

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 174/MP/2017**

**Coram:**

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

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

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

**Date of Order:**

**8<sup>th</sup> March, 2018**

**In the matter of**

Petition under Section 79(1)(c) and 79(1)(f) of the Electricity Act, 2003 read with Regulation 32 of the CERC (Grant of Connectivity, Long-Term Access & Medium-Term Open Access in Inter State Transmission & related matters), Regulation 2009

**AND IN THE MATTER OF:**

M/s Suzlon Power Infrastructure Ltd.  
Through Vice President  
One Earth, Opp. Magarpatta City, Hadapsar,  
Pune-411028  
Maharashtra

**... PETITIONER**

**VERSUS**

1. M/s Power Grid Corporation of India Ltd.  
Corporate Office: Saudamini, Plot No.2,  
Sector 29, Gurgaon, Haryana 122001

2. M/s Solar Energy Corporation of India  
Managing Director, 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
4. M/s Green Infra Wind Energy Ltd.  
5th Floor, Tower C,  
Building No. 8, DLF Cyber City,  
Gurgaon 122002  
Haryana
5. M/s Green Infra Renewable Energy Ltd.  
5th Floor, Tower C,  
Building No. 8, DLF Cyber City,  
Gurgaon 122002  
Haryana
6. M/s Adani Green Energy (MP) Ltd.  
Adani House Nr Mithakhali Six  
Roads Navrangpura Ahmedabad,  
GUJARAT - 380009
7. M/s Anantapur Wind farms Pvt. Ltd.  
The Futura, Block B, 8th Floor,  
No334,Rajiv Gandhi Salai,  
Shollinganallur, Chennai, 600 119,  
TAMILNADU – 600119
8. M/s Gamesa Renewable Pvt. Ltd.  
The Futura IT Park, Block B, 8th Floor,  
No334, Rajiv Gandhi Salai,  
Shollinganallur, Chennai, 600 119,  
TAMILNADU – 600119

9. M/s Kurnool Wind Farms Pvt. Ltd.  
The Futura, Block B, 8th Floor,  
No334,Rajiv Gandhi Salai,  
Shollinganallur, Chennai, 600 119,  
TAMILNADU – 600119
10. M/s BLP Energy Pvt. Ltd.  
14<sup>th</sup> Floor, Vatika Towers,  
Golf Course Road, Sector 54,  
Gurugram, Haryana 122003
11. M/s Mytrah Energy (India) Pvt. Ltd.  
Q City Survey No 109 8001  
Block A Gachibowli  
Hyderabad 500032,  
ANDHRA PRADESH - 500032
12. M/s Regen Wind Farm (TN) Pvt. Ltd  
S 7 Krishna Arcade, Old No. 36,  
New No. 10, Rajabathar Street, T. Nagar,  
Chennai,  
TAMILNADU – 600017
13. M/s INOX Wind Infrastructure Services Ltd.  
INOX TOWERS 17 SECTOR-16A,  
NOIDA (Gautam Budh Nagar),  
UTTAR PRADESH – 201301
14. M/s Srijan Energy Systems Pvt. Ltd.  
102, El Tara, Hiranandani Gardens, Powai, Mumbai,  
Mumbai,  
MAHARASHTRA – 400076
15. M/s Ostro Kutch Wind Pvt. Ltd.  
Ostro Energy Pvt. Ltd, Unit no.G-0,  
Ground Floor, Mira Corporate Suites,  
1&2 Ishwar Industrial Estate,

Mathura Road, New Delhi,  
New Delhi,  
DELHI - 110065

16. M/s Sitac Kabini Renewables Pvt. Ltd.  
507-508 Ashoka Estate,  
24 Barakhamba Road,  
New Delhi-110001.
17. M/s Orange Rajkot Wind Pvt. Ltd.  
#301B, 3rd Floor,  
D21 Corporate Park,  
Sector-21, Dwarka, New Delhi - 110075
18. M/s Clean Wind Power, Tuticorin  
212, GF, Okhla Industrial Estate Phase-III  
New Delhi – 110020
19. M/s Clean Wind Power, Bhavnagar  
212, GF, Okhla Industrial Estate Phase-III  
New Delhi – 110020
20. M/s ReNew Power Venture Pvt. Ltd.  
S7, Krishna Arcade, Old No. 36,  
New No. 10, Rajabathar Street,  
T. Nagar, Chennai - 600 017

