby the detailed procedure could be adopted only pursuant to due deliberation and incorporation of suggestions of all the stakeholders concerned. The instant petition seeks to introduce a detailed procedure for a specific class of utilities, being the wind/solar power generators allegedly on account of the absence of a procedure for grant of connectivity specifically for the wind/solar power generators. Such an amendment in the detailed procedure, wherein the Petitioner seeks to prescribe a new methodology altogether which would be applicable on the wind/solar power generators for the purpose of grant of connectivity, cannot take place by way of a petition seeking such relief by way of invoking the inherent powers of the Commission. The said procedure could only be carried out by way of an amendment to the detailed procedure which would be prospective in nature and which takes into consideration the concerns/suggestions of all concerned

stakeholders, in terms of the procedure prescribed under Regulation 27 of the Connectivity Regulations.

D. Changes should be prospective in nature

34. The Respondents have largely supported the proposition that certain amendments are required to be carried out in the Connectivity Regulations and the Detailed Procedure; however, the same should take into account the dynamics and particulars of the renewable energy sector. Further, it is contended that any amendment sought to be carried out by the Petitioner can only take place prospectively and that too after following the due process prescribed in the Connectivity Regulations and the Detailed Procedure i.e. after calling for and considering the comments/suggestions of all the key stakeholders in the wind power sector.

E. Absence of any Dispute

35. On the point of maintainability, the Respondents have submitted that in terms of Section 79 (1) (f) of the Act, the Commission is required to adjudicate disputes between generating companies or transmission licensees in regard to matters connected with tariff of generating station within its jurisdiction or inter-State transmission of electricity and to refer any dispute for arbitration. However, the instant petition does not refer to existence of any dispute between the parties and

hence, on the basis of generic allegations without any basis, the present petition is not maintainable under 2009 Connectivity Regulations of the Commission.

36. The Respondents have submitted that for the purposes of obtaining connectivity or LTA, the successful SECI bidders, and other applicants stand on an equal footing. There can be no preference given to successful SECI bidders over other applicants, and that too in a retrospective manner. Preference given to successful SECI bidders would amount to violating the right to equal treatment enshrined under Article 14 of the Constitution and therefore, the Respondents have prayed to reject the present Petition both on the grounds of merit and maintainability in its entirety in the interests of justice.

II. Submissions on merits

A. Squatting

37. The Respondents have submitted that the term 'squatting' is neither defined in law or in any of the Regulations of CERC and as such, the scope and meaning of the term 'squatting' in the context of the present Petition is quite subjective as it is unclear as to when connectivity taken by a party with an intent to participate and secure a project in ongoing and/or upcoming bids can be construed as 'squatting'.

38. It would be beyond any pale of logic to assume that a party which has obtained connectivity with an intent to participate and secure a project in ongoing

and/or upcoming bids carried out by SECI or any other State agency, is indulging in squatting merely because it fails to secure a project in a particular bid. Moreover, most of the IPPs referred in the petition have applied for connectivity to the grid on or around the time when the discussions pertaining to issue of SECI guidelines commenced in March 2016. Thereafter, the SECI guidelines were issued in October 2016. It is clearly evident that the applications for grant of connectivity received by PGCIL were filed by the developers with a view to secure themselves qua the requirement of connectivity to the grid before participating in the said SECI bidding procedure and as such the said applications were clearly made in anticipation of securing projects in the upcoming bids of SECI or other State agencies. In this reference, the Respondents have contended that the advance action taken by wind/solar power developers to secure connectivity to the grid before participating in the bidding process of SECI or any other State agency has to be differentiated from the practice of underutilization of bays or squatting as alleged by PGCIL, specifically in view of the fact that the obligation to arrange connectivity is completely cast upon the IPPs.

39. In the instant petition the term "squatting" is used to describe the alleged non-taking of effective steps by grantee of connectivity towards project implementation which is stated to have led to underutilization of bays by wind/solar power generators. However, branding of IPPs as "squatters", who have invested substantial equity in the development of various projects by way of

Special Purpose Vehicles (SPV), amounts to an extreme approach being adopted by the Petitioner against bona fide developers IPPs. The scope and meaning of the term 'squatting' in the context of the present Petition is quite subjective as it is unclear as to when connectivity taken by a party with an intent to participate and secure a project in ongoing and/or upcoming bids can be construed as 'squatting'. For instance, if a party bids and doesn't get the project in the first instance, could such scenario be termed squatting?; if a party hasn't bid for first or second rounds of bid post securing connectivity but intends to bid for upcoming bids, can such scenario be construed as 'squatting', considering that it takes around four years to develop a project, excluding time taken in undertaking preparatory activities, and if connectivity has been granted only twelve or eighteen months ago?.

40. As regards "concrete steps" suggested in the petition, Respondents have submitted that milestones as expected by CTU after grant of connectivity should not be interpreted to mean erection of wind turbines only as various preparatory activities on the site are required prior to undertaking erection of wind turbines. Therefore, non-erection of turbines on the site by connectivity holders cannot be termed as squatting over connectivity. Any person who undertakes pre-construction activities cannot be termed as squatting over connectivity. Further, it is not prudent for any developer to undertake substantial works on the site without actually having taken the initial 'project preparation activity' of getting connectivity for the proposed project.

41. According to the Respondents, Participation in a certain bid is a business call of the wind/solar power IPPs and the said participation is carried out after an extensive analysis of the bidding conditions as well as the prevailing business environment of the place where the said bidding is being carried out. In such a situation, it may not always be economically or practically feasible for a certain wind/solar power IPP to participate in a certain bid being carried out in a particular area/region. As such, an IPP may have to sit out from certain bids being carried out by SECI or any other relevant authority until a bid, which is commercially feasible for the said IPP is carried out by SECI. In such a case, merely because a certain IPP did not participate in an ongoing bid of SECI or any other relevant authority after securing connectivity, it cannot be construed that it does not intend to participate in any future bid as well. Such wind/ solar power IPPs are well within their rights to take advance action, in terms of the extant legal and regulatory framework, to obtain connectivity to the grid for their prospective projects. Accordingly, it would be open to the Petitioner to cancel connectivity of a certain wind/solar power IPP on the ground that the said IPP is indulging in the practice of squatting over the connectivity granted by the Petitioner. It would be beyond any pale of logic to assume that a party which has obtained connectivity with an intent to participate and secure a project in ongoing and/or upcoming bids carried out by SECI or any other relevant authority, is indulging in squatting merely because it fails to secure a project in a particular bid.

42. The Respondents have submitted that the Petitioner has made a very

flimsy attempt to demonstrate squatting by the wind or solar power IPPs and has contended that most of the IPPs have applied for connectivity to the grid on or around the time when the discussions pertaining to issue of SECI guidelines commenced in March 2016. Thereafter, the SECI guidelines were issued in October 2016. It is clearly evident that the above-mentioned applications for grant of connectivity received by the Petitioner herein were filed by the IPPs/developers with a view to secure connectivity to the grid before participating in the said SECI bidding procedure and as such the said applications were clearly made in anticipation of securing projects in the upcoming bids of SECI or other relevant authorities in due course. However, it cannot be assumed that as soon as a certain wind/solar power IPP applies for connectivity to the grid of the Petitioner, it has to necessarily participate in every upcoming bid that is carried out by SECI or any other relevant authority or else it shall fall prey to the vaguely defined practice of 'squatting' by the Petitioner. The advance action taken by wind/solar power IPPs to secure connectivity to the grid before participating in the bidding process of SECI or any other relevant authority ought to be differentiated from the practice of squatting as alleged by the Petitioner specifically in view of the fact that the obligation to arrange connectivity is completely cast upon the IPPs. In case such differentiation is not done, it would amount to dis-incentivizing the proactive and diligent wind/solar power IPPs who procure connectivity in advance in the interest of the project.

43. The Respondents have submitted that the petition does not take into account various practical exigencies that arise on a routine basis in the domain of

competitive bidding. Therefore, any proposed amendment in order to cater to the alleged practice of 'squatting' warrants the inclusion of the comments/suggestions of all concerned stakeholders so as to arrive at a structured and comprehensive framework which shall thereafter govern the grant of connectivity to the wind/solar power generators going forward.

44. The Respondents have submitted that the data provided by the Petitioner, by way of the present petition, only refers to two sub-stations of the Petitioner i.e. Tirunelveli and Bhuj and as such the same is completely inadequate in order to substantiate the claim of the alleged squatting by the IPPs/developers leading to underutilization of allotted bays by the wind/solar power generators. Accordingly, the said details are inadequate to justify the Petitioner's stance of granting preferential connectivity to the bidders who have emerged successful in the SECI bidding process. It is imperative for the Petitioner to provide additional data/details qua the status of sub-stations under construction/operationalized in the aforesaid States in order to arrive at a reasoned conclusion as regards the alleged practice of non-taking of effective steps by grantee towards project implementation pursuant to grant of connectivity.

45. The Respondents have submitted that the projected wind power capacity addition to be bid out in the current financial year far exceeds the existing transmission and evacuation infrastructure of the Petitioner. The wind energy capacity addition envisioned by the Government of India (MNRE), through the press release dated 18.12.2016 published by the Press Information Bureau (PIB)

envisaged the following:

"TARGETS

The Government of India has set a target of 175 GW renewable power installed capacity by the end of 2022. This includes 60 GW from wind power, 100 GW from solar power, 10 GW from biomass power and 5 GW from small hydro power. A target of 16660 MW grid renewable power (wind 4000 MW, solar 12000 MW, small hydro power 250 MW, bio-power 400 MW and waster to power 10 MW) has been set for 2016-17...

Source	2016-17	2017-18	2018-19
Solar Power	*12000*	*15000*	*16000*
Wind	*4000*	*4600*	*5200*
Biomass	*500*	*750*	*850*
SHP	225	*100*	*100*
Grand Total	16725	*20450*	*22150*

Respondents have argued that in view of the very significant capacity addition envisaged by the Government of India specifically with respect to wind and solar power projects, the Petitioner is required to take up proportionate development/strengthening of the inter-State transmission system by the Petitioner ahead of such generation capacity. In view of the aforesaid targets, if an existing IPP which has approximately around 500 to 1000 MW of installed capacity, secures another 200-250 MW of connectivity with a view to secure bids in the upcoming auctions of SECI or any other relevant authority, it would be highly impractical and out of place to call such proactive developmental intent of a certain IPP as "squatting".

46. The Respondents have further submitted that from the data, it can very clearly be inferred that in order to enhance the installed wind power capacity in the country to 60 GW by 2022, MNRE is very likely to undertake bidding for

another 4000 MW this financial year. In view of the said fact, a certain IPPs, which already have sufficient installed capacity in the market to prove their credentials, and who secure an additional 400-500 MW of connectivity keeping in mind the aforesaid quantum of bidding likely to take place in the upcoming years including the present year, cannot be branded as a "squatter" since the said IPPs are well within their rights to secure such connectivity so as to be able to participate in the said upcoming bids and thereafter be able to seamlessly implement the project, secured by way of the said competitive bidding process. Further, securing such connectivity in advance assumes even more importance in light of the fact that it consumes at least 24 to 36 months in carrying out the various project preparatory activities, as elaborated in the subsequent section, before participation in a bid can be carried out and as such the same is therefore done in the interest of the project.

47. The Respondents have further submitted that the period of six months for review of grant of connectivity as proposed by the Petitioner herein is impractical and far from the ground realities of the actual time consumed in setting up of a wind power project. It is a fallacy to state that wind projects typically take only 9-12 months for construction. It is pertinent to note that in the past, projects were smaller in size (i.e. between 50-100 MW) and hence the same could be constructed and completed within a time period of 9-12 months. However, the bigger projects with capacity of around 250 MW and above typically take around 18-24 months for construction excluding 18-24 months for various

preparatory/pre-developmental activities required to be carried out before the project is ready to participate in a bid. Thus, an IPP can only participate in a bid once preparatory or pre-developmental activities are completed. Even by the most conservative estimates, the said activities cannot be completed before 30-36 months from the grant of connectivity.

B. <u>Regarding timelines proposed as milestones by PGCIL and MNRE for completion of various activities:</u>

48. The Respondents have submitted that actual construction period provisioned for wind power generation is about 18 months but the same does not factor in prior pre-construction activities required to be undertaken on the site. The pre-construction activities are time taking and may require about two years before the actual construction activities may start. Further, regarding milestones proposed in the petition, it is submitted that the same must be consistent with the provisions of the Connectivity Regulations and ground realities of wind power generation. On these lines, specific timelines have been discussed by the Respondents as under:-

(I) **Acquisition of Land**

49. The Respondents have submitted that the Petitioner at para 14(ii)(a) of the present petition has suggested that acquisition of 25% of land is required to be completed by an IPP within six months from the grant of connectivity to the grid. In contrast to the above, the MNRE at para IV (a) has suggested that at least 50% of acquisition of land should be completed by the project developer within the first 12 months of grant of connectivity. Though MNRE has enhanced the

proportionate capacity of land acquisition by 25% in another 6 months' time, in effect, their suggestions are premised on the basis that 25% to 50% of the land required for the project needs to be acquired within 6 to 12 months from the grant of connectivity. The Respondents have submitted that the acquisition of land within a period of 6 to 12 months from the date of grant of connectivity, as suggested by the Petitioner and MNRE respectively, is an unrealistic proposition on account of the following reasons:

(a) An IPP typically requires around 24 months for undertaking various preparatory/pre-developmental activities. Therefore, acquisition of land cannot be carried out unless the preparatory/pre-developmental activities are completed. Further, such acquisition of land is also dependent upon the IPP securing a project pursuant to competitive bidding carried out by SECI or any other relevant authority. It is not practically feasible to accurately envisage as to how and when bidding shall be carried out by SECI any other relevant authority for award of wind projects and therefore, acquiring land before hand is not feasible.

(b) The extent of land required for a particular project would depend upon the Wind Turbine Generator ("WTG") chosen for the project. The said choice varies with change in technology and further such a decision can only be made once an IPP has secured a project. To that extent, planning acquisition of land in advance is an impractical proposition.

(c) A company is unlikely to block finances in land unless they have a project in hand. Such level of commitment from IPPs, without having a certain roadmap on future bids, is unreasonable.

