

**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

Petition No. 173/MP/2017
alongwith
IA No. 63/2017& 72/2017

Date of Order: 31st of October, 2017

In matter of

Petition under Section 79(1)(f) of the Electricity Act, 2003 read with Regulation 33A and 33B of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in Inter-State Transmission and Related Matters) Regulations, 2009 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking directions to Power Grid Corporation of India Limited (PGCIL), to facilitate Connectivity and Long term Open Access to the special purpose vehicles incorporated by the Petitioner to implement the wind power projects awarded to it under the scheme of Government of India, Ministry of New and Renewable Energy dated 28.10.2016 for setting up of 1000 MW ISTS- connected wind power projects.

And
In the matter of

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

Petitioner

Versus

1. Power Grid Corporation of India Ltd (PGCIL),
B-9, Qutub Institutional Area,
KatwariaSarai, New Delhi-110016

2. Ministry of New and Renewable Energy (MNRE),
Block No. 14, CGO Complex,
Lodhi Road, New Delhi-110003

3. Solar Energy Corporation of India Limited(SECI),
D-3, 1st Floor, Wing-A,
Religare Building, District Center,
Saket, New Delhi-110017

4. Power Trading Company India Limited (PTC),
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi-110066

Respondents

Parties Present:

Ms.Swapna Seshadri, Advocate, IWISL
Shri Ashwin Ramanathan, Advocate, INOX
Ms. Rhea Luthra, Advocate, INOX
Shri B. Juneja, INOX
Shri Awinash Pandey, INOX
Shri Alok Gupta, INOX
Shri Parteek Prasun, SECI
Shri Aashish Anand Bernard, Advocate, PTC
Shri Paramhans, Advocate, PTC
Shri Swapnil Verma, PGCIL
Ms. Joyti Prased, PGCIL
Shri Dileep Rozekar, PGCIL
Shir Gopal Jain, Senior Advocate, SITAC

ORDER

The Petitioner, INOX Wind Infrastructure Services Ltd., has filed the present petition for seeking relaxation in the provisions of Regulations 2(b) (i) 8, 12 and 15 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in Inter-State Transmission and Related Matters) Regulations, 2009 and the corresponding provisions in the Detailed Procedure made thereunder, to facilitate Connectivity and Long term Open Access to the special purpose vehicles (SPVs) incorporated by the Petitioner to implement the wind power projects awarded to it under the scheme of Government of India, Ministry of New and Renewable Energy (hereinafter referred to as "MNRE") dated 22.10.2016 for setting up of 1000 MW ISTS connected wind power projects.

2. The Petitioner has submitted as under:

(a) On 22.10.2016, MNRE issued Guidelines for implementation of a scheme for setting up 1000 MW ISTS (i.e. inter-State Transmission System) connected wind power projects and requested Solar Energy Corporation of India (SECI) which is the implementation agency for the Scheme, to start the bidding process for selection of wind power projects under the Scheme. The projects were to be developed in eight States classified as “Windy States”, namely, Andhra Pradesh, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu and Telangana.

(b) SECI issued Request for Selection (RfS) dated 28.10.2016 for setting up of grid connected wind power projects in India on “Build, Own, Operate” basis for an aggregate capacity of 1000 MW. PTC India Ltd. was selected as the Trading Agency for purchase and sale of wind power from such projects and was required to enter into PPA with the selected bidders for purchase of wind power for a period of twenty five years based on the terms, conditions and provisions of the RfS. The maximum tariff payable to each project developer was to be fixed for twenty five years as discovered through the e-bidding and e-reverse auction.

(c) As per Clause 3.7 of RfS, the transmission network up to the delivery point was required to be set up by the wind power projects at their own cost. Therefore, it was the responsibility of the wind project developer to obtain connectivity and access into the ISTS. However, the transmission charges for use of ISTS were to be paid by the buying entity.

(d) As per Clause 3.14, the power generated from selected projects was required to be purchased by PTC under contractual arrangements with the project developers and the buying entities. The Government of India, Ministry of Power vide order dated 30.9.2016 has notified that for generation projects based on wind resources, no ISTS charges and losses would be leviable on transmission of electricity through ISTS for sale by such projects commissioned till 31.3.2019. However, the waiver would be available for a period of 25 years from the date of commissioning of such projects who have entered into PPAs with distribution companies for compliance of their renewable purchase obligations.

(e) Clause 3.20 of the RfS provides for the shareholding pattern of a project developer and has laid down that the shareholding pattern of the project company could change after one year from commencement of supply of power with the permission of SECI.