...RESPONDENTS

**Parties Present:**

Shri Sanjay Sen, Senior Advocate, SPIL  
Shri Matrugupta Mishra, Advocate, SPIL  
Shri Hemant Singh, Advocate, SPIL  
Ms. Shikha Ohri, Advocate, SPIL  
Ms. Ankita Bafna, Advocate, SPIL  
Shri Nishant Kumar, Advocate, SPIL  
Ms. Suparna Srivastava, Advocate, PGCIL  
Ms. Jyoti Prasad, PGCIL  
Shri Swapnil Verma, PGCIL

Ms. Swapna Seshadri, Advocate, BLP Energy  
Ms. Rhea Luthra, Advocate, BLP Energy  
Ms. Parichita Chowdhary, Advocate, BLP Energy  
Shri Shodan Babu, Advocate, SKRPL  
Ms. Aanchal Basur, Advocate, SKRPL  
Shri Shahab Ahmad, Advocate, SKRPL  
Shri Hemant Sahai, Advocate, OSWPPL  
Shri Ranjeet Singh, WWIL  
Shri Avinash Kashyap, WWIL  
Shri Waqas Ahmad, WWIL  
Shri Rishabh Dhyani, Advocate, IWTNA  
Shri Alok Shankar, Advocate, GRPL

### **ORDER**

The Petitioner, M/s Suzlon Power Infrastructure Ltd. (SPIL) (hereinafter referred to as the “Petitioner”) is a company incorporated under the Companies Act, 1956. The Petitioner has filed the petition under Section 79(1)(c) and 79(1)(f) of the Electricity Act, 2003 read with Regulation 32 of the CERC (Grant of Connectivity, Long-Term Access & Medium-Term Open Access in Inter State Transmission & related matters), Regulation 2009 (hereinafter referred to as the “Connectivity Regulations, 2009”) and its amendments thereof, requesting the Commission to direct PGCIL to allow the utilization of 300 MW Grid connectivity and LTA granted to the Petitioner for Chandragiri Wind Farm, for the 249.90 MW Wind power Project awarded to the Petitioner in consortium with Green infra Wind Energy Limited (hereinafter referred to as “the Consortium”) by the Solar Energy Corporation of India (hereinafter referred to as “SECI”).

2. Respondent No.1, M/s Power Grid Corporation of India (PGCIL), is a Government of India Enterprise, notified as the Central Transmission Utility (hereinafter referred to as “CTU”) under Section 38 of the Electricity Act, 2003 that discharges its functions of coordination & planning for the Inter-State transmission of electricity. The CTU has been nominated as Nodal Agency for processing applications received for the grant of connectivity, long term access & medium term open access to the ISTS under Connectivity Regulations, 2009.

3. Respondent No. 2, Solar Energy Corporation of India is a Central PSU under the administrative control of the Ministry of New and Renewable Energy, set up to facilitate the implementation of JNNSM and achievement of targets set therein.
4. Respondent No. 3 is the Ministry of New and Renewable Energy (hereinafter referred to as “MNRE”)
5. Respondent No. 4, Green Infra Wind Energy Private Ltd. (hereinafter referred to as “GIWEL”), is a company incorporated under the Companies Act, 1956 and is engaged in the business of generation of electricity through wind.
6. Respondent No. 5, Green Infra Renewable Energy Ltd. (hereinafter referred to as “GIREL”) is the Consortium project company formed by the Petitioner and Respondent No. 4, pursuant to the issuance of the LOA by SECI, for the 249.90 MW Wind power Project at Tuticorin.
7. Respondent No. 6 to 16, were impleaded as Respondents as per the directions of the Commission on 18.08.2017.
8. The Petitioner has prayed for the following reliefs:
  - a) To direct Respondent No. 1 to permit Respondent No. 5 to utilize the connectivity and LTA granted in favour of the Petitioner;
  - b) To direct Respondent No. 1 to confirm the connectivity permission available with Petitioner for Kumarapuram wind farm project and Kadambur wind farm project for use by the Wind Power Generating companies, on the terms and conditions provided in the connectivity permission.

- c) To condone any inadvertent omissions, errors, short comings and permit the Petitioner to add/ change/ modify/ alter this filing and make further submissions as may be required at a future date; and
- d) Pass such other and further orders as are deemed fit and proper in the facts and circumstances of the case and in the interest of justice.

**Brief Facts of the case:**

9. The Petitioner on the representations and assurance of Respondent No. 1 in the 16<sup>th</sup> Meeting of Southern Region Constituents applied to the Respondent No. 1 for grant of LTA of 900 MW with LTA of 300 MW each for its wind farms located at Chandragiri, Kumarapuram and Kadambur in Tirunelveli. The Connectivity were granted to the Petitioner during the 18<sup>th</sup> Meeting of the Southern Regional constituents. The Petitioner was also granted LTA of 75 MW from Chandragiri Wind farms, Tamil Nadu to Northern Region and Eastern Region. The Petitioner executed the Transmission Service Agreement with the Respondent No. 1 for the three wind farms at Chandragiri, Kumarapuram and Kadambur (900MW LTA) and Long Term Open Access Agreement (LTOA) for 75MW LTA of the Chandragiri, on 29.09.2016. Respondent No. 2 invited bids vide Request for Selection (RfS) No. SECI/C&P/WPD/RfS/ 1000MW/ 102016 dated 28.10.2016 under MNRE Scheme for setting up of 1000 MW ISTS connected Wind Power Projects. The Petitioner entered into the Consortium agreement with Respondent No. 4 (GIWEL) on 08.01.2017. The Consortium submitted the bid on 09.01.2017 and was declared as one of the successful bidders. Letter of Award (LoA) was issued on 05.04.2017. The Petitioner vide letter dated 19.04.2017 requested Respondent No. 1 to consider the 300 MW and 75MW grant of Connectivity at Chandragiri, for use by the Consortium. However, Respondent No. 1 by a letter dated 25.05.2017 bearing Ref. No. C/CTU/S/SPIL&GIWEL declined the request stating that since the grant of Connectivity and the LTA were in favour of the Petitioner only, the Consortium formed by the Petitioner and Respondent No. 4 seeking to utilize such Connectivity would amount to transfer of Connectivity from one legal entity to another. However, the Petitioner has submitted that refusal by the Respondent No. 1 to permit the usage of the

Connectivity and LTA by the Consortium is contrary to the existing provisions of Connectivity Regulations, 2009 and the Procedures under which the connectivity is granted to the Applicant. The grant of approval for Connectivity would be valid as long as there is no change pertaining to the physical characteristics of the “Generating Station”. It is a mere change in ownership of Generating Station from the Petitioner to the Consortium and as such the change in ownership of “Generating Station” should not affect the legality of the permissions or the transactions conducted or likely to be undertaken relating to the “Generating Station”. The intended Chandragiri wind farm, already has its connectivity. The only requirement upon the change in ownership is to file a prior declaration with CTU promising to abide by its terms and conditions for grant of Connectivity. In order to facilitate timely completion and connectivity of the project the Respondent No. 1 may be directed to allow the use of connectivity granted to the Petitioner to be used by the Respondent No.5. The Commission has an inherent power to relax any provision of the detailed procedure to treat wind park developers on the same footing as solar park developers.

10. Per Contra, the Respondents have submitted that the Petitioner has relied on the legal opinion to grant connectivity to entities '*who may not remain the owner of the generation plant*'. Wind power projects are developed on a mechanism very different from development of a conventional fuel based generating station. Wind based generation is location specific and each turbine cannot be connected to the network of the beneficiary and therefore it is necessary to develop a sub-pooling station. Since sharing of a common dedicated line is permissible and provided in the Connectivity Regulations, 2009, there is no issue in allowing different entities using the sub-pooling stations of the developer technically, commercially or legally. Since the quantum of ISTS connectivity is massive and is spread out among developers of diverse background, the possibility of a connectivity allottee resorting to monopoly kind of abuse does not arise. The allottee could be bound by timelines for developing the common transmission infrastructure up to sub-pooling station through amendment in the Connectivity Regulations.
11. The Respondent has submitted that as per the extant regulations there does not appear to be any provision for transfer of connectivity and LTA. The stand taken by the Petitioner is not in sync



with the realities of wind farm development across the globe. Pursuant to a first lot bidding for the ISTS Connected Wind Project, the successful bidders are not being allowed to develop the project in the name of the chosen partners only on the ground that the connectivity was not applied for in the name of the entity now proposing to implement the project. Perusal of the Petitioner's letter dated 27.06.2017 suggests that the decisions taken in the meeting of 27.06.2017 wherein the Petitioner had agreed to surrender the bays at Tirunelveli by moving to single circuit from double circuit is no longer acceptable to the Petitioner. Therefore, the bays which were alleged to be available for allotment to successful bidder do not appear to be available any longer.

12. The Respondent has submitted that it is an undeniable fact that there is no scarcity of bays and there is no need to evict/ or alter priority of any applicant. Further, there is no need to make new pooling stations when existing ones are yet to be actually used up to their optimum capacity. By granting new connectivity to every bid winner or the SPV implementing the project pursuant to the bidding and not permitting the use of connectivity of its parent company/ consortium partner/ any other developer not only flies in the face of intrinsic nature of developing of wind power projects but also provides opportunity for entities to garner additional connectivity by deliberately bidding in the name of a different entity and keep hoarding the available connectivity. The remedy of new out of turn allotment for every bid winner or the SPV implementing the project will lead to arbitrariness and lead to non-transparent and unpredictable allotment of the bays. As per RFS documents issued by SECI, the bidders have undertaken to be entirely responsible for obtaining connectivity. 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.
13. The Respondent has submitted that the combined reading of the provisions of the Connectivity Regulations and the definition of "generating station" and "generating company" do not appear to satisfy the stated position that connectivity once taken can continue to be utilised as the site of the "generating station" and other common infrastructure remains the same.

14. The Respondent has submitted that the legal opinion quoted in the Minutes of Meeting of the 16<sup>th</sup> meeting of the Southern Region constituents allows connectivity to remain with the generating station despite change in shareholding but the same cannot be interpreted to mean that the generating station can mean a wind farm accommodating various IPPs. TSA being relied on by the Petitioner has been entered into pursuant to the Sharing Regulations and has entirely different purpose. In any event the clauses relied on by the Petitioner enable assignment for purpose of creation of security and not as a conduit to wriggle out of the LTA granted to the petitioner without following the procedure for the same. Relinquishment of LTA is allowed only as per procedure under the Connectivity Regulations and not otherwise.
15. The Respondents have submitted that the Consortium undertook a risk to participate in the competitive bidding process of SECI, without securing any connectivity to the grid with the complete knowledge that in terms of the extant tender/bid documents issued by SECI, the said connectivity had to be obtained by the project developers/bidders. The Consortium was solely responsible for obtaining the Connectivity. Now, the Petitioner cannot invoke the inherent powers of the Commission contrary to the extant regulatory regime, thereby leading to an environment of doubt and regulatory uncertainty. The Connectivity Regulations, in terms of Regulation 7, clearly state that connectivity shall be granted to an applicant within a period of 60 days (sixty days) from the date of application, thereby meaning that such connectivity is required to be granted on a first come first serve basis. The Consortium was aware of the Connectivity Regulations at the time of submission of the bid. There is no provision in Connectivity Regulations, 2009 that the Consortium can use connectivity granted to an individual consortium member. 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 stake holders.
16. The Petitioner has argued that as the connectivity is only granted to a generating station, the extant regulations permit transfer of connectivity from one company to the other in accordance with the cited legal opinion. The argument by the Petitioner is flawed since for such transfer to actually happen there must exist a generating station. Merely a site earmarked for the purposes of

establishing a wind generating station cannot be termed as a generating station in accordance with the definition of the term as set out in the Electricity Act, 2003.

17. The Petitioner has also failed to demonstrate any activity in relation to the additional connectivities obtained for Kumarapuram Wind Farm and Kadambur Wind Farm at the same Tirunelveli PS. If the intention of the Petitioner was to build a project itself with the said connectivity, the Petitioner should have taken a controlling shareholding in the Consortium rather than take an insignificant shareholding of 1% in the Consortium, which as such can be transferred to the Respondent No.5 post execution of PPA for the Project.
18. In case, the Petitioner is allowed to transfer the said connectivity to any third party of its choice with which it forms a Consortium, then the same may tantamount to trading of use of national resource and would undermine the authority of Respondent No. 1 in managing the efficient utilization of the said resource as per the Connectivity Regulations. Several OEMs secure connectivity with the intention of selling the SPV which has been granted the connectivity/transferring the connectivity itself to a third party and earning a premium on it. However, if such a practice of utilization of Connectivity of the OEM be allowed by the Consortium, then the same 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.
19. Any reliance to the concept of Solar Parks is misplaced. 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 have to be obtained by the Independent Power Producers (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. Therefore, it is prayed that the Petition filed by the Petitioner may be rejected.

**Analysis and Decision:**

20. The Commission notes that the only issue that arises for decision before us is *Whether the Petitioner can be allowed to transfer the Connectivity granted by Respondent No. 1 in favour of Consortium (Respondent No. 5) in the present scenario? and Whether the Respondent No.1 should be directed to permit Respondent No. 5 to utilize the connectivity & LTA granted in favour of the Petitioner?*
21. The Commission observes that the Petitioner who was granted connectivity has not utilized the same by participating in the bid invited by SECI and therefore there is no question of winning the bid. Further, the Petitioner has sought to transfer the connectivity in the name of a Consortium (third party) in which the Petitioner has only a nominal share of 1%. The Respondents have alleged that the transfer of Connectivity of Petitioner to Consortium tantamounts to trading which is against the spirit of the Electricity Act, 2003.
22. To answer the issue we intend to analyse maintainability of the prayer of the Petitioner for transfer of Connectivity in the light of the following viz. a) Connectivity Regulations, 2009, b) Legal Opinion sought as per minutes of the Sixteenth meeting of the Southern Region Constituents regarding LTA and Connectivity Applications or c) the exception carved out by the Commission in the Petitioner No. 145/MP/2017.

**a) Connectivity Regulations, 2009:**

23. The Commission is of the view 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 optimally.

24. Regulation 2 of the Connectivity Regulations defines the term “Applicant” for grant of connectivity extracted as under:-

*“(b) ‘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.”*

25. The Commission observes that as per Regulation 2 (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. However, unlike the case of Solar Power Park Developer who is eligible to

apply for connectivity, there is no provision in the Connectivity Regulation for Wind Power Developers. Consequently, Wind Power Generators are therefore 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.

26. It is apparent from the above that there is no provision for transfer of connectivity to any other entity in the Connectivity Regulations, 2009.

**b) Legal Opinion sought as per minutes of the Sixteenth meeting of the Southern Region Constituents regarding LTA and Connectivity Applications:**

27. The extract of the minutes of the Sixteenth meeting of the Southern Region Constituents regarding LTA and Connectivity Applications dated 25.09.2013 is reproduced below:

*"2.2 As per the decision POWERGRID sought the legal opinion and the observations are as given below:*

*It is a common practice of the Wind Developers transferring the generating stations to third parties after commissioning of the generating unit. There is nothing in law which prohibits them from effecting such transfer. Such transfers are done mostly of the shares of the generating company and not by sale of generating station as such.*

*In other words, a generating company is formed, the wind project is established in the generating station and thereafter the Promoters sell the shares to third parties. The connectivity under the Connectivity Regulations is given to a generating station and not necessarily to a company as a whole. In my opinion, there is no difficulty whatsoever in regard to the connectivity granted, if there is a change in the ownership of the shares or even when there is a change in the ownership of the generating station. While granting the approval for connectivity, Powergrid can specify that the connectivity is restricted to the generating station and will not be available for transfer to any other generating station or unit.*

*As regards the ownership change, Powergrid can provide in the approval that in case of change of ownership, the developer and the new owner shall file a declaration with Powergrid and the new owner shall be bound by all the terms and conditions of the approval granted for the connectivity."*

28. The Commission observes that the portion of the legal opinion placed on record deals with the issue of transferability. It is observed that the legal opinion is based on the assumption that *"It is a common practice of the Wind Developers transferring the generating stations to third parties after commissioning of the generating unit. There is nothing in law which prohibits them from effecting such transfer."* This implies, that the generating stations after commissioning can be transferred to the third party and there is no bar on such transfers. The legal opinion further clarifies that *"In other words, a generating company is formed, the wind project is established in the generating station and thereafter the Promoters sell the shares to third parties.* Meaning thereby, that the generating company should be first formed and the wind project should be commissioned/established in the generating station before the Promoters sell the shares to the

third party. The legal opinion further clarifies that *“In my opinion, there is no difficulty whatsoever in regard to the connectivity granted, if there is a change in the ownership of the shares or even when there is a change in the ownership of the generating station. While granting the approval for connectivity, Powergrid can specify that the connectivity is restricted to the generating station and will not be available for transfer to any other generating station or unit.”* This infers that, only in the case of the established/commissioned generating station the change of the ownership can be allowed.

29. The Commission observes that Sec. 2(30) of the Electricity Act, 2003 defines a “Generating Station” as follows:

*“(30) “generating station” or “ station” means any station for generating electricity, including any building and plant with step-up transformer, switch yard, switch-gear, cables or other appurtenant equipment, if any used for that purpose and the site thereof, a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;”*

30. “Generating Company” is defined under Section 2(28) of the Electricity Act, 2003 as follows:

*“(28) “generating company” means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;”*

31. “Generating Company and requirement for setting up of generating station” is stipulated under Section 7 of the Electricity Act, 2003 as follows:



*“Section 7. (Generating company and requirement for setting up of generating station): Any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of section 73.”*

32. “Duties of the Generating Company” is stipulated under Section 7 of the Electricity Act, 2003 as follows:

*“Section 10. (Duties of generating companies):*

*(1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.*

*(2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.*

*(3) Every generating company shall –*

*(a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;*

*(b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.”*

33. The Commission observes that Section 7 and Section 10 of the Electricity Act, 2003 deal with establishment of generating stations by generating companies and the duties of generating companies respectively. Section 7 of the Electricity Act, 2003 stipulates that a company capable

of owning a generating station is a generating company whereas Section 10 of the Act prescribes the duties of generating companies. The duties of a generating company are to establish, operate and maintain generating stations, tie-lines, substations and dedicated transmission lines connected therewith.

34. In the instant case, the Petitioner had applied for LTA way back on 3<sup>rd</sup> November, 2014 and connectivity even prior to that. The Petitioner has nowhere demonstrated that post application of LTA, it has done any development work since 2014. The Petitioner has also not demonstrated any activity in relation to the additional connectivities obtained for Kumarapuram Wind Farm and Kadambur Wind Farm at the same Tirunelveli PS. On the other hand, the Petitioner had in fact carved out the Consortium with Respondent No. 4 and has consciously taken an insignificant shareholding of 1% and the Controlling share of 99% is with Respondent No. 4 and hence Respondent No. 4 is the Lead Member of the Consortium who was awarded the bid by the Respondent No. 2. The Petitioner now seeks to transfer the connectivity for the purpose of the project intended to be developed by the Respondent no. 5, which is completely unrelated to the application made by the Petitioner for connectivity in 2014.

35. The Commission further observes that Clause 6 of the “Connection Agreement” stipulates as under:

*"6. Transfer Assignment and Pledge*

*The Applicant or Inter-state transmission licensee shall not transfer, assign or pledge its right and obligations under the connection agreement to any other person."*

36. Therefore, the Commission observes that if the application of the Petitioner for the transfer of Connectivity is allowed in the present circumstances the same will tantamount to trading which is against the spirit of the Electricity Act, 2003.

37. It would also be pertinent to mention in this context that the question regarding the creation of vested rights in the Developers/Generators who have been granted connectivity came before the

Commission in Petition No. 145/MP/2017. The issue was deliberated in detail and it was held that:

*“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.”*

38. The Commission is of the view that by merely making the application and being granted connectivity, the wind generator/developer cannot claim vested rights and in the absence of the vested rights the question of transferring the Connectivity by the Petitioner in favour of Consortium.
39. In the view of above the Commission does not agree with the legal opinion and hence, the same does not support the case of the Petitioner.

**c) The exception carved out by the Commission in the Petitioner No. 145/MP/2017**

40. The Commission has taken a view with regard to transfer of connectivity to SPV that is 100% subsidiary in the Petition No. 145/MP/2017 as under:

*“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."*

41. In the aforesaid Order (145/MP/2017), the Commission specifically deliberated on the question of transfer of Connectivity granted to a parent company to a SPV that is 100% subsidiary of the parent company. In order to address emerging needs and to safeguard against the misuse of Connectivity, the Commission allowed such transfer of Connectivity in view of the fact that SECI bids allow creation of SPVs for project implementation. But certain conditions were attached to such transfer and they are as under:

- i) In order to obviate the possibility of misuse or trading of connectivity, 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.
- ii) That in case of more than one SPV, the lock-in period shall apply from commencement of supply of power from the last SPV.
- iii) That the parent company will act as principal generator and undertake all operational and commercial responsibilities for the renewable energy generating station(s).
- iv) Subject to condition at (i), 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.

42. Respondent No.4 is a principal generator with 99% shareholding in the Consortium whereas the Petitioner has retained only 1% of the shareholding. The Consortium (Respondent No.5) so formed by the Petitioner and the Respondent No.4 does not get covered under the Order in 145/MP/2017. The Consortium needs to apply for the separate Connectivity and the same has to be processed in accordance with the Connectivity Regulations, 2009 and Procedures thereunder by the Respondent No. 1. The request of the Petitioner cannot be acceded to and is rejected.

43. In view of above the Petition No. 174/MP/2017 stands disposed of.

Sd/-

**(Dr. M. K. Iyer)**  
**Member**

Sd/-

**(A. S. Bakshi)**  
**Member**

Sd/-

**(A. K. Singhal)**  
**Member**