(II) **Execution of Bay Implementation Agreement**

50. The Respondents have submitted that the Petitioner in Para 14(d) of the Petition has stated that signing of the bay implementation agreement should be completed within six months from the grant of connectivity to the grid while the MNRE at para 9(IV)(a) has proposed a timeline of 12 months for the same. In this regard, it is submitted that considering that the developer is ready to give a bank guarantee for two years after the grant of connectivity (during which period it would undertake preparatory/pre-developmental activities), it is already financially committing to setting up the project and therefore, the requirement of upfront executing Bay Implementation Agreement should not be imposed on IPPs. In the event, an IPP does not set up the project, it would lose the bank guarantee and that would be sufficient penal provision. Thus, the timelines proposed by both the Petitioner and MNRE are unrealistic on account of the fact that an IPP requires around 24 months for undertaking preparatory/pre-developmental activities as elaborated in the preceding section.

(III) Letter of Award by Bidding Agency for at least 50% connectivity quantum and execution of PPA of 100% power from the project.

51. The Respondents have submitted that the Petitioner at para 14(ii)(b) of the petition has suggested that the project developer should have secured a letter of

award for at least 50% of the connectivity applied for within six months from date of grant of connectivity. Further, the MNRE at para 9(IV)(b) has suggested that an IPP should be able to execute a PPA within 18 months from the date of grant of connectivity. Both the aforementioned suggestions are not feasible on account of the fact that 24 months are required for undertaking preparatory/pre-developmental activities by an IPP on account of the following reasons:

(a) Since, an IPP cannot envisage as to how and when shall bidding be carried out by SECI or any other relevant authority for award of wind generation capacity, having a signed PPA/LOA from the bidding agency is also beyond the control of the generator. Even after winning a project, the grant of LoA and/or signing of PPA entails significant lapse of time which is completely beyond the control of the developer. It is submitted that there could be a time lapse of around 6 to 12 months between participating in bids and being able to secure a project. It is only after securing a project pursuant to competitive bidding carried out by SECI or any other relevant authority, can such IPP proceed to execute a PPA.

(b) A bidder cannot be certain of winning every bid that it participates after securing connectivity. Also, a bidder may choose not to participate in a particular bid pursuant to an analysis of the bidding conditions and business environment of the area/region where the bid is being conducted. Even if the bidder has intent to procure a project at the earliest, securing the same in a competitive bid is beyond its control.

(IV) Letter of Award for Internal Transmission Infrastructure and Machines

52. The Respondents have submitted that the Petitioner at para l4(ii)(c) of the present petition has proposed that the project developer should be able to accomplish issuing of the letter of award for internal transmission infrastructure and machines within six months from the date of grant of connectivity. In this regard, it is submitted that the activities of acquisition of land, installation of internal transmission infrastructure, financial closure etc. are all activities that are intrinsically and inherently linked and the timelines for achievement of the said milestones cannot be prescribed in isolation and de hors the manner of progress of the other said activities. It is submitted that installation of internal transmission infrastructure can only be done when land for the project has been acquired. However, the land for the project cannot be acquired until the pre-developmental activities and wind data study of the area is not carried out. It is reiterated that the extent of land required for a particular project would depend upon the WTG chosen for the project. The said choice varies with change in technology and further such a decision can only be made once an IPP has secured a project. Thus, from the above, it is evident that the said activities are interlinked and as such the said milestones cannot be practically achieved within a short time span of six months to one year.

(V) Achievement of Financial closure

53. With regard to MNRE's suggestion that the project developer should achieve financial closure of the project within 24 months from the date of grant of connectivity, the Respondents have submitted that the same is not feasible on account of the fact that financial closure inherently and intrinsically is linked to acquisition of land and the same can only be completed once acquisition of land has been done. Thus, the financial closure of the project cannot be achieved within a period of 24 months. The following suggestions in this regard have been offered:

(a) The timelines for planning, design and completion of a wind power project are necessary to be taken into consideration for the purpose of formulating a methodology governing the grant/review of connectivity to wind power projects.

(b) The various project preparatory/pre-developmental activities that need to be carried out in order to make a project reach a stage where it is ready to participate in bidding cannot be completed before 30-36 months from the grant of connectivity.

54. The Respondents have submitted that the above activities and the timelines involved therein are set out below:

a) Activities such as identification of areas with high wind using Meso Scale Maps, basic due diligence of land/ settlement of right of way issues, if any, and negotiating the lease/ purchase of land consume around three months.

b) Thereafter, at least 18-24 months are consumed in the collection of high wind season data. The period of 24 months cannot be curtailed by the wind power project developer since it necessarily has to collect the said data over the course of two high wind seasons as it has to consider for operating the project for a period of 25 years. Collection of the said data accurately assumes greater importance on account of the fact that there exist penal provisions in the PPAs executed by the IPPs with the trading utilities, wherein penalties are imposed upon the IPP for supply of power less than 90% or more than 120% of the contracted capacity.

c) Pursuant to the collection of the aforesaid data, an analysis of the said data, micro siting, obtaining of initial approvals, preparation of a business plan and obtaining approval from the board/ investment committee for participating in a project, *consumes around six months.*

C. Blocking of Connectivity by Original Equipment Manufacturers (OEMs)

55. The Respondents have submitted that the entire intent of the Petitioner herein is to avoid blocking of connectivity by the non-serious players in the market and for this purpose, it has been suggested that connectivity ought to be granted to only those who own generating assets and have a sufficient net

worth as opposed to OEMs who do not own assets on the ground. Such an approach would make the non-serious players ineligible for applying for connectivity at the inception stage itself, thereby eliminating the practice of blocking connectivity for the purpose of trading with the same at a later stage. In this regard, with reference to the list of applicants granted connectivity at Bhuj and Tirunelveli Sub-stations of the Petitioner, it may be noticed that out of a total available capacity of 3534 MW at Tirunelveli, OEMs have blocked a total quantum of 2184 MW. Further, out of a total available capacity of 5050 MW at Bhuj, the OEMs have blocked connectivity amounting to 2000 MW. Several OEMs secure connectivity with the ulterior motive of selling/transferring the said connectivity approval to a third party and earning a premium on it at a later stage. It is stated that such a practice is detrimental to the interests of the end consumers of electricity since the transfer of such connectivity approvals to a third party entails earning of a premium by such OEMs, thereby raising the cost of the project. The relevant issue regarding transfer of connectivity has been discussed in the 16th Meeting of Southern Region Constituents regarding LTA and Connectivity Applications held on 25.09.2013. As a matter of fact, OEMs do not own generating stations and their business model envisage transfer of SPV in which project asset is housed to another entity. Therefore, connectivity should not be granted to OEMs as they are not in the business of owning and operating generating assets like IPPs. The following suggestions have been made in this regard:

a) A proper qualification criteria has to be evolved in order to ensure that only bona fide entities who own renewable projects are eligible to apply for grant of connectivity. The said approach will help eliminate the non-serious bidders at the inception stage itself and the aforementioned practices of trading in the domain of connectivity approvals shall be arrested. In this regard, reference has been made to the qualification criteria for short listing of wind power projects mentioned in the SECI guidelines, wherein ownership of projects, prior experience/presence in wind power generation sector and minimum net worth per megawatt of quoted capacity are some of the relevant criteria for shortlisting of bona fide bidders. It has been submitted that similar criteria may be evolved for eliminating the non-serious applicants for grant of connectivity.

b) Connectivity ought to be granted to only those who own generating assets and have a sufficient net worth as opposed to OEMs who have no significant assets on the ground. Such an approach would make the non-serious players ineligible for applying for connectivity at the inception stage itself, thereby eliminating the practice of blocking connectivity for the purpose of trading with the same at a later stage.

c) There should be a lock-in period on the transfer of connectivity in any manner whatsoever i.e. direct or indirect. Both the assignability of connectivity either within inter-se group companies shall be allowed provided they are transferred to the wholly owned subsidiary with

controlling shareholding of the holding company till one year from the commissioning of the Project.

d) There should be a restriction on indirect transfer, i.e. a restriction on transfer of shareholding in the SPV wherein the connectivity approval is housed.

e) The bid documents read with the PPA envisage lock in restriction on the transfer of shares in the SPV which has been allotted a project pursuant to bidding process(i.e. 51% of shares of the SPV- controlling shareholding cannot be transferred till one year after the COD of the project). A similar restriction shall also be applied on the indirect transfer of connectivity by way of selling of shareholding.

D. Data Submitted by Petitioner is Inadequate

56. The Respondents have submitted that Petitioner has contended that there are eight windy states in the country (i.e., Andhra Pradesh, Gujarat, Kamataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu and Telangana). However, the data with regard to grant of Connectivity provided by PGCIL in the present petition pertains to only two sub-stations and as such cannot be representative of the status of grant of Connectivity across the 8 windy States in the country. Further, the data regarding the number of sub-stations in operation and under construction is available with PGCIL. PGCIL is also aware of the future bidding programme of MNRE/SECI as well as the total capacity sought

to be added by the Government by 2022. Further, to enhance the installed wind power capacity in the country to 60 GW by 2022, the Government will have to necessarily award wind power projects amounting to 25000 MW by the first half of 2021 (considering the fact that the current installed wind power capacity along with capacity already bid out is around 35000 MW) so as to be able to complete the entire bidding process by 2022. The same amounts to an approximate bidding capacity of 5000-6000 MW per year until 2021.

57. Two SECI bids of 1000 MW each have been carried out. Gujarat Urja Vidyut Nigam Limited has issued tenders for 500 MW of wind power and the Tamil Nadu Electricity Board has issued tenders for 500 MW of wind power within their respective States. Further, around 4000 MW of wind power capacity bids are proposed to be further bid out in the current financial year. Therefore, the details provided by PGCIL in the present petition are inadequate and as such not representative of the status of grant of connectivity to bays across sub-stations in the various other windy states of the country. It has been suggested that the Petitioner should provide additional data/details qua the status of sub-stations under construction/operationalized in the aforesaid States in order to arrive at a reasoned conclusion as regards the alleged practice of non-taking of effective steps by grantee towards project implementation pursuant to grant of connectivity.

E. MNRE Directions vide Letter dated 6.2.2017

58. Respondents have submitted that letter dated 6th February 2017 issued by the Ministry of New and Renewable Energy to the Commission is not mandatory in character and cannot be against the extant Regulations. The letter dated 6.2.2017 sets out the Central Government's position in relation to the public issue of grant of connectivity and requests that squatting be discouraged by prioritizing connectivity to the bidder selected in the SECI bid process and therefore, this Commission is to take guidance from such directions. It has been submitted that the aforementioned letter cannot be the basis for the Commission to act contrary to the Connectivity Regulations and the extant framework applicable in relation to grant of connectivity. In this regard, the Respondents have submitted that the letter issued by the MNRE is only in the nature of a request and cannot be termed a direction within the meaning of Section 107 of the Electricity Act. Even assuming that such a letter would qualify as a direction within the meaning of the Act, such directions are not mandatory in nature and this Commission need not be bound by it while exercising its statutory functions. In this relation, the Hon'ble Appellate Tribunal for Electricity ("APTEL") has noted the non-binding nature of these directions and observed that the commissions are independent statutory authorities and are not bound by any policy or direction which hampers with its statutory functions and the term 'shall be guided' is not mandatory and its character would depend upon case to case."

F. Justification for preference for successful SECI bidders as opposed to successful bidders participating in other bids not provided

59. The Respondents have submitted the Petitioner seeks preferential treatment to successful bidders, which were not available prior to the bidding process. However, the Petitioner has failed to provide any justification for the proposal that successful SECI bidders be given preferential treatment as opposed to successful bidders in Non-SECI bids, or independent power producers setting up power plants with the intention of supplying electricity through entering into PPAs for either LTA or MTOA or STOA with third parties. The justification that bidders under the SECI bids are participants in the government's objective to encourage the generation of increased wind power energy is misplaced as the SECI bids are only one of the routes for setting up wind power plants.

G. Grant of Connectivity without the subsequent right to be considered for grant of Long Term Open Access on an equal footing is redundant

60. The Respondents have submitted that wind resource availability and ability to evacuate power are the two cornerstones for developing a wind power project. Without the availability of a corridor to evacuate power, even a grant of connectivity becomes redundant. The PPAs executed by the successful bidders under the SECI bids are long term PPAs entered into for a period of 25 years and therefore, the successful SECI bidders would seek to obtain long term access once connectivity is granted. However, if the prayer sought for by the Petitioner is taken to its logical

end, the rights of the grantees of connectivity would be prejudiced since it would affect LTA applications as well. Thereupon, the successful SECI bidders would not only be given preferential treatment at the first phase of grant of connectivity but also be in a position to move up the ladder at the second phase during the grant of Long Term Access.

H. Practical exigencies of Wind Energy Sector

61. The Respondents have submitted that the Petition glosses over the practical realities of the renewable energy sector, in particular of the wind generation projects. The Petitioner has alluded that once connectivity is granted, the grantees often do not take any action which leads to under-utilization of Connectivity. The Respondents have submitted that this contention is completely detached from the commercial sensibilities of setting up a wind generation project on following grounds:-

(a) Unlike a solar power plant where SECI/ Solar Park developer provides the land on which the solar park is set up and the same is clearly designated and allocated, wind mills are set up based on a number of considerations such as wind speed, terrain, availability of land etc., as a result the pooling substation of the developer, and the EHV evacuation system to the CTU cannot be ascertained in advance. Therefore, a WPD is not in a position to commence substantial operations till the date of grant of connectivity.