(f) Subsequently, SECI issued an amendment to the RfS amending the Clause 3.5.10 to provide a mechanism for setting up a Special Purpose Vehicle (SPV) for execution of the awarded projects. As per Clause 3.5.10 of amended RfS, a bidder which has been selected as the successful bidder can execute the Project through the SPV i.e. a Project company specially incorporated as a fully owned subsidiary Company (100% subsidiary) of the successful bidder for setting up of the Project which has to be registered under the Indian Companies Act, 2013, before signing of the PPA. Therefore,

the wind power projects awarded under the RfS could be implemented through SPVs established by the selected bidders.

(g) On 9.1.2017, the Petitioner submitted bid for setting up five (5) wind power projects (50 MW each) near Dayapar, Kutch in the State of Gujarat under the MNRE Scheme. SECI vide its letter dated 5.4.2017 issued LOA to the Petitioner with certain terms and conditions.

(h) The Petitioner formed the five (5) SPVs as its 100% owned subsidiaries for execution of each of the above five (5) projects, namely (i) Renergy Pvt. Ltd, (ii) Wind Two Renergy Pvt. Ltd, (iii) Wind Three Renergy Pvt. Ltd, (iv) Wind Four Renergy Pvt. Ltd and (v) Wind Five Renergy Pvt. Ltd. The Petitioner, through its SPVs, furnished bank guarantees in favour of SECI. The Petitioner was required to furnish proof to SECI regarding connectivity with ISTS through Transmission Service Agreement (TSA).

(i) On 30.5.2016, the Petitioner applied to PGCIL for grant of connectivity to the ISTS. PGCIL vide its letter dated 31.3.2017 intimated the Petitioner about grant of connectivity through the Bhuj Pooling Station at 220 kV which could be transferred from Dayapar to the CTU's sub-station at Bhuj through 220 kV D/C line.

(j) On 30.11.2016, the Petitioner applied to PGCIL for grant of LTA for 500 MW. The Petitioner vide its letter dated 13.6.2017 informed PGCIL about status of power generation and evacuation from its projects. The Petitioner requested SECI that it is desirous to use 250 MW out of the LTA granted in its name for the projects to be developed by its SPVs in terms of RfS issued by

SECI under which the successful bidders were given the option of implementing the projects through SPVs with 100% shareholding of the bidder company. However, PGCIL vide its letter dated 1.8.2017 informed the Petitioner that since under the present Connectivity Regulations, there is no provision of developer for the wind generation project, the Petitioner is advised to ensure compliance with regulatory requirements for the Connectivity and LTA granted against the Petitioner's application, specifically signing of the PPA by IWISL. Accordingly, the Petitioner could not avail the granted connectivity and LTA for transferring power from its projects to the ultimate beneficiaries due to existing regulatory mechanism.

3. Against the above background, the Petitioner has filed the present petition with the following prayers:

“(a) Relax the provisions of Regulations 2(b)(i), 8, 12 and 15 of the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and Related Matters) Regulations, 2009 and the corresponding provisions in the Detailed Procedure framed there under and/or provide such additional dispensation in the said Regulations/Detailed Procedure as are necessary so as to give effect to the MNRE Guidelines dated 22.10.2016 for setting ISTS connected wind based power plants in the country and to enable the Petitioner to evacuate power from the projects awarded to it under the said Guidelines.

(b) Pass such further and other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case.”

4. The Petitioner has filed IA No. 63/2017 seeking urgent listing and disposal of the Petition.

5. Notices were issued to the Respondents to file their replies. Reply to the Petition has been filed by PTC. PTC in its reply has requested to examine the issues

raised by the Petitioner in light of the applicable laws and Regulations issued by the Commission.

6. During the course of hearing on 27.9.2017, learned senior counsel for the SITAC Kabini Renewables Pvt. Ltd. (SITAC) sought permission to file an IA for impleadment of SITAC as party to the Petition. However, learned counsel for the Petitioner objected to the same and submitted that SITAC is not an affected party and is trying to delay the proceedings.

7. SITAC has filed an IA No. 72/2017 seeking dismissal of the present petition. SITAC has submitted that the present petition is not restricted to the Bhuj Sub-station as asserted by the Petitioner but rather has a wide ranging scope with far reaching implications. If the relief sought in the Petition is granted, then developers such as the Petitioner would be able to transfer connectivity to other entities through transfer of subsidiaries, whether the stake holding of the Petitioner in the subsidiary is 100% or otherwise. SITAC has further submitted that if the prayer of the Petitioner is allowed by permitting utilisation of connectivity granted to the Petitioner by a subsidiary or an SPV, whether owned 100% or otherwise, it would amount to trading in connectivity. SITAC has submitted that on 20.10.2016, SITAC applied for grant of connectivity at Tuticorin for utilization which was subsequently corrected on 29.12.2016. This application is pending with PGCIL and in the event the prayers sought for by the Petitioner are granted, the proposed application of the Petitioner would be processed out of turn contrary to the Connectivity Regulations to the detriment of the SITAC. SITAC has submitted that this is not a case where there exists a vacuum in the existing regulations. The Connectivity Regulations are comprehensive and prescribe a specific manner in which the Connectivity