(b) In the case of wind power generation, till such time connectivity is granted, the WPD cannot make further investments into the project for a number of reasons. The steps taken by the WPDs in setting up a wind power plant are outlined below:-

i) Upon knowledge of the availability of connectivity, WPD initiates assessment of windy nature of certain areas in vicinity of the connectivity, to assess 'windy portions' which will enable efficient utilization of wind farm

ii) After initiating wind assessment, and procuring preliminary data for first few months (say, at least one windy season) the WPD may apply for connectivity.

iii) Once the WPD has assurance/reasonable assurance of connectivity being granted, the WPD invests in carrying out wind analysis, topographical analysis and climatological analysis. Such wind study takes a minimum of 1 year, but most WPD prefer atleast 2 years – so as to be able to get appropriate wind data from the potential project, make the project report bankable and be able to assess the wind farm layout (micro-siting) considering various turbine models available.

iv) In parallel to the wind assessment, WPD needs to evaluate nature of land in the area which can be potentially utilized for setting up of turbines

v) Developing a wind farm is more complex and sensitive than solar where the generation in any given area is largely the same, which allows the solar park developer to find land parcels closer to the evacuation sub-station where connectivity is granted. In wind, the variation in generation can change drastically within a span of a few hundred meters or a couple of kilometers.

vi) Thus, only once the WPD has the above reports or at the very least a credible data set to make an educated estimate, can the WPD identify pieces land (private, government revenue and forest) that it would wish to purchase / lease for its projects.

vii) Only after the micro-siting of the project is complete does the layout of the wind farm become clearer. Based on the micro-siting and the layout the WPD finds suitable option to set up the wind farm pooling sub-station, after which the route of the Extra High Voltage (EHV) transmission line be considered for routing to the evacuating sub-station or line at which connectivity has been secured. Hence, the route and length of the EHV transmission line can be worked upon only after conducting wind assessment, securing some or most of the land for setting up wind turbines, and finalizing the wind farm pooling sub-station. These activities take time and cannot be finalized in a short period before the bid.

(c) It has been suggested that since developing a wind farm is more complex and has many more variables and uncertainties, when compared to setting up a solar farm, therefore, for wind power generation, assurance or visibility on connectivity is essential for the WPD to be able to invest and undertake development and in fact the same is usually a precursor to most development activities. Accordingly, all these aspects should be kept in consideration while deciding upon the milestones to assess the preparedness of the WPDs.

(l) Suggested schemes/models to address the issue of underutilization of bays

62. Respondent No.4, Mytrah Energy (India) Private Limited (MEIPL), has suggested that the existing Connectivity Regulations and Detailed Procedure need to be reviewed, considering the strategic changes in the Renewable sector, more specifically MNRE's initiative of competitive bidding to award wind power projects to prospective wind power developers. As regards MNRE's suggestion for prioritizing the connectivity and LTA for successful bidders shortlisted through government nominated bid/SECI bid, the Respondent has submitted that such a prioritization is absolutely essential to ensure execution of the projects within timelines as the RfS issued by SECI in SECI Bid-I allows only 18 months to commission the project which includes getting all the consents, approvals, connectivity, LTA etc. The Respondent has submitted that relying on this specific clause [3.22 [10 (i)] of the said RfS for SECI Bid 1] and in consonance with its business model of developing

wind power projects under SPVs, MEIPL initially submitted bid for 250 MW in its name on 07.01.2017. Subsequently, after SECI has issued Letter of Award (LOA) to MEIPL on 05.04.2017 for setting up of 250 MW Wind Power Project in Tamil Nadu through 230 KV Tirunelveli 400/230 KV Sub-station. MIEPL incorporated a Special Purpose Vehicle, Mytrah Vayu (Saharmati) Private Limited (herein referred as MVSPL) as its 100% subsidiary. Subsequently, at the request of the Respondent, SECI has facilitated for signing of the PPAs directly in the name of SPV i.e. in the name of MVSPL. However, when MIEPL approached the Petitioner to be allowed to utilize 250 MW out of the 300 MW connectivity approval already granted to it for evacuating power from the project by MVSPL, the Petitioner expressed its inability to consider the said request in terms of clause 6 of Detailed Procedure. The Respondent No. 4 has prayed/suggested that all agreements including connection and LTA agreement pursuant to any competitive bids for setting up of wind /Solar projects, including the already conducted SECI-1 bid should be allowed to be executed directly with the SPV where the successful bidder chooses to execute the project through and by such SPV and Connection Agreement for 250 MW out of the 300 MW connectivity approval already granted to Respondent No. 4 may be allowed to be executed directly in favor of MVSPL.

63. Regen Wind Farm (TN) Pvt. Limited (Regen) - Respondent No. 8 has submitted that the following scheme towards optimal utilization of bays:-

a) Suitable provision be incorporated in the RfS issued by SECI to define the qualification criteria as bidder who already have the connectivity granted as on date of submission of response to RfS.

b) Effective utilisation of the connectivity could also be made in case, prior to submission of response to RfS, developers make sure that he is offering the project for which he has already been granted connectivity with ISTS system.

c) The connectivity provision under Clauses 3.7 and 3.16 of the SECI's RFS document make it clear that the responsibility of getting the ISTS connectivity and LTA shall entirely be of the WPD. However, in order to avoid any interpretational issue arising out of the referred RfS provison, an explicit clarification by the Commission is needed to the fact that the bidder/WPD may put to use the connectivity in case it already exists either in the name of parent company or its hundred percent owned subsidiary.

64. As regards the proposal for long term solution for efficient utilization of the bays, the Respondent No.8 has submitted as under:-

a) Under Para 7 of the petition, there is mention of Format of new set of milestones and such milestones are being checked/fulfilled subsequent to grant of connectivity. The format which is primarily the status of

generation project is supplied and reviewed during the JCC meeting which is post grant of connectivity. In this reference, the new devised and regulated format may be made part of the connectivity application itself so that due diligence may be established at the time of grant of connectivity itself, and a proper screening is done at initial level, before grant of connectivity.

b) All cases where even after grant of connectivity, the project has not been started, such cases cannot be taken as a case of squatting. A holistic and pragmatic approach needs to be adopted whilst dealing with such scenario.

c) As regards the provisions for review of connectivity granted based on physical/financial progress so that in future, the squatting of bays through grant of connectivity is curbed, the Respondent has submitted that proposed milestones need to be made more exhaustive by inclusion of following additional milestones:-

(i) Completion of detailed line route survey and submission of report thereof;
(ii) Section 68 clearance;
(iii) Analysis of actual participation in the biddings;
(iv) PERT chart and progress of activities (s) according to that;
(v) Signing of Connection Agreement CON-6

d) As regards suggestion of levying connectivity application bank guarantee amount, it has been submitted that LTA be mandated to be applied along

with connectivity so that the LTA application BG amount is also levied and seriousness is ensured.

e) As regards suggestion to treat the Connectivity as provisional, the Respondent has suggested that instead of granting provisional connectivity, the connectivity be made time-bound and any renewal should be subject to review status and based on fulfillment of laid milestones/criteria.

f) As regards the request for issuance of directions in case of non-compliance of timeline, the Respondent has submitted that the same is not required as the JCC reviews the status of the generation project with the granted ISTS system quarterly, while the financial closure timeline (during which one of the mandatory documents to be furnished is connectivity/transmission agreement) as provisioned in the bid document is 9 months; therefore, a review would have been done at least twice by the time of financial closure and based on the review a decision can be taken by CTU.

65. On the issue of applicants who have emerged successful in the bids of SECI and their priority connectivity over other applicants in queue, following submissions have been made by Respondent No.8:

a) There is no provision of priority for connectivity in the existing Connectivity Regulations as the connectivity applications are processed on first-cum-first serve basis.

b) The connectivity with ISTS system is a well-planned activity by wind developer akin to transmission planning by CTU and the same is conceived well in advance after detailed study of available transmission system, land availability, power evacuation proximity, WRA. Hence any priority may disturb any such process, which can never be the legislative or policy intent. The wind developer needs to render more emphasis on proper and meticulous planning so that it is harmonized with CTU transmission planning.

c) Out of the SECI' s successful bidders as tabulated under para 10 of the petition, all successful bidder(s) already have the connectivity granted either to them or to one of the consortium partners for the location as bid for, therefore, there seems to be no specific problem for connectivity per-se. The applicants who have emerged as successful bidder in SECI's bid, at the time of submission of response to RFS, must have planned in advance considering the scenario in context of availability of ISTS system where project would come up.

d) Under SECI's RFS, there is also a provision of change in sub-station location until financial closure. Hence an alternate sub-station with which

the successful bidder has already been granted connectivity can be put to use and thus under-utilisation concern of the petitioner shall also be addressed.

66. BLP Energy Private Limited - Respondent No. 9 has suggested the following scheme to address the issue of under-utilization of bays:-

a) The pooling of generators using a common dedicated system is also a well-recognized concept and forms part of the various policy documents of the Government of India. The Commission needs to evolve the principle and procedure to be followed universally and not on a case to case basis which in turn would provide much needed regulatory certainty and the same would also be for the benefit of the system and its development. As a regulatory and legal principle, the Commission has already recognized that mere grant of connectivity does not vest any right in any party with regard to open access and over the transmission system. Regulation 8 (6) of 2009 Connectivity Regulations reads as under :-

> "(6) The grant of connectivity shall not entitle an applicant to interchange any power with the grid unless it obtains long-term access, medium-term open access or short-term open access."

b) The only exception made by the Commission is with regard to injection of infirm power by a generating company during the time of start-up, commissioning and commercial operation for a period of 6 months. In all other cases, the generating company has to obtain some form of open access, either long term, medium term or short term in order to inject the power into the grid.

c) In the above background, the suggestion of CTU that the connectivity granted initially is to be a preliminary connectivity is consistent with the principle settled by the Commission and is correct. This being the accepted position, there can be no question of asking the generators to submit any bank guarantee at this stage. The encashment of bank guarantee without there being any underlying claim cannot be countenanced in law, apart from having several severe repercussions for the generators.

d) Post-grant of preliminary connectivity, all the generators granted connectivity at a particular sub-station can be placed in a pool. In the quarterly review meetings, generators placed in the pool can be asked to submit the details of the progress in the projects in a particular format. The milestones mentioned in Para 14 (ii) (a) - (d) of the petition cannot be expected to be achieved within six months of the grant of connectivity. A longer period of at least one year should be prescribed.

e) Any generator having a firm PPA with a distribution licensee ought to have the highest priority for connectivity. This is particularly in the present scenario wherein many States and the Central agencies are also involved in reverse bidding process for procurement of renewable power. Since public interest is involved in such cases, the procedure for connectivity ought to facilitate such procurement of power by the distribution licensees from renewable sources and the generators who proceed to establish the projects in pursuance of such

procurement process by the distribution licensees ought to have a higher priority over other generators.

f) The generators having preliminary connectivity can be placed in a pool and subject to the fulfillment of milestones, the final connectivity and open access can be granted. In the pool in which the generators having preliminary connectivity are placed, all such generators would be equally placed without there being any higher right or prior right of one generator over another. In other words, irrespective of the time that a generator applies for preliminary connectivity, so long the generators are at the stage of preliminary connectivity without a firm commitment to connectivity and open access, such generator has no vested or prior right over other generators in the same pool of preliminary connectivity.

g) Any generator who is in the pool of preliminary connectivity and who have been able to firm up the project by fulfilling the conditions prescribed by the CTU in para 14(ii) of the petition, would be considered for final connectivity approval. For such consideration of final connectivity approval, all generators placed in the pool of preliminary connectivity would be considered equally and not any person having preference over one another. Further, at this stage the CTU may seek appropriate payment security mechanism sufficient to discharge the obligation of connectivity and open access charges due to the transmission licensees.

h) This process can be notified for the future by way of amendment. For the present, the Commission can pass appropriate orders to remove difficulties in the

implementation of the Regulations and also for development of an efficient and coordinated system.

i) One of the other major issues being faced by all generators is that the connectivity has been granted to the parent company but the actual RE project is being implemented either by a 100% subsidiary or an SPV. The SECI guidelines provide for such a course. The only issue which would concern the CTU is that there should be no trading in the connectivity. Therefore, subject to appropriate safeguards, the connectivity granted to a parent company should be allowed to be transferred to an SPV/Project company or a 100 % subsidiary. For this purpose, necessary undertakings may be obtained by the CTU.

67. Gamesa Renewable Power Private Limited - Respondent No. 12 has suggested the following to address the issue with regard to under-utilisation of bays:

(a) Sharing of connectivity either by allowing a developer to seek connectivity or allowing a lead generator to share connectivity as in the case of Solar Power Developer would lead to optimum utilisation of the bays and associated transmission corridor.

(b) The real issue is mismatch between minimum size of connectivity and minimum size of SECI bids. As the bidders do not have flexibility to share connectivity with any entity as per the present Connectivity Regulations, it has

resulted in far greater investment in 220 kV outlets at ISTS pooling stations than should have been optimally required.

(c) All existing and future allottees of connectivity for wind or wind-solar hybrid plants should be treated as deemed developers. The connectivity owner including existing ones would be required to develop transmission infrastructure including sub-pooling station at its own cost in a time bound manner so as to ensure that connectivity at PGCIL pooling station is granted only for quantum of power which is commensurate to the optimum capacity of the bay taking into account the voltage and conductors.

(d) While one solution to using the bays at the sub-pooling station can be that on completion of transmission infrastructure, SECI etc. would be notified and kept informed by the connectivity holder. SECI shall keep a national registry of such outlets and keep record of allotted and free bays in public domain. The downstream outlets can be allotted to those who win the bids conducted by government agencies. The charges for each outlet at the sub-pooling station can be fixed by MNRE etc. on a normative basis. SECI shall be the sole authority for allotment of outlets who win in competitive bidding or to a 100% captive wind power or solar plant. The owner of the connectivity and dedicated facilities gets no preferential treatment and get the outlets only if it wins the bid.

(e) Another method is leaving the development and costs thereof entirely to the developer of the wind farm and interested wind power developers. Therefore allocation of bays at sub-pooling station, cost thereof and other details can be left to market forces and any person interested in setting up a

wind generating station can enter into discussion with a wind farm developer who has been granted connectivity and has developed the common infrastructure and share the connectivity so granted.

(f) Further, new PS is being proposed at Tirunelveli without any effort being made to ensure that the under-construction PS is optimally utilised. It is submitted that if all the 19 bays at the Tirunelveli PS are utilised to their optimum capacity of 300 MW, then about 5700 MW capacity can be carried which is significantly more than present quantum of granted connectivity of 3534 MW. The details of the connectivity granted at the Tirunelveli PS is produced hereunder:

APPLICANTS GRANTED CONNECTIVITY AT TIRUNELVELI 400/230 kV POWERGRID					
Srl. no.	APPLICANT	MONTH OF APPLICATION	CONNECTIVITY (IN MW)	No. of 230/220 kV BAYS REQUIRE	PROPOSED/ GRANTED IN LTA MEETING
1	MYTRAH ENERGY (India) Ltd (Maniyachi, Tirunelveli)	FEB-12	300	2	GRANTED
2	SUZLON POWER INFRASTRUCTURE LTD (Chandragiri Wind Farm)	NOV-14	300	2	GRANTED
3	SUZLON POWER INFRASTRUCTURE LTD (Kumarapuram Wind	NOV-14	300	2	GRANTED
4	SUZLON POWER INFRASTRUCTURE LTD	NOV-14	300	2	GRANTED
	(Kadambur Wind Farm)				
5	INOX WIND INFRASTRUCTURE SERVICES LTD	JUNE-16	500	2	GRANTED
		TOTAL	1700		
6	REGEN WINDFARM (TN) PVT. LTD	MAR-16	384	2	GRANTED

7	ORANGE SIRONJ WIND POWER PVT.LTD	JUL-16	200	1	GRANTED
8	OSTRO ALPHA WIND PVT.LTD	SEP-16	400	2	GRANTED
9	BLP ENERGY PVT.LTD	OCT-16	250	1	GRANTED
10	GAMESA RENEWABLE PVT	OCT-16	400	2	GRANTED
11	GREENMINT POWER PRIVATE LTD	OCT-16	200	1	GRANTED
		TOTAL	1834		
		GRAND TOTAL	3534		

(g) Since the (n-1) criteria is not applicable to last mile connectivity of renewable generation, it has been submitted that many more connectivity applicants can be connected with the under-construction Tirunelveli sub-station at the same time ensuring optimum utilisation of costly national asset such as the sub-station.

(h) Since, Wind based generation is location specific and each turbine cannot be connected directly to the grid therefore, it is necessary to develop a sub-pooling station. Entities using the sub-pooling stations should not be the concern of the ISTS licensee. It has been submitted that such arrangement shall also enable optimum utilisation of each of the bays of the pooling station and thus solve the problem of artificial crisis of non-availability of the connectivity to entities desirous of setting wind power plants.

(i) In the event sharing of connectivity is permitted and sub-pooling stations (33KV/220KV) with bays of appropriate lot size are allowed to be developed by connectivity holders there would be no dearth of connectivity and unnecessary investment in the new ISTS sub-station would be avoided. It is submitted unless

sharing of connectivity is allowed, entire granted and under-consideration connectivity is likely to remain underutilised even for next three to five years.

(k) The Competitive Bidding Guidelines for Solar PV and Connectivity Regulations must be aligned and similar arrangements may also be made.

68. Siemens Gamesa Renewable Power Private Limited, Anantpur Windfarms Private Limited and Kurnool Wind Farms Private Limited have made the following additional submissions:

a) Under Section 38(2) of the Electricity Act the CTU is responsible for an economical and efficient ISTS system. CTU is required to plan and develop the ISTS network in coordination with all the concerned stakeholders including the generating companies. In the context of wind power, planning a new sub-station and ISTS network must be done considering exploitable wind potential in the vicinity and the existing pooling station must be utilised to its optimum capacity.

b) The capacity of the ISTS pooling station should be matching with the exploitable wind potential in the nearby areas rather than the theoretical wind potential or connectivity applications. For instance, CTU has already granted connectivity to 3534 MW at the Tirunelveli Pooling station and is planning to build a new sub-station (New Tirunelveli) for granting connectivity for another 5000-7000 MW. The theoretical wind potential in the area is said to be of the order of 10,000 MW. However, it is understood that the maximum availability of suitable

sites of land in the area surrounding the Tirunelveli pooling station for the purpose of installing wind turbines and ancillary infrastructure including availability of pathways to transport equipment including 5T Cranes for erection are hardly of the order of 2500 to 3000 MW only.

c) It can be inferred that the entire exploitable wind potential can be accommodated in the existing Tirunelveli pooling station having outlets capable of accommodating 3534 MW of wind power. Therefore, the CTU's plan to build a new pooling station merely based on new connectivity applications is a misconceived and not according to the ground realities.

d) It is therefore, suggested that in the context of wind power, planning a new sub-station and ISTS network and must be done considering exploitable wind potential in the vicinity and the existing pooling station must be utilised to its optimum capacity.

69. Inox Wind Infrastructure Services Limited- Respondent Nos. 6 has submitted that SECI bid allows creation of 100% owned SPVs for execution of the projects won by the bidder and PPA is also allowed to be executed by these SPVs but as per the current regulations for connectivity, these SPVs are not allowed to utilize the connectivity of the parent company. The Commission may consider allowing the same else these SPVs of the successful bidders will not be able to use the

connectivity and LTA already granted to such bidders and they will have to apply for separate connectivity which will not only be difficult to secure post bidding but will also make the project unviable as they will have to construct separate transmission infrastructure to connect their project with PGCIL sub-station as per the present Connectivity Regulations.

70. Adani Green Energy Limited and Adani Green Energy (MP) Limited (Respondent Nos. 28 and 29) have suggested that the Commission may devise a mechanism to allow successful bidders to resort to pooling arrangement to facilitate effective utilisation of connectivity and evacuation of power as under:-

(i) A Wind Power Park Developer ought to be considered as authorized legal entity to apply for connectivity and the connectivity so allotted should be allowed to accommodate several individuals, owners or generators in the vicinity of the park before commissioning.

(ii) The definition of Lead Generator under Regulation 2(1)(b)(i)(c) of the Connectivity Regulations should be harmoniously interpreted in line with objectives of 2009 Connectivity Regulations in order to cover generating stations having installed capacity of equal to or more than 50 MW and it should be covered under the ambit of the connectivity granted to the Lead Generator as long as they are being connected at a single connection point at the pooling sub-station. The concept of Lead

Generator/Wind Power Park Developer is in its nascent stages and has therefore to be interpreted in view of the evolving sectorial realities.

(iii) Clause 7.2 provides for a Wind Park Developer who has been granted connectivity, can accommodate several individuals wind generator before commissioning itself. This is a standard practice at STU levels, where most of the wind energy projects are connected within the connectivity already granted in the name of the Wind Power Park Developer.

(iv) It is contended that pooling of wind power projects using common dedicated transmission line would be an efficient utilization of the evacuation infrastructure and would save the space for corridor, ROW issues as well as cost of line bays to be developed for connectivity in the sub-station. The pooling of different wind power projects through a common dedicated transmission line is therefore a cost and time efficient solution.

(v) The Appellate Tribunal in its judgment dated 2.1.2013 in Appeal No. 81 of 2011 has also promoted the use of a common dedicated line for optimal utilisation of the transmission corridor with a view to minimize cost of point to point transmission of electricity and minimize the requirement of transmission corridor as long as the dedicated transmission system. The relevant provisions related to dedicated transmission under para 24.19 of the said judgment is as follows:-

"If the parent company of any successful bidder have been granted connectivity then such successful bidder's project may be allowed to connect through pooling under its parent company connectivity. In that case, the parent company would be allowed to function as lead generator and would be a single point of connect for dealing with scheduling & forecasting, energy account pooling and de-pooling, etc. with the concerned RLDC;

(vi) The successful bidder of the SECI bid may be allowed to connect through pooling arrangement with another successful bidder of SECI that has already been granted connectivity and has some free capacity available. In that case the project developer to whom the connectivity already granted would become a lead generator and would be a single point of connect for dealing with scheduling and forecasting, energy account pooling and de-pooling, etc. with concerned RLDC.

(vii) In view of the above, the respondents have suggested/prayed as under:-

a) Those applicants who have emerged successful in the bids carried by SECI under the initiative of MNRE be allowed connectivity by shifting their priority vis-à-vis other applicants in queue with the existing/under construction sub-station by shifting them suitably;

b) The Commission may allow review period of granted connectivity after 1.5 to two years instead of six months for the existing applicant for submission of any document and if applicant has failed to

provide evidence for proposed milestone, the connectivity should be shifted to nearest planned sub-station as an option to applicant.

c) The Commission may allow the use of connectivity granted to the parent company of the successful bidder or allow use of connectivity granted to any wind generators through pooling.

Comments on the model proposed by Inox(IWISL) and Adani Green Energy (MP) Limited

71. Other Respondents have made following submissions with respect to model/scheme for optimum utilization of connectivity proposed by Inox (IWISL) and Adani Green Energy (MP) Limited:

a) As regards the suggestion for pooling of power by way of using common dedicated transmission lines either with the parent company or with the other successful bidders, it has been commented that such an approach will not have the desired effect of preventing blocking of connectivity by non-serious players. The Respondents are not averse to the idea of sharing of transmission and evacuation infrastructure by different developers/IPPs who already have secured respective connectivity. Essentially, if two IPPs have secured respective connectivity and thereafter want to share the infrastructure meant for evacuation of power, such a practice can be allowed/promoted as it would lead to better usage of space and will also be

cost and time effective. However, sharing of connectivity approvals between successful bidders or with the parent company ought to be rejected.

b) The methodology of pooling as suggested by Adani Green and IWISL respectively will lead to a situation wherein successful bidders will indulge in the practice of trading of their spare connectivity with other bidders who have secured projects but do not have connectivity approval. Further, it does not in any manner prevent the practice of blocking of connectivity in the name of a Special Purpose Vehicle ("SPV") by a parent company and thereafter selling the said SPV to a third party at a premium, thereby, ultimately promoting the practice of trading in connectivity approvals. Therefore, it has been suggested that there has to be a total restriction on the sharing of connectivity approvals as well as transfer of such connectivity by an IPP to a third party, in order to avoid/ prevent instances of trading in connectivity. Accordingly, connectivity once granted to a certain entity/ IPP ought to be used only by that entity/ IPP and transfer of the same ought not to be allowed.

c) The proposal of Adani Green in seeking to replicate the concept of Solar Parks and juxtaposing of the same in the context of wind power generation is misplaced. This is on account of the fact that while in the case of solar parks, the nodal agency has the obligation to arrange for the necessary infrastructure as well as approvals including connectivity, the said

infrastructure and approvals has to be obtained by the IPPs themselves in case of wind power generation. Further, in case of solar parks, the level of radiation in a certain area of land is similar thereby making acquisition of land by the nodal agency for the purpose of development of a solar park easier. On the contrary, the wind availability at a single location varies based on a variety of factors and therefore, acquisition of a single piece of land for development of wind power projects without carrying out the necessary analysis of wind season data shall not be practically feasible.

d) The Respondents have suggested an alternative methodology as under:-

i. A qualification criteria ought to be evolved, in terms of the criteria mentioned in the SECI bidding guidelines, as elaborated earlier, based upon which the non-serious bidders/developers are eliminated from the process of grant of connectivity and the entities/lPPs who are in the business of owning and operating renewable projects should only be considered for grant of connectivity instead of entities like OEMs who are in the practice of ultimately trading in connectivity. This will go a long way in wiping out the non-serious contenders who block connectivity with an ulterior motive to trade the same at a later stage.

ii. Further, in context of time lines, there has to be a time lapse of two years between grant of connectivity to an IPP and submission of a bank guarantee by such an IPP. The said period of two years

post grant of connectivity is required by the IPP in order to collect and analyze wind season data, identification of location of wind mast, negotiation/purchase of land for wind mast and other project related activities. Such a pragmatic approach will provide the IPP with a proper opportunity to gauge the feasibility of implementing a project at a certain location based upon analysis of the wind season data.

iii. Pursuant to the lapse of the above-mentioned period of two years, depending upon the feasibility of the project as analyzed by the IPP and after completion of the preparatory/pre-developmental activities, the said IPP can either surrender the connectivity approval granted to it or in the alternative, go ahead with the execution of the project after furnishing a bank guarantee.

iv. However, once a bank guarantee is furnished by an IPP, it should not be subjected to regular and interim checks qua development of the project. The said IPP should be allowed a certain timeline within which it ought to commission the said project. It is submitted that such timeline should be at least five years from the date of grant of connectivity i.e., three years after the issuance of bank guarantee in relation to securing connectivity. Such a timeline would ensure that non-serious players do not block their

finances for such a long period of time by way of submission of a bank guarantee.

v. The development of a wind power project is not akin to an EPC contract, wherein payments are made on milestone basis which warrants a periodic check and accordingly, such development ought not to be subjected to a regular and periodic check. The IPPs needs to be given requisite time for it to implement the said project and in case, an IPP is unable to commission the project within the period of five years as mentioned above from the date of grant of connectivity, the bank guarantee furnished by it can be encashed.

72. SECI in its affidavit dated 24.8.2017 has submitted as under:

(a) On 28.10.2016, SECI issued the Request for Selection (RfS) document, which also has a similar provision in Clauses 3.5 and 3.7 of the RfS which are pari-materia with the above mentioned provisions of the guidelines. It is therefore submitted that even the RfS does not require the project land and the connectivity to the ISTS Grid to be confirmed before evaluation of the bid and for selection of the WPDs and issuance of Letter of Award or PPA.

(b) Section 4 of the RfS document along with Amendment No.1 contains the detailed methodology of bid evaluation and selection of Projects by SECI under Tranche-I. The qualifying criteria as per Clause 3.5 of the RfS read with Amendment No.1, formed the basis of evaluation of the bids. Based on the

techno-commercial evaluation of bids as per the criteria mentioned above, the bids were shortlisted for opening of financial bids. The financial evaluation of bids was carried out as per the methodology provided in Clause 4.2 B of the RfS. As per the provisions of Clause 4.3.3 of the RfS, the financially eligible bids were shortlisted for e-Reverse Auction (e-RA) conducted by SECI on 23.02.2017 on the TCIL website. Based on the results of the e-RA conducted as above, project capacities were awarded to the successful bidders in line with Clause 4.4 of the RfS.

(c) Under Regulation 2(1)(b)(i)(b) and 2(1)(b)(i)(c) of the Connectivity Regulations, the WPDs can make connectivity applications for a proposed Generating Station along with the required details as per Regulation 8(1). However, the said Applications are considered in the Order in which the Applications are made by the WPDs. However, several bidders who obtain the connectivity do not succeed in the bidder process and are not selected or issued Letters of Award or the PPA. Therefore, no action is taken by such bidders in pursuance of the grant of connectivity and therefore they end-up by blocking the limited resources of infrastructure at the ISTS sub-station which prevents other WPDs who have been selected and obtained the LOA and the PPA.

(d) With the increasing number of applicants for connectivity at each sub-station even though most of them do not have the Letter of Award or the Power Purchase Agreement and as a result have not signed the bay implementation agreement with the CTU/PGCILL/STU and in view of the fact that the selected WPDs are not

able to obtain the facility of connectivity and bay at the relevant sub-stations, it is necessary that the bays allotted to those applicants who have not received the LOA or have not executed the PPA, be re-allotted to the successful bidders so that the PPA signed with them by SECI are not derailed and the concerned projects are commissioned at the earliest.

(e) The Commission may consider setting up mechanisms as suggested by the Petitioner in paras 12 & 14 of the Petition or any other mechanism to suitability regulate the retention of the restricted resource of connectivity and bays at the sub-stations of ISTS so that effective implementation of the power projects as selected by SECI may take place.

Rejoinder of the Petitioner vide affidavit dated 31.8.2017

73. The Petitioner vide its affidavit dated 31.8.2017 has submitted as under

a) The ISTS connectivity already granted by the Petitioner to various wind/solar power generators at the under-construction Tirunelveli and Bhuj pooling Sub-station shall not be disturbed in any manner and all their vested rights qua the connectivity granted to them shall thus remain unaffected and intact.

b) As regards the generators whose applications for connectivity are under process with the Petitioner, no vested rights qua connectivity have yet accrued in their favour in the absence of a grant. In this reference, the Petitioner has submitted following legal pronouncements in Howrah

Municipal Corporation & Ors. Vs. Ganges Rope Co. Ltd. & Ors. [(2004) 1 SCC 663, Ashok Kumar Sharma Vs. State of UP & Ors. [AIR 2014 All 106], J.S. Yadav Vs. State of Uttar Pradesh & Anr, (2011) 6 SCC 570 : AIR 2011 SC and has thus, averred that in view of the settled legal position, the applicants whose applications for grant of connectivity are pending with the Petitioner, can only be said to have a 'settled expectation' that their applications would be considered as per existing laws; however, such 'settled expectation' is not enforceable and the same can even be rendered impossible due to subsequent change in law affected in public interest. That being so, the Commission can exercise its inherent powers and its rule making power so that the Government of India's initiative for giving thrust to the renewable energy sector is implemented in letter and in spirit.

c) SECI has submitted that in the present petition, all applicants/grantees of connectivity at Bhuj Sub-station and Tirunelveli Sub-station have been impleaded as Respondents. These Respondents have together filed 53 applications for grant of connectivity as per the following time-line:-

Time-line	Particulars	Applications received
Prior to 30.09.2016		14
30.09.2016	Notification for Waiver of ISTS Charges for Wind Projects	39
28.10.2016	Notification for Request for Selection (RFS) of ISTS connected 1000 MW Wind Projects	
	Total Applications	53

d) A flood of applications seeking connectivity at the above ISTS sub-stations have occurred only after the notification for waiver of ISTS charges for wind projects by the Ministry of Power vide Notification dated 30.9.2016. The number of connectivity applications has further accelerated after the notification of RfS for ISTS connected 1000 MW wind projects dated 28.10.2016 and thus, the regulatory issues raised under the present Petition are more recent and immediate in nature. Further, the connectivity granted on these applications has been monitored in Joint Coordination Committee (JCC) Meetings for the respective regions held on 27.3.2017 and 16.6.2017 and it was impressed upon the grantees to take necessary and concrete steps towards effective utilization of the connectivity granted.

e) In the above backdrop, the Petitioner has filed the present petition seeking directions so that the successful bidders may be granted connectivity so as to achieve the objective of renewable capacity additions under the SECI bids. The Petitioner has also proposed incorporation of regulatory provisions in the Connectivity Regulations and Detailed Procedure to introduce levy of application bank guarantee at the stage of connectivity application so as to ascertain the seriousness of the applicant at the application stage itself. Further, the Petitioner has also proposed milestones and timelines, based on which the connectivity granted can be reviewed and corrective actions with regard to revocation of the connectivity grant can be taken up to ensure that the transmission infrastructure of ISTS is effectively used and not blocked.

Analysis and Decision

74. We have considered the submissions of the Petitioner, the Respondents, MNRE and SECI. We have also extensively heard the learned senior counsels and counsels for the parties. After considering the various viewpoints expressed during the hearing regarding maintainability of the present petition, short term and long term solution to the problems of connectivity, need for optimum utilization of connectivity, and resolution to the problem of mismatch between the commissioning of sub-stations and wind power projects, we intend to address the following issues in this order:

(a) Issue No.1: Whether the Petition is maintainable under various provisions of the Act and regulations of the Commission as invoked by the Petitioner?

(b) Issue No.2: Whether the existing provisions of the Connectivity Regulations and Detailed Procedure issued thereunder are adequate to address the issues of connectivity in respect of Wind Power Developer/Generator?

(c) Issue No.3: Whether connectivity granted by CTU has created vested rights in the Developers/Generators who have been granted connectivity? Whether the persons who have been granted connectivity but are not utilising the connectivity are likely to block the connectivity for the potential Developers/Generators?

(d) Issue No. 4: Whether the applicants who have been selected through competitive bidding for developing the wind power projects should be given overriding priority in the matter of grant of connectivity?

(e) Issue No.5: What shall be the guidelines for CTU to process the pending applications for connectivity in respect of Wind Power Developers/Generators?

(f) Issue No.6: Whether the Connectivity Regulations and Detailed Procedure require suitable amendment in the light of the issues raised in the petition?

(g) Issue No.7: Whether a company which has been granted connectivity can be permitted to utilize the connectivity for one or more of its subsidiaries and if so under what terms and conditions?

Issue No.1: Whether the Petition is maintainable under various provisions of the Act and regulations of the Commission invoked by the Petitioner?

75. The Petitioner has filed the present petition under Section 79(1)(f) of the Act, Regulation 33B of the Connectivity Regulations, Regulation 111 of the Conduct of Business Regulations and Regulation 2(3) of the Payment of Fee Regulations. Section 79(1)(f) states that the Central Commission shall "adjudicate upon disputes involving generating companies or transmission licensees with regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration". Regulation 33B of the Connectivity Regulations provides as under:

"33B. Power to Remove Difficulty:

If any difficulty arises in giving effect to the provisions of these regulations, the Commission may, on its own motion or on an application made before it by the

> nodal agency, by order, make such provision not inconsistent with the provisions of the Act or provisions of other regulations specified by the Commission, as may appear to be necessary for removing the difficulty in giving effect to the objectives of these regulations."

Regulation 111 of the Conduct of Business Regulations provides for the inherent powers of the Commission to make such orders as may be necessary to meet the ends of justice. The said regulation is extracted as under:

> 111. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.

Regulation 6(2)(3) of the Payment of Fee Regulations exempts the CTU from payment of fees for any application made in discharge of its regulatory functions.

76. CTU has filed the present petition under Regulation 33B of Connectivity Regulations and Regulation 111 of the Conduct of Business Regulations seeking directions for preventing underutilization of bays for connectivity granted to wind/solar generation projects. CTU has prayed to address the cases where those applicants who have emerged successful in the bids carried out by SECI under the initiative of MNRE by allowing them connectivity by shifting their priority vis-a-vis other applicants in queue with existing/under construction sub-stations by shifting them suitably so that the renewable generation and associated evacuation system is matched and objective of Government of India in promoting renewable energy generation and for approval of a procedure proposed in para 13 of the petition for review of the already granted but not utilized connectivity for efficient and planned development of renewable energy.

77. Some of the Respondents have questioned the maintainability of the petition on the following grounds:

(a) The petition does not refer to existence of any dispute between the parties and is based on generic allegations without any basis;

(b) For the purpose of obtaining connectivity or LTA, the successful SECI bidders and other applicants stand on an equal footing;

(c) The instant petition seeks to introduce substantive changes in the mechanism for grant of connectivity with retrospective effect and specifying certain follow up steps to be taken by the entities seeking to develop wind energy projects. Since section 178 of the Act conferring rule making power on the Commission does not confer any power to make rules retrospectively, any attempt to alter the substantive rights retrospectively would be clear and express violation of the intents of the Electricity Act;

(d) Retrospective amendment in the regulations in exercise of the power to remove difficulty is beyond the scope of Regulation 33B of the Connectivity Regulations as power to remove difficulty can be exercised to only remove minor obscurities in order to make the Act or regulation workable but cannot change, disfigure or do violence to the basic structure and primary features of the Regulations or the Detailed Procedure issued thereunder;

(e) Inherent Powers are to be exercised by an authority or court when the matter sought to be taken care of by exercise of inherent power is not covered by any other specific provision and exercise of those powers would not in any way be in conflict with what has been expressly provided in the enactment or the intention

of the legislature. Therefore, inherent power cannot be invoked by the Commission in the present case for amendment of the existing regulations and give preferential treatment to certain class of wind power developers.

(f) Certain amendments need to be carried out in the Connectivity Regulations and the Detailed Procedure by taking into account the dynamics of the renewable energy sector with prospective effect and following the due process prescribed in the Act and Connectivity Regulations. The present proceedings cannot be used for carrying out amendments to the Connectivity Regulations and Detailed Procedure.

78. Let us first examine the powers and functions of the Central Commission in the light of the some of the judgments of the Hon'ble Supreme Court. In the matter of PTC India Ltd Vs Central Electricity Regulatory Commission {(2010) 4 SCC 603}, the Hon'ble Supreme Court had examined the scope and extent of power of the Central Commission under the provisions of the Electricity Act, 2003. The following two paras of the said judgment are relevant which are extracted as under:

"37. On the above analysis of various sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. According to Professor Wade, "between legislative and administrative functions we have regulatory functions". A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also part of administrative process resembling a judicial decision by a court of law. [See Shri Sitaram Sugar Co. Ltd. v. Union of India and Ors. reported in (1990) 3 SCC 223].

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40. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licenses, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc.. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a pre-condition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the 2003 Act. An Order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject matter of challenge before the Appellate Authority under Section 111 as the levy is imposed by an Order/decision making process. Making of a regulation under Section 178 is not a pre-condition to passing of an Order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the Order levying fees under Section 79(1)(g) has to be in consonance with such regulation. Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178. However, if a regulation is made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulation under Section 178. One must keep in mind the dichotomy between the power to make a regulation under Section 178 on one hand and the various enumerated areas in Section 79(1) in which the Central Commission is mandated to take such measures as it deems fit to fulfil the objects of the 2003 Act. Applying this test to the present controversy, it becomes clear that one such area enumerated in Section 79(1) refers to fixation of trading margin. Making of a regulation in that regard is not a pre-condition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central Commission in an

appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures a Central Commission takes under Section 79(1)(j) has to be in conformity with Section 178. One must understand the reason why a regulation has been made in the matter of capping the trading margin under Section 178 of the Act. Instead of fixing a trading margin (including capping) on a case to case basis, the Central Commission thought it fit to make a regulation which has a general application to the entire trading activity which has been recognized, for the first time, under the 2003 Act. Further, it is important to bear in mind that making of a regulation under Section 178 became necessary because a regulation made under Section 178 has the effect of interfering and overriding the existing contractual relationship between the regulated entities. A regulation under Section 178 is in the nature of a subordinate Legislation. Such subordinate Legislation can even override the existing contracts including Power Purchase Agreements which have got to be aligned with the regulations under Section 178 and which could not have been done across the board by an Order of the Central Commission under Section 79(1)(j)."

80. The above judgment clearly provides the following principles for exercise of the legislative, regulatory and quasi-judicial powers by the Commission. They may be briefly referred to as under:

(a) The Central Commission has both rule-making and decision making functions.

(b) Law comes into force not only through legislation but also through regulation and litigation (adjudication). Laws from these three sources are binding.

(c) To regulate is an exercise which is different from making of the regulations.

(d) The Central Commission is empowered to take measures/steps in discharge of the regulatory functions enumerated in Section 79(1) of the Act.

(e) The measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable.

(f) Making of a regulation under Section 178 is not a pre-condition to the Central Commission taking any steps/measures under Section 79(1) of the Act.

(g) It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178 of the Act.

From the above, it emerges that absence of particular provision in the regulations to address the problems of certain class of persons does not preclude the Commission to take appropriate decision or measure in the matter in exercise of its regulatory powers. As a corollary to the example given in the above judgment with regard to terms and conditions of tariff, it is open to the Commission to lay down the terms and conditions of open access in inter-State transmission of electricity including connectivity in the absence of appropriate provisions in the regulations with regard to wind power generators/developers.

81. In the matter of All India Power Engineers Federation and Others Vs. Sasan Power Limited and Others {(2017) 1 SCC 487}, the Hon'ble Supreme Court held that even in cases of price increase outside the four corners of the PPA including the cases covered under Section 63 of the Act, the Commission alone has the power to accept the amended tariff as that would impact consumer interest and public interest. The relevant extract of the judgment is as under:

> "30. All this would make it clear that even if a waiver is claimed of some of the provisions of the PPA, such waiver, if it affects tariffs that are ultimately payable by the consumer, would necessarily affect public interest and would have to pass muster of the Commission under Sections 61 to 63 of the Electricity Act. This is for the reason that what is adopted by the Commission under Section 63 is only a tariff obtained by competitive bidding in conformity with guidelines issued. If at any subsequent point of time such tariff is increased, which increase is outside the four corners of the PPA, even in cases covered by Section 63, the legislative

intent and the language of Sections 61 and 62 make it clear that the Commission alone can accept such amended tariff as it would impact consumer interest and therefore public interest."

Therefore, the Commission has been clothed with the powers under sections 61 to 63 of the Act even to look into the price increase within four corners of the PPAs in public interest even though the Act under section 63 empowers the Commission to adopt the tariff only if it is discovered through competitive bidding. As a corollary, where consumer interest and public interest is involved, the Commission in exercise of its powers under section 79(1)(c) of the Act can issue appropriate directions if it is found and established that the existing provisions of Connectivity Regulations and Detailed Procedures do not contain appropriate provisions to deal with a class of persons seeking connectivity and open access into inter-State transmission system.

82. From the above, it emerges that the Commission has the rule-making power to give effect to the objectives of the Act in the matters which fall within the jurisdiction of the Commission. In the absence of regulation in a particular matter, the Commission can in exercise of its regulatory power lay down the terms and conditions and take measures in discharge of its functions under the Act. In the present case, since the issue pertains to regulation of inter-State transmission of electricity, the Commission in discharge of its regulatory power can issue directions and take suitable measures to address the situation which is not specifically addressed in the Connectivity Regulations and Detailed Procedure.

83. As regards the Power to Remove Difficulty, the Respondents have relied upon the judgment of the Hon'ble Supreme Court in Mahadeva Upendra Sinai and Others v. Union Of India {(1975) 3 SCC 765}, which is extracted as under:-

> "The existence or arising of a difficulty is the sine qua non for the exercise of power. If this condition precedent is not satisfied as an objective fact, the power under this clause cannot be invoked at all. Again the "difficulty" contemplated by the clause must be a difficulty arising in giving effect to the provisions of this Act and not a difficulty arising aliunde or an extraneous difficulty. Further, the Central Government can exercise the power under the clause only to the extent it is necessary for giving effect to the Act, etc., and no further. It may slightly tinker with the Act to round off angularities and smoothen the joints or remove minor obscurities to make it workable, but it cannot change, disfigure or do violence to the basic structure and primary features of the Act. In no case, can it, under the guise of removing the difficulty, change the scheme and essential provisions of this Act."

The above judgment says that for exercise of the power to remove difficulty, the difficulty must be a difficulty arising in giving effect to the Act, and not a difficulty which has arisen as an extraneous difficulty. Further, the removal of difficulty power may be exercised to remove the minor obscurities and round off the angularities to make the provisions workable but cannot be used to change the scheme and essential provisions of the Act. In the present case, the Petitioner has invoked power of the Commission to remove the difficulty "by shifting the priority of the applicants for connectivity who have been selected in the bids carried out by SECI vis-a-vis the applicants in queue with existing/under-construction sub-stations". Another prayer is that the Commission should approve the procedure proposed by the Petitioner in Para 13 of the Petition for review of already granted but not utilized connectivity for efficient and planned development of renewable energy. In our view, both prayers require substantial changes in the Connectivity Regulations with regard to prioritization of applicants for grant of

connectivity against certain objective criteria which cannot be addressed through the exercise of power to remove difficulty under Regulation 33B of the Connectivity Regulations.

84. The Respondents have also challenged the filing of the petition by the Petitioner by invoking the inherent power of the Commission under Regulation 111 of the Conduct of Business Regulations. The Respondents have submitted that inherent power can be exercised when the matter sought to be taken care of is not covered by any other specific provision and the exercise of such inherent power is in no way in conflict with the express provisions of the Act or Regulations. The inherent power of the Commission in Regulation 111 of the Conduct of Business Regulation is pari materia with the provisions of Section 151 of the Code of Civil Procedure which provides that “nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of law”. The Hon’ble Supreme Court in Padam Sen v. State of UP, [(1961) 1 SCR 884] has dealt with the scope of inherent powers of the Courts under the Code of Civil Procedure as under:

> "8. Section 151 of the Code reads:
>
> Nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.
> The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature. It is also well recognized

that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code. "

Further, in the case of K.K. Velusamy Vs. N. Patattisamy, [(2011) 11 SCC 275], the Supreme Court has held as under:-

"12. The Respondent contended that Section 151 cannot be used for re-opening evidence or for recalling witnesses. We are not able to accept the said submission as an absolute proposition. We however agree that section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses. The scope of Section 151 has been explained by this Court in several decisions (See: Padam Sen v. State of UP, AIR 1961 SC218; Manoharlal Chopra v. Seth Hiralal, AIR 1962 SC 527; Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993; Ram Chand and Sons Sugar Mills (P) Ltd. v. Kanhay Lai, AIR 1966 SC 1899; Nain Singh v. Koonwarjee, 1970 (1) SCC 732; The Newabganj Sugar Mills Co. Ltd. v. Union of India, AIR 1976 SC 1152; Jaipur Mineral Development Syndicate v. Commissioner of Income Tax, New Delhi, AIR 1977 SC 1348; National Institute of Mental Health and Neuro Sciences v. C Parameshwara, 2005 (2) SCC 256; and Vinod Seth v. Devinder Bajaj, 2010 (8) SCC 1. We may summarize them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, Section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercise in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special

provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief

The power under Section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court."

From the above two judgments, it emerges that the inherent powers can be exercised in order to address the procedural infirmities in the CPC in order to achieve the ends of justice and abuse of the process. In the present case there are no procedural infirmities in the Conduct of Business Regulations which prevents the Commission to address the issue of connectivity to the applicants who have been selected as successful bidders in SECI conducted bids. The difficulties have arisen in the absence of substantive provisions in the Connectivity Regulations to address the issue of connectivity in case of wind power generators/developers keeping in view the peculiarity of wind energy sector. In our view, inherent power of the Commission cannot be invoked under Regulation 111 of the Conduct of Business Regulations to grant relief to the Petitioner.

85. It has been argued that there is no dispute which requires adjudication by invocation of power of the Commission under section 79(1)(f) of the Act. We find that the first prayer of the Petitioner seeks to give priority to the applicants for connectivity who have won the bids over the applicants in queue for connectivity. It is the case of the Petitioner that it has adopted the principle of first come first serve basis in granting connectivity. That being the case, it will prejudicially affect those who are standing in the queue for grant of connectivity ahead of the applicants who have been selected in SECI bid. The applicants who have been standing in the queue including the applicants who have been selected as successful bidders have been arrayed as respondents in this petition. The Respondents have filed their replies for and against the proposal to grant priority to the SECI selected bidders. In a way, dispute has arisen involving the potential wind power generators/developers with regard to connectivity to ISTS which is covered under regulation of inter-State transmission of electricity under Section 79(1)(c) of the Act and therefore, the petition is maintainable under Section 79(1)(f) of the Act.

86. The reasons for large number of applications for connectivity by the wind power developers which have led to the present situation are as follows:

(a) The regulations do not mandate that connectivity and long term access should be sought together, though the regulations say that mere grant of connectivity will not allow a generator to inject power into the grid without availing some form of access except for drawal of start-up power or injection of infirm power.

(b) The regulations do not prescribe for any financial obligations for grant of connectivity in the form of bank guarantee as in the case of long term access. It was based on the assumption that whoever applies for connectivity shall also apply for long term access for which LTA to target regions without identifying beneficiaries was permitted. Bank guarantee gives comfort to the CTU while ensuring seriousness on the part of project developers.

(c) Waiver of the inter-State transmission charges and losses for solar and wind power developers has resulted in a large number of applications being made as the project developers are not subjected to any penalty in the event of non-implementation of the projects.

(d) It has been argued by CTU that proper objective criteria for assessing and filtering the applications of the wind power developers to determine the seriousness of the projects by the applicants for connectivity has neither been provided in the Connectivity Regulations nor in the Detailed Procedure. What is provided for applies to conventional generators. The Commission notes that in those cases also, despite the progress of the generators being assessed in the Joint Coordination Committee meetings, there is demand for relinquishment of LTAs by a large number of generators. The Commission is of the view that it was incumbent on the part of the CTU to flag the issues regarding regulatory inadequacy with regard to wind power developers before granting them connectivity.

88. These issues require appropriate regulatory intervention by the Commission in order to ensure that while serious players implement the projects, the connectivity assets built by CTU do not remain unutilised or stranded in future. In this context, the Commission in exercise of its regulatory power under section 79(1)(c) of the Act (to regulate inter-State transmission of electricity) can prescribe conditions or impose reasonable restrictions even in case of existing connectivity holders in order to achieve the purpose of the Act, namely, the provision which requires CTU to ensure "development of an efficient, coordinated and economical system of inter-State transmission for smooth flow of electricity from generating stations to the load centre".

Though the Petitioner has not invoked Section 79(1)(c) of the Act in the present petition, it is a settled position of law that the Court can take into account the appropriate provision of law while granting the relief. In the light of the above discussion, we hold that the petition is maintainable under Section 79(1)(c) and (f) of the Act.

Issue No. 2: Whether the existing provisions of the Connectivity Regulations and Detailed Procedure issued thereunder are adequate to address the issues of connectivity in respect of Wind Power Developer/Generator?

89. Regulation 2 of the Connectivity Regulations defines the term "Applicant" for grant of connectivity. The said Regulation is extracted as under:-

"Applicant means

(i) The following in respect of grant of connectivity:

(a) a generating station with installed capacity of 250 MW and above, including a captive generating plan of exportable capacity of 250 MW and above or;

(b) a hydro generating station or generating station using renewable source of energy, of installed capacity between 50 MW and 250 MW;

(c) one of the Hydro Generating stations or generating stations using renewable sources of energy, individually having less than 50 MW installed capacity, but collectively having an aggregate installed capacity of 50 MW and above, and acting on behalf of all these generating stations, and seeking connection from CTU at a single connection point at the pooling sub-station under CTU, terms as the lead generator, or;

(d) a bulk consumer;

(e) any renewable energy generating station of 5 MW capacity and above but less than 50 MW capacity developed by a generating company in its existing generating station of the description referred to in sub-clauses (b) (i) (a) to (c) of this clause and seeking connectivity to the existing connection point with inter-State Transmission System through the electrical system of the generating station; and

(f) any company authorized by the Central Government as Solar Power Park Developer."

As per Regulation2 (1) (b) (i) (b), generating stations using renewable energy of installed capacity between 50 MW and 250 MW are eligible for grant of connectivity to ISTS. Unlike the case of Solar Power Developer who are eligible to apply for connectivity, there is no provision in the Connectivity Regulation for Wind Power Developers. Consequently, Wind Power Generators are governed by Regulation 2 (1) (b) (i) (b) of the Connectivity Regulations. Regulation 5 provides for making of Application to the nodal agency i.e. CTU for grant of connectivity. Regulation 7 of the Connectivity Regulations provides for 60 days' time for processing of the applications for grant of connectivity. Regulation 8 (2) of the Connectivity Regulations provides for processing of applications for connectivity after carrying of inter-connection study by CTU in

accordance with the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007. Regulation 8 (3) provides that while granting connectivity, the nodal agency shall specify the name of sub-station or pooling station or switchyard where connectivity is to be granted. The said Regulation further provides that the nodal agency shall indicate the broad design features of the dedicated transmission line and timeline for completion of dedicated transmission line. Regulation 8 (5) provides that the Applicant shall sign a connection agreement with the Central Transmission Utility or inter-State Transmission licensee owning the sub-station or pooling station or switchyard or the transmission line as identified by the nodal agency where connectivity is being granted.

90. Clause 3.5 (subsequently re-numbered as 3.8) of the Detailed Procedure provides that “all applications received during the month shall be treated to have been made concurrently”. In other words, all applications for connectivity received during the month shall have equal priority and shall have to be granted connectivity together. The applications received during the following month will be prioritized below the applications for the previous month. There is no provision for inter se priority among the applications received during a month. The only objective criteria provided are in Clause 2 of the Detailed Procedure, which is extracted below:

> "2. INFORMATION REQUIRED TO BE SUBMITTED WITH THE APPLICATION FOR CONNECTIVITY BY GENERATING STATION
>
> 2.1 In order to assess preparedness of applicant making application for the connectivity to the ISTS, an applicant is required to submit along with its application, documents in support of having initiated specific actions for project preparatory activities in respect of matters mentioned in (i) to (v) below.

i) Site identification and land acquisition: The applicant shall inform land required for the generation project along with extent to which the same have been acquired and taken possession of. The "Requirement" of land would be considered as indicated in the proposal filed with the competent authority for seeking environmental clearance.

In case of land to be acquired under the Land Acquisition Act 1894, the applicant shall submit copy of notification issued for such land under Section 4 of the Land Acquisition Act 1894. In all other cases, the applicant shall furnish documentary evidence in the form of certificate by concerned and competent revenue / registration authority for the acquisition / ownership / vesting of the land.
ii) Environmental clearance for the power station: The applicant shall have to inform status on submission of requisite proposal, for the environmental clearance, to the concerned administrative authority (first level submission).

iii) Forest Clearance (if applicable) for the land for the power station: The applicant shall have to inform status on submission of requisite proposal, for the forest clearance, to the concerned administrative authority (first level submission).

iv) Fuel Arrangements: Details on fuel arrangements shall have to be informed for the quantity of fuel required to generate power from the power station for the total installed capacity intended for connectivity.

v) Water linkage: The applicant shall inform the status of approval from the concerned state irrigation department or any other relevant authority for the quantity of water required for the power station.

These evidences shall be supported by a sworn in affidavit by the generation project developer as per the format given at FORMAT-CON-1."

91. The Petitioner in its capacity as the nodal agency is required to consider applications received during a month based on the objective criteria as given above and is required to segregate the serious and non-serious applicants and grant connectivity to the serious applicants. On our direction, CTU had submitted the applications received by it for grant of connectivity. We have perused the applications and have noticed that CTU has not carried out the due diligence in accordance with the Connectivity Regulations

and the detailed Procedure before grant of connectivity. Consequently, all applicants have been granted connectivity on the principle of first come first serve basis.

92. The Petitioner has submitted that these milestones were devised with specific reference to conventional power generations like hydro and thermal power and as such, the same are not ipso facto applicable in case of the solar and wind generation. The Petitioner has submitted that even the requirement of land acquisition is not a necessary prerequisite as generally the land is held by an aggregators to whom the interested generation developers approach for setting up the projects and the land as such is not acquired and is rather leased for the wind turbine mast area only. According to the Petitioner, the prescribed milestones do not give enough inputs for assessing the readiness of the applicants. The Petitioner is stated to have devised new sets of milestones to assess the readiness of the applicants with regard to the project development but the exercise did not fetch desired results. The Petitioner has further submitted that since there are no enumerated reciprocal obligations on the connectivity applicants to sign any agreement or submit any BG or fulfill any other financial obligation, such the grantees take no action towards making actual use of the connectivity so granted which results in the connectivity grantee blocking the available infrastructure at the ISTS sub-station for use by other entity, if the original grantee is not taking any substantive action for its usage. Without addressing these problems, the Petitioner has has considered the applications received from wind power developers for connectivity on first come first served basis in accordance with clause 3.5 of the Detailed Procedure and granted connectivity. The submission of the Petitioner is extracted as under:-

"As per Clause 3.5 of the Detailed Procedure (Clause 3.8 after amendment) all applications for connectivity received during the month are to be treated to have been made concurrently and accordingly, the connectivity applications are processed and connectivity is granted giving priority as per the month of application on first come first serve basis."

93. In our view, CTU should have acted in a proactive manner to address the issues that are likely to result from grant of connectivity to applicants intending to set up wind power generation in the light of the goal of GOI to achieve wind power capacity of 60 GW by 2022. Further, MNRE, GOI has issued the Guidelines for implementation of Scheme for setting up of 1000 MW ISTS Wind power projects and authorized SECI to carry out competitive bidding to select the wind power generators. Though CTU had approached the Commission for prescribing certain strict criteria for specifying prerequisites for grant of connectivity and mechanism for monitoring the grant of connectivity, the proposal was in the context of conventional generators. CTU has never approached the Commission earlier about specifying the separate prerequisites for grant of connectivity to wind power developers, keeping in view the peculiar requirements of the wind sector. On the contrary, CTU went ahead with grant of connectivity to prospective wind power generators on the basis of the existing provisions of Connectivity Regulations and Detailed Procedure knowing pretty well that the said provisions cannot be applied ipso facto in case of wind power generators. Further, CTU is well aware that under the provisions of the Act, this Commission has been vested with the function to regulate access to ISTS in accordance with the provisions of the regulations specified under section 178 of the Act. CTU which has been vested with the statutory function of development of an efficient, co-ordinated and economical system of inter-State

transmission lines for smooth flow of electricity was required to approach the Commission for putting in place an appropriate regulatory framework before it started granting connectivity and access to the wind energy generators. Even CTU confirmed during the hearing that they had not sought the regulatory approval for implementation of the Green Energy Corridor. We are of the view that CTU could have handled the situation with foresight in consultation with all stakeholders like MNRE and SECI and should have sought regulatory guidance from the Commission before grant of Connectivity to the wind power developers.

Issue No.3: Whether connectivity granted by CTU has created vested rights in the Developers/Generators who have been granted connectivity? Whether the persons who have been granted connectivity but are not utilising the connectivity are likely to block the connectivity for the potential Developers/Generators?

94. The Petitioner in its rejoinder has submitted that the connectivity already granted to the applicants will not be disturbed. In the petition, the Petitioner has sought granting over-riding priority to those who have owned the bid in the SECI conducted competitive bidding. In other words, the Petitioner has acknowledged that the applicants who have been granted connectivity have acquired a vested right whereas those who have merely applied but have not been granted connectivity have only acquired right of expectation and not vested rights.

95. The Petitioner has submitted the allocation of connectivity at Tiruneveli sub-station and Bhuj sub-station as under:

Tiruneveli Sub-Station

- The sub-station has provision of total 19 no.s 220 kV bays
- Out of 19 bays, 11 applicants have been granted connectivity with all 19 Nos bays. Subsequently 3 bays have been spared considering that n-1 criteria is waived by CEA for immediate connectivity of Renewable projects.
- Further 16 applications are pending under consideration

Bhuj substation

(iii) This is a 765/400/220 kV AIS Sub-station having a provision for 10 Nos. of 400 kV bays and 16 Nos. of 220 kV bays.

(iv) Of these, 4 Nos. 400 kV bays and 12 Nos. of 220 kV bays have already been allocated to 11 Nos. of applicants with connectivity quantum of 5050 MW.

Subsequently, 15 Nos. of new applications with connectivity quantum of 4450 MW have been received, for which new 400/220 kV sub-station is being proposed. The new applications include application from M/s Adani Green Energy MP Ltd. who is one of the successful bidders in the SECI bid carried out under the aegis of MNRE.

96. The Petitioner has however submitted that a number of generators who have been granted connectivity are neither utilizing the same by either participating in the bid or winning the bid and are squatting on the connectivity, thereby depriving the generators who are genuinely interested in executing the projects. The main contention of the Petitioner is that connectivity, as a separate product, was introduced to facilitate the generation developers to undertake project preparation activities and it was expected that having received facilitation instrument in the form of connectivity, the Applicants would take some concrete steps to proceed towards implementation of generation project in a time-bound manner and thus utilize the connectivity gainfully. The petitioner

has submitted that the applicants who have been granted connectivity have neither signed the bay implementation agreement nor submitted any advance deposit with the transmission licensee for implementation of terminating bays at ISTS sub-station end. According to the Petitioner, these project developers have been holding the bay allocation without having undertaken any physical work for utilizing the connectivity. Therefore, even though there is no dearth of bays at the Tirunelveli Sub-station to accommodate the successful bidder(s) under MNRE scheme, since the bays have been previously allocated to aforementioned applicants, the same cannot be utiised for any gainful use under the bidding route.

97. Some of the Respondents have argued that the scope and meaning of the term 'squatting' in the context of the present Petition is quite subjective as it is unclear as to when connectivity taken by a party with an intent to participate and secure a project in ongoing and/or upcoming bids can be construed as 'squatting'? For instance, if a party bids and doesn't get the project in the first instance, could such scenario be termed squatting; if a party hasn't bid for first or second rounds of bid post securing connectivity but intends to bid for upcoming bids, can such scenario be construed as 'squatting'. These Respondents have further submitted that the very purpose of a bidder in choosing to apply for connectivity to the grid in advance is to mitigate the risk or adverse contractual consequences of not having a definite connectivity to the grid as and when a project is competitively secured by such a bidder. Thus, the connectivity is sought to avoid any potential delays in execution of a project post declaration of such bidder as a successful bidder and consequently avoid various contractual penalties prescribed under

the Power Purchase Agreements. The Respondents have further submitted that most of the IPPs in the lists attached as Annexure to the Petition shows that they have applied for connectivity to the grid on or around the time when the discussions pertaining to issue of SECI guidelines commenced in March 2016 and therefore the applications for grant of connectivity received by CTU were filed by the developers with a view to secure themselves qua the requirement of connectivity to the grid before participating in the SECI bid procedure and as such, the applications were clearly made in anticipation of securing projects in the upcoming bids of SECI or other projects. The Respondents have submitted that advance action taken by wind/solar power developers to secure connectivity to the grid before participating in the bidding process of SECI or any other State agency has to be differentiated from the practice of under-utilisation of the bays or squatting as alleged by CTU.

98. We have considered the submission of the Petitioner and Respondents. In our view, the applicants who have been granted connectivity have not incurred any reciprocal obligations to compensate CTU for creation of the assets if the connectivity is not utilised by the persons granted connectivity. While the transmission charges and losses for inter-State transmission are not chargeable on the project developers at present, the expenditures will be borne by the Designated ISTS Customers (DICs). These assets will not be of any use to the DICs if these project developers do not establish the projects despite being granted connectivity. Since there are no reciprocal financial obligations, no vested right can be said to have been created in the favour of the applicants who have been granted connectivity. It is further noted from the submission of the Petitioner that except one, none of the grantee applicants have signed

Bay Implementation Agreements with CTU. By merely making the application and being granted connectivity on the basis of first come first serve basis, the wind generator/developer cannot claim vested rights and such connectivity can be regulated by the Commission by introducing non-discriminatory and objective criteria to ensure that the assets created on the basis of connectivity granted do not remain unutilized or stranded. In case of the applicants who have not been granted connectivity, there cannot be any vested rights in their favour. The Hon'ble Supreme Court in Howrah Municipal Corporation & Ors. Vs. Ganges Rope Co. Ltd. & Ors. [(2004) 1 SCC 663] has held as under:

> "37. The arguments advanced on the basis of so-called creation of vested right for obtaining sanction on the basis of the building Rules as they were on the date of submission of the application and the order of the High Court fixing a period for decision application and the order of the High Court fixing a period for decision of the same, is misconceived. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". The context, in which respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to "ownership or possession of any property" for which the expression "vest" is generally used. What we can understand from the claim of a "vested right" set up by the respondent Company is that on the basis of Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a "legitimate" or "settled expectation" to obtain the sanction. **In our considered opinion, such "settled expectation", if any, did not create any vested right to obtain sanction.** True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, **such 'settled expectation' has been rendered impossible of fulfillment due to change in law. The claim based on the alleged "vested right" or "settled expectation" cannot be set up against**

statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such "vested right" or "settled expectation" is being sought to be enforced. The "vested right" or "settled expectation" has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, **such a "settled expectation" or so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon."**

Thus, making an application for connectivity as per the prevailing Connectivity Regulations and Detailed Procedure does not create a vested right in the applicants for connectivity. It is at best a "settled expectation" which does not create any vested right in the applicants in the matter of grant of connectivity. These applicants shall be subject to any revised conditions that the Commission may impose through amendment of connectivity Regulations ad Detailed procedure or through orders in exercise of the regulatory power of the Commission.

99. As regards the allegation of squatting or blockage of bays by some of the grantees of connectivity, the Commission has considered the concerns of the affected grantees, particularly the preparatory works required to be taken and the timeline of project execution for wind projects. The Commission is of the view that merely because a connectivity grantee has not participated in the bid or has not been selected in the bid cannot be held against him. If a wind power generator acquires connectivity and takes no actions towards project development for a long period of time, the connectivity granted cannot be allowed to continue ad infinitum. Therefore, there is a need to assess the progress on the basis of certain objective criteria. CTU is directed to frame objective criteria to be prescribed through amendment to Detailed Procedure after seeking

comments from the stakeholders and submit to the Commission within a period of two month from the date of issue of this order.

Issue No. 4: Whether the applicants who have been selected through competitive bidding for developing the wind power projects should be given overriding priority in the matter of grant of connectivity?

101. The Petitioner has prayed the Commission to issue suitable directions to address the cases where the applicants who have emerged successful in the bids carried out by SECI under the initiative of MNRI be allowed connectivity by shifting their priority vis-a-vis other applicants in queue with the existing/under construction sub-stations by shifting them suitably so that renewable energy generation and associated evacuation system is matched.

102. Respondents have submitted that the Petitioner is seeking preferential treatment for successful bidders, which were not available prior to the bidding process. However, the Petitioner has failed to provide any justification for the proposal that successful SECI bidders be given preferential treatment as opposed to successful bidders in Non-SECI bids, or independent power producers setting up power plants with the intention of supplying electricity through entering into PPAs for either LTA or MTOA or STOA with third parties. The Respondents have further submitted that the justification that bidders under the SECI bids are participants in the government's objective to encourage the generation of increased wind power energy is misplaced as the SECI bids are only one of the routes for setting up wind power plants. The Respondents have submitted that by

seeking to accord preferential allocation of connectivity to successful bidders from the SECI bid in October 2016, the Petitioner has sought to distort the level playing field by changing order of priority for grant of connectivity to a hand full of entities who won the first SECI bid. This goes against the legitimate expectations of the Respondents as they are in the queue of applicants for connectivity. Respondents have submitted that had they known that the Petitioner would provide preferential treatment to successful bidders, they would have accordingly participated and quoted lower bids.

103. Mytrah Energy Pvt. Ltd. (MEIL) Respondent No. 4 has submitted that while the prevalent CERC connectivity procedures and LTA regulations are largely relevant in current circumstances, the provisions relating to granting connectivity and LTA need to be amended in order to prioritize the connectivity and LTA for successful bidders shortlisted through government nominated bid/SEC1 bid. It is submitted that such a prioritization is absolutely essential to ensure execution of the projects within timelines as the RfS issued by SECI in SECI Bid-I allows only 18 months to commission the project which includes getting all the consents, approvals, connectivity, LTA etc.

104. We have perused bidding guidelines as notified by MNRE dated 22.10.2016 which provides as follows:

> " The responsibility of getting the ISTS connectivity and Long Term Access (LTA) shall entirely be the WPD. For the information of the bidders, CTU may provide the details of ISTS Substation of the windy states with indicative information on the total installed transformation capacity and capacity available in MVA which can be injected / evacuated from these substations at a particular time…"

Further, the Request for Selection (RfS) document for scheme for setting up of 1000 MW ISTS connected wind power project provides as follows:

> *"3.2 Total Capacity Offered, Project Scope and Technology selection*
> *Selection of Grid-connected Wind Power Projects for total capacity of 1000 MW will be carried out through e-bidding followed by e-Reverse Auction process.*
> *.Project Scope and Technology Selection: Under this scheme, the WPD shall set up Wind Power Project(s) including the transmission network up to the Delivery Point in line with Clause 3.7, at its own cost and in accordance to the provisions of this RfS document. All approvals, permits and clearances required for setting up of the Project (including connectivity) including those required from State Government and local bodies shall be in the scope of the WPD. The Projects to be selected under this scheme provide for deployment of wind power technology. However, the selection of Projects would be technology agnostic within wind power technology.*
> *.3.7 Connectivity with the Grid*
> *3.7.1 The project should be designed for interconnection with the ISTS*
> *3.7.2 The responsibility of getting the ISTS connectivity and Long Term Access (LTA) shall entirely be the WPD. For the information of the bidders, CTU may provide the details of ISTS Substation of the windy states with indicative information on the total installed transformation capacity and capacity available in MVA which can be injected / evacuated from these substations at a particular time…"*

105. The above stipulations in the bidding guidelines as well as RfS document clarifies that the responsibility of getting the ISTS connectivity and Long Term Access (LTA) shall entirely lie with bidders. CTU is required to give indicative information on the total installed transformation capacity and the capacity available in MVA which can be injected or evacuated from these sub-stations at particular time. Therefore, the bidders were expected to carry out their due diligence with regard to the availability of the bays within the timeline required for execution of project and submit the bids accordingly. and cannot claim ignorance at this point of time. Further, from the affidavit of SECI dated 24.8.2017, it is noticed that the bidders had sought the following clarification:

"3.7.2. Clarification sought:

We understand that SECI has published a list of CTU sub-stations with their transformational capacity. However, we request you to publish a list of CTU sub-stations along with available capacity and available inter regional capacity. It will be for the larger benefit for all the interested bidders. It will also avoid hassles to CTU in responding separately to every bidder on such enquires."

SECI vide their clarification dated 23.12.2016 replied as follows:

"The same shall be made available if furnished by the CTU. However, the bidders shall be solely responsible to obtain such information, if required, in case the same is not made available by SECI."

Therefore, it is the responsibility of the bidders to get information from CTU regarding available capacity and take an informed decision accordingly. There is nothing on record that the required information was not made available by the CTU to the bidders. The bidders having quoted the bid based on its own assessment cannot expect to be granted preferential treatment.

106. It is further noted that prior to bid, clarifications were sought on such issues as supporting the Wind Power Developers to obtain the clearances in a fast track mode, entitlement to deemed generation/force majeure in case of any delay in grant of connectivity or non-availability of LTA to the project. SECI has clarified that bid conditions shall prevail. Therefore, we are of the view that the successful bidders have taken the risks at the time of submission of bids and cannot be granted special dispensation in the matter of grant of connectivity.

Issue No.5: What shall be the guidelines for CTU to process the pending applications for connectivity in respect of Wind Power Developers/Generators?

107. The main areas where a large number of Connectivity applications have been received are Tirunelveli area in Tamil Nadu and Bhuj area in Gujarat. The Petitioner has submitted that out of these areas following bidders have won the bid during 1st tranche of 1000 MW e-reverse auction conducted by SECI:

Pg-ps	SECI — first Tranche bid winner	Capacity (MW)
Tirunelveli	Mytrah Energy India Pvt Ltd	250
	Green Infra Wind Energy Limited (GIWEL)	249.9
Bhuj	Inox Wind Infrastructure Services Ltd.	250
	Adani Green Energy MP Ltd	50
Bachau	Ostro Kutch Wind Pvt. Ltd	250

108. Out of these bidders, Connectivity has been granted to Mytrah Energy India Pvt Ltd, Inox Wind Infrastructure Services Ltd. and Ostro Kutch Wind Pvt. Ltd. The applications of Green Infra Wind Energy Limited and Adani Green Energy MP Ltd. are pending for grant with CTU. Though additional three bays have become available at Tirunelveli and four bays become available at Bhuj, the successful bidders as noted above may not be accommodated within these bays based on their position in the waiting list.

109. MNRE vide its letter dated 11.8.2017 to CERC has requested regulatory support for preferential treatment to the successful bidders in order to ensure that the projects are developed in accordance with the timeline envisaged in the bidding guidelines for execution of the project. Some of the Respondents have commented that the letter of MNRE is not in the nature of the policy direction in terms of Section 107 of the Act. It has been further submitted that in the light of the judgment of the Appellate Tribunal in Appeal No. 106 &107 of 2008, the policy directions are for guidance only and are not binding on the Commission.

110. The Commission has considered that the GoI has set a target of 175 GW of renewable energy installed capacity by 2022, of which 60GW has to come from wind energy projects. As on 31st July 2017, the wind power installed capacity is around 32.5 GW which implies that about 27.5 GW needs to be installed in less than 5 years to achieve the set target. It is in best interest of this sector, and for the nation as a whole, that these projects should be commissioned within the timeline. The letter of MNRE dated 11.8.2017 needs to be viewed in the context of meeting the overall objective of GOI to promote wind power generation in the country.

111. The Petitioner has submitted that it is planning new sub-stations to accommodate the pending applications for connectivity. However, since the new sub-stations may take 36 to 40 months for execution, whereas, the projects which have been awarded through the SECI competitive bidding have a timeline of 18 months from the date of award. In other words, there is likely to be mismatch between the commissioning of the sub-station and commissioning of the wind power project by successful bidder. Siemens Gamesa,

Anantpur Windfarms and Kurnool Wind Farms have submitted that there is no need to make new pooling stations when existing ones are yet to be actually used upto their optimum capacity. They have further submitted that new PS is being proposed at Tirunelveli without any effort being made to ensure that the under-construction PS is optimally utilized and that if all the 19 bays at the Tirunelveli PS are utilised to their optimum capacity of 300 MW, then about 5700 MW capacity can be carried which is significantly more than present quantum of granted connectivity of 3534 MW.

112. BLP Energy Private Limited has submitted that post grant of preliminary connectivity, all the generators granted connectivity at a particular sub-station can be placed in a pool. In the quarterly review meetings, generators placed in the pool can be asked to submit the details of the progress in the projects in a particular format. The milestones mentioned in Para 14 (ii) (a) - (d) of the petition cannot be expected to be achieved within six months of the grant of connectivity. A longer period of at least one year should be prescribed. IWISL and Adani Green have also argued that pooling of power by way of using common dedicated transmission lines should be allowed either with the parent company or with the other successful bidders.

113. Considering the above facts, we are of the view that CTU should plan the sub-stations in such a way that the bays are fully utilized corresponding to the capacity expected to be developed around a particular sub-station and no extra bays are made which will remain unutilized and stranded. Accordingly, we direct CTU to plan the bays

at different locations after consultation with MNRE and after being satisfied about the potential requirements of the bays at a particular location.

114. In order to address the problem flagged in the petition, the Commission is of the view that Connectivity for Wind or Solar Projects shall be granted considering preparedness of the applicants as required under Detailed Procedure of Connectivity Regulations. Further, the applicants who have been granted connectivity shall be provided physical connectivity by way of allocation of bay only on commissioning of dedicated line and the wind generating station. Given that the capacities in the sub-stations (existing as well as the one planned in Tirunelveli and Bhuj) being adequate to accommodate all the applicants as on the date of the petition, the aforesaid arrangement will not extinguish the Connectivity rights of any generator and will only make optimal utilisation of this scarce national resource.

115. In order to ensure optimum planning and utilization of transmission system including bays by CTU, the Commission in exercise of its regulatory power under Section 79 (1) (c) of the Act directs the following:

(a) CTU shall plan the sub-station at each location considering the potential of wind resource in consultation with MNRE.

(b) All applicants applying for connectivity shall be granted connectivity indicating a firm location of ISTS substation and an alternative location giving the clear cut timelines for commissioning of the ISTS sub-station.

(c) All applicants who have been granted connectivity shall be allowed physical connection at the sub-station based on their readiness for physical connectivity with the bays.

(d) The stipulation at para (c) based on the readiness for physical connection by the wind power generators/developers will not prejudicially affect the interest of any other wind power generator since, only those generators which have physically commissioned their projects in the area and are accommodated within the capacity of the sub-station shall get physical connectivity. Reserving the bay for a wind power developer/generator which is not ready for commissioning will result in under-utilization of bays which should be avoided at all cost in national interest.

(e) It is desired that the wind and solar energy generators should apply for long term access within a reasonable period of grant of Connectivity in accordance with the Connectivity Regulations and Detailed Procedure therein in order to enable the CTU to plan the evacuation system and system strengthening.

(f) CTU shall implement the sub-station, evacuation line and the system strengthening after consulting the wind generators and after assessing the progress and certainty of such generators in the Joint Coordination Committee Meeting.

(g) CTU shall carry out review of the progress of the wind power generators/developers every six months and report the same to the Commission for necessary directions.

Issue No.6: Whether the Connectivity Regulations and Detailed Procedure require suitable amendment in the light of the issues raised in the petition?

116. Following suggestions have been received from the respondents for optimum utilization of the bays and transmission system in the wind generation sector:

a) The Commission may allow connectivity for wind power on the lines of Solar Park Developer(s) 'SPD'. In this reference, the Competitive Bidding Guidelines for Solar PV and Connectivity Regulations must be aligned and similar arrangements may also be made.

b) Suitable provision be incorporated in the RfS issued by SECI to define the qualification criterion for bidders who already have the connectivity granted as on date of submission of response to RfS.

(i) Completion of detailed line route survey and submission of report thereof;
(ii) Section 68 clearance;
(iii) Analysis of actual participation in the biddings;
(iv) PERT chart and progress of activities (s) according to that;
(v) Signing of Connection Agreement CON-6

c) LTA be mandated to be applied along with connectivity so that the LTA application BG amount is also levied and seriousness is ensured.

d) The grant of connectivity should be time-bound and any renewal may be subject to review status and based on fulfillment of laid milestones/criteria.

e) The pooling of generators using a common dedicated system may be allowed.

f) The generators having preliminary connectivity can be placed in a pool and subject to the fulfillment of milestones, the final connectivity and open access can be granted. Any generator who is in the pool of preliminary connectivity and who have been able to firm up the project by fulfilling the conditions prescribed by the CTU in para 14(ii) of the petition, would be considered for final connectivity approval.

g) Allocation of bays at sub-pooling station, cost thereof and other details can be left to market forces.

h) Sharing of connectivity may be permitted and sub-pooling stations (33KV/220KV) with bays of appropriate lot size may be allowed to be developed by connectivity holders whereby there would be no dearth of connectivity and unnecessary investment in the new ISTS sub-station would be avoided.

i) In the context of wind power, planning a new sub-station and ISTS network must be done considering exploitable wind potential in the vicinity and the existing pooling station must be utilised to its optimum capacity.

j) The capacity of the ISTS pooling station should be matching with the exploitable wind potential in the nearby areas rather than the theoretical wind potential or connectivity applications.

k) The Commission may allow review period of granted connectivity after 1.5 to two years instead of six months for the existing applicant for submission of any document and if applicant has failed to provide evidence for proposed milestone, the connectivity should be shifted to nearest planned sub-station as an option to applicant.

l) Application bank guarantee at the stage of connectivity application should be provisioned so as to ascertain the seriousness of the applicant at the application stage itself.

116. It is observed that there is a need of introduction of concept of Wind Park developer more so when new wind developers are getting connected to ISTS.

117. To ensure further clarity in the process of granting and reviewing connectivity going forward, we direct the staff of the Commission to examine in consultation with CTU the various issues raised in para 115 and 116 above and suggest suitable amendments to the Connectivity Regulations and Detailed Procedure

118. CTU should provide the information regarding the capacity available in existing/upcoming substations as required in RFS document of SECI for enabling the prospective bidders to take informed decision.

119. We feel that SECI is not considering the capacity available at each ISTS substation while evaluating the bids. It will be prudent if SECI should seek the relevant information from CTU and evaluate the bids based on available capacity of ISTS substation.

Issue No.7: Whether a company which has been granted connectivity can be permitted to utilize the connectivity for one or more of its subsidiaries and if so, under what terms and conditions?

120. Mytrah has also pleaded for allowing utilization of the connectivity granted to a parent company by its 100% subsidiaries. BLP Energy, Regen, INOX and other respondents have invited our attention to the following :

> *"One of the other major issues being faced by all generators is that the connectivity has been granted to the parent company but the actual RE project is being implemented either by a 100% subsidiary or an SPV. The SECI guidelines provide for such a course. The only issue which would concern the CTU is that there should be no trading in the connectivity. Therefore, subject to appropriate safeguards, the connectivity granted to a parent company should be allowed to be transferred to an SPV/Project company or a 100 % subsidiary."*

120. The Commission has considered this issue. Though there is no provision for transfer of connectivity to any other entity, RfS issued by SECI allows creation of SPVs for project implementation. The Respondents have submitted that such SPVs face difficulties in implementation of their projects since they cannot utilize the connectivity granted to their parent companies.

121. Connectivity Regulations provides for the concept of "lead generator" and "principal generator" as follows:

Regulation 2(1)(b)(i)(c)
“One of the Hydro Generating stations or generating stations using renewable sources of energy, individually having less than 50 MW installed capacity, but collectively having an aggregate installed capacity of 50 MW and above, and acting on behalf of all these generating stations, and seeking connection from CTU at a single connection point at the pooling sub-station under CTU, termed as the lead generator,”

Regulation 2(1)(b)(i)(e)
"Any renewable energy generating station of 5 MW capacity and above but less than 50 MW capacity developed by a generating company in its existing generating station of the description referred to in sub-clauses (b)(i)(a) to (c) of this clause and seeking connectivity to the existing connection point with inter-State Transmission System through the electrical system of the generating station ."

Regulation 8 (1)
"Provided further that the application by the applicant defined under Regulation 2(1) (b)(i) (e) shall be considered by CTU only if the existing generating station agrees to act as the "Principal Generator" on behalf of the renewable energy generating station(s) seeking connectivity through the electrical system of the generating station and formalizes a written agreement/arrangement among them to undertake all operational and commercial responsibilities for the renewable energy generating station(s) in following the provisions of the Indian Electricity Grid Code and all other regulations of the Commission, such as grid security, scheduling and dispatch, collection and payment/adjustment of Transmission charges, UI charges, congestion and other charges etc., and submit a copy of the agreement to the CTU, alongwith the application for connectivity, with copy to the respective RLDC in whose control area it is located."

122. Keeping in view the fact that creation of SPV is an option under RfS issued by SECI and that a number of companies are executing the projects through creation of 100% subsidiaries after winning the bids, we are of the view that the 100% subsidiary companies should be allowed to utilize the connectivity granted to the parent company. However, in order to obviate the possibility of trading in connectivity, we are of the view that any sale of shares in the subsidiary company(ies) shall be allowed only after one year of the commencement of supply of power from the SPV. In case of more than one

SPV, the lock-in period shall apply from commencement of supply of power from the last SPV. Further, in such cases, the parent company will act as principal generator and undertake all operational and commercial responsibilities for the renewable energy generating station(s) in following the provisions of the Indian Electricity Grid Code and all other regulations of the Commission, such as grid security, scheduling and dispatch, collection and payment/adjustment of Transmission charges, deviation charges, congestion and other charges etc. In case parent company wishes to exit and handover the Connectivity/LTA granted to it to its SPVs, one of the SPV shall have to take over as lead generator and be responsible for all activities stated above.

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

sd/-	sd/-	sd/-	sd/-
(Dr. M.K. Iyer)	**(A.S. Bakshi)**	**(A.K. Singhal)**	**(Gireesh B. Pradhan)**
Member	**Member**	**Member**	**Chairperson**