applications are to be processed and granted. Any deviation from the prescribed procedure has to be effected by way of an amendment of the existing Connectivity Regulations and cannot be made through an order passed under Section 79 (1) (c) or Section 79 (1) (f) of the Act. SITAC has submitted that in the event, the connectivity is allowed to be transferred to the SPVs formed by the Petitioner, the Petitioner would then be in a position to subsequently effect the change of ownership of these SPVs and therefore do something indirectly which is expressly prohibited directly. This would in effect encourage the hoarding of connectivity and would be in direct contravention with the intention of the regulation.

8. In response to the IA of SITAC, the Petitioner has submitted that any order passed by the Commission in the present petition will have no effect on SITAC. SITAC is not even one of the parties in the waiting list for grant of connectivity at Bhuj sub-station of Gujarat, which concerns the Petitioner. The Petitioner has placed on record the status of the connectivity of the generating companies as on 19.7.2017. With regard to the contention of SITAC that it will be affected by the principle decided, the Petitioner has submitted that it cannot be a ground for impleadment. Every person will get affected by the principles to be decided in the various matters before the Commission and this will not entitle them to simply get impleaded and convert private litigations into public interest litigations.

Analysis and Decision:

9. We have considered the submissions of the Petitioner and the Respondents. The Petitioner has filed the present petition for seeking relaxation in the provisions of Regulations 9(b), 8, 12 and 15 of the Connectivity Regulations to facilitate Connectivity and Long term Open Access to the special purpose vehicles (SPVs)

incorporated by the Petitioner to implement the wind power projects awarded to it under the scheme of Government of India.

10. The main grievance of the Petitioner is that SECI bid allows creation of 100% owned SPVs for execution of the projects won by the bidder and PPAs are also allowed to be executed by these SPVs. However, as per the current Connectivity Regulations and Detailed Procedure, these SPVs are not permitted to utilize the connectivity granted to the parent company. The Petitioner has requested for permitting the connectivity granted to the parent company to be utilised by their 100% SPVs. PGCIL has submitted that unlike solar power projects, there is no provision of 'developer' for wind generation project in the Connectivity Regulations. However, the issue needs to be examined in the light of impending Wind projects to be awarded by the Central Government.

11. SITAC has filed an IA and has sought impleadment in the petition. We have considered the application for impleadment. SITAC is not directly affected if the Petitioner is allowed the prayer made in the Petition but seeks impleadment on the ground that if the principle is decided as per the prayer in the Petition, then it will affect the interest of SITAC. We do not find any merit in the application for impleadment. If a person has been granted connectivity and if the said connectivity is not allowed to be utilised by its 100% SPVs which have won the bids to execute the project, then neither the connectivity could be utilised nor could the project be implemented. While SECI's bid permits a successful bidder to execute the project through 100% subsidiary, the connectivity granted to the person should be allowed to be utilised by such SPVs in order to complete the projects in time. Further, the apprehension that it will lead to trading in connectivity is unfounded as the

connectivity would be utilised by the SPVs which are 100% subsidiaries and no other company is involved. Moreover, providing a suitable lock-in period for holding of the SPVs by the parent company would address the apprehension of trading in connectivity. In our view, allowing a company who has been granted connectivity to utilise such connectivity by its 100% subsidiary in order to execute the competitively bid project under SECI scheme will not affect the interest of other persons who have either been granted connectivity or have applied for or are in the process of applying for connectivity. IA for impleadment is disposed of accordingly.

12. The Petitioner, vide its affidavit dated 9.10.2017, has submitted that on the primary issue pertaining to utilization of connectivity/LTA granted to a parent company by a fully owned subsidiary, the Commission vide order dated 29.9.2017 in Petition No. 145/MP/2017 has already settled the principle. Therefore, the petition can be disposed of in terms of the said order as the finding of the Commission squarely applies to the Petitioner.

13. The Commission vide order dated 29.9.2017 in Petition No.145/MP/2017 has dealt with the issue of utilisation of connectivity granted to a parent company by one or more of its fully owned subsidiary companies 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.”

14. In the light of the above decision, the Petitioner is permitted to utilise the connectivity granted to the Petitioner by its fully owned SPVs for execution of the projects awarded through the competitive bidding carried out by SECI, subject to the terms and conditions given in para 122 of the order dated 29.9.2017 in Petition No.145/MP/2017.

15. The Petition along with IAs 63/2017 and 72/2017 are disposed of in terms of the above.

Sd/-
(Dr. M